

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 99-1198

JOHN R. BRIDDELL,

APPELLANT,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before FARLEY, STEINBERG, and GREENE, *Judges*.

ORDER

In a single-judge order dated December 17, 2001, the Court denied the appellant's application for an award of attorney fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). On December 20, 2001, the appellant filed a timely motion for panel decision pursuant to Rule 35 of the Court's Rules of Practice and Procedure.

Upon consideration of the foregoing, it is

ORDERED that not later than 20 days after the date of this order, the Secretary file, and serve on the appellant, a response, pursuant to Rule 35(g), to the appellant's motion for panel decision as well as to the arguments presented therein. It is further

ORDERED that, not later than 15 days after service of the Secretary's response, the appellant may file, and serve on the Secretary, a reply thereto.

DATED: February 4, 2002

PER CURIAM.

STEINBERG, *Judge*, concurring: I believe the appellant's motion for a panel decision should be granted because the appellant has raised a matter of first impression that was not addressed in the single-judge order. I hope that the parties will address the implications, if any, for the prevailing-party issue of *Jacobsen v. West*, 12 Vet.App. 546, 547-48 (1999) (holding that Secretary's position not substantially justified at administrative stage where Secretary had conceded at merits stage that Board failed to follow established law, even though Court had not so found at merits stage).