

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA *
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vs. *

GREGORY LEE PERIMAN *

Docket No. 08-0074-PAF-98ST.L
EQUAL ACCESS TO JUSTICE ACT

ORDER

1. On March 5, 2002 the Respondent filed the original "Notice of application for Equal Access to Justice Act" in this case. A copy of that submission is attached as Attachment A.
2. The Equal Access to Justice Act provides, in pertinent part, that an agency which conducts an adversary adjudication shall award to a prevailing party fees and expenses incurred by that party in connection with that proceeding, unless it is found that the agency's position was substantially justified or that special circumstances make an award unjust. See 5 USC § 504(a)(1). The Act continues that the party seeking an award must file an application within 30 days of a final disposition in the adversary adjudication showing that the party is the prevailing party and is eligible to receive an award under this section. Also, the amount of the award sought including an itemized statement from an attorney representing the applicant stating the actual time expended and the rates at which fees and expenses were computed, must be included.

3. The Department of Transportation regulations governing the award of fees and expenses under the Equal Access to Justice Act are codified at 49 CFR § 6. Those rules require that an application for an award of fees and expenses under the Act contain, in part, the following information:

- A. Identify the position of the Agency which was not substantially justified;
- B. Include a statement that the individual's net worth does not exceed \$1 million;
- C. Include a statement of the amount of fees and expenses for which the award is sought; and
- D. Include a written verification under oath or under penalty of perjury that the information provided in the application is true and accurate.

See 49 CFR § 6.17

The Department of Transportation rules require that the agency counsel file an answer to the application within 30 days. 49 CFR § 6.25(a). Failure to file an answer "... may be treated as a consent to the award request." (*Id.*)

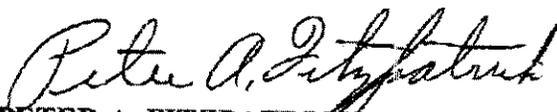
4. The Decision and Order served on March 26, 1999 in this case found the charge Use of a Dangerous Drug and the related specification Proved. On appeal the Vice Commandant issued Decision of the Vice Commandant on Appeal No. 2061 remanding the case with instructions to withdraw the original decision and issue a new decision based on the original hearing and any new evidence received at the reopened hearing to be scheduled. Further hearings were scheduled at St. Louis on May 22, 2001 by orders dated March 21 and 30, 2001. Subsequently, the Coast Guard filed a Motion for Dismissal requesting that the case be dismissed "based on new evidence discovered by the Coast Guard on April 5, 2001." That motion was

granted and the case was dismissed with prejudice by order dated April 16, 2001.

5. The "Notice" filed in this case appears to be that alone and not the application contemplated by the Act and the Department of Transportation rules. None of the information required to be submitted in an EAJA application is included in this submission. No claim of fees and expenses is set out nor is there any evidence that the Respondent qualifies for any award.

Moreover, this "Notice" was filed long after the 30 day filing period set out in EAJA. The final order dismissing the underlying case was issued on April 16, 2001. The initial receipt of a facsimile of the Notice here was received at the ALJ Docketing Center, Baltimore, MD on February 27, 2002 or over 9 months later. Clearly it is untimely.

For the foregoing reasons, the Notice of Application for Equal Access to Justice Act (if it purports to be an application) is **DENIED**.


PETER A. FITZPATRICK
Administrative Law Judge

Done and Dated April 16, 2002
Norfolk, Virginia

02-26-02

Administrative Law Judge Docketing Center Baltimore
40 S. Gay Street, Room 412
Baltimore, Maryland 21202-4022

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702 1188 - 5 11 10 20
ALJ DOCKETING CENTER
BALTIMORE, MD

Attention: Hearing Docket Clerk

RE : Notice of application for Equal Access to Justice Act
49 CFR Part 6, 5 U.S.C. 504
From adverse decision by USCG- DOT
Docket No. 08-0074-PAF-98
License No. 852819 issued to
Gregory Lee Periman

Respectfully submitted



Gregory Lee Periman

Copy: MSO ST.Louis