

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

RONALD D. GILBERT,
Claimant-Appellant,

v.

**ERIC K. SHINSEKI, SECRETARY OF VETERANS
AFFAIRS,**
Respondent-Appellee.

2012-7006

Appeal from the United States Court of Appeals for
Veterans Claims in case no. 10-0705, Judge Lawrence B.
Hagel.

ON MOTION

ORDER

PER CURIAM.

Ronald D. Gilbert submits a "motion for attorney fees and expenses." The Secretary of Veterans Affairs opposes. The court construes Gilbert's March 22, 2012 submission as a motion to file a supplemental brief. In response, the Secretary moves for leave to respond.

To the extent that Gilbert's motion seeks reimbursement of attorney fees and legal expenses under the Equal Access for Justice Act (EAJA), 28 U.S.C. § 2412(d), Gilbert's request is premature. Gilbert's appeal remains pending before this court and thus he cannot yet be considered a "prevailing party" as required under EAJA. The court additionally notes that pro se litigants like Gilbert are not eligible to recover attorney fees under EAJA. *See Naekel v. Dep't of Transp., F.A.A.*, 845 F.2d 976, 981 (Fed. Cir. 1998).

To the extent that Gilbert is again seeking to proceed in forma pauperis, this court has already ruled on that matter. Because Gilbert is a prisoner, he must pay the \$450 filing fee in its entirety over time when funds exist.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for attorney fees and expenses is denied.

(2) Gilbert's motion to file a supplemental brief and the Secretary's motion for leave to respond are granted. A copy of Gilbert's March 22, 2012 submission and a copy of the Secretary's response shall be transmitted to the merits panel assigned to hear the case.

FOR THE COURT

APR 30 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Ronald D. Gilbert
K. Elizabeth Witwer, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

APR 30 2012

JAN HORBALY
CLERK