

Attorneys' Fees Denied After Case Removed from CFC

On May 15, 2013, the U.S. Court of Federal Claims denied a request for attorneys' fees under the Equal Access to Justice Act (EAJA) in a case that was previously filed in the CFC, but was ultimately remanded and resolved in an administrative proceeding without the CFC hearing the merits of the claims. The case is *Hughett v. United States* and the opinion can be read in its entirety [here](#).

In 2009, plaintiff, a member of the Air National Guard, was discharged soon after being diagnosed with a serious medical condition. The plaintiff brought suit against the United States, claiming that she was wrongfully discharged, seeking reinstatement to active duty. But because the Air Force Board for Correction of Military Records never had an opportunity to hear the plaintiff's challenge, the CFC granted a joint motion to remove the case to the Board for adjudication. Ultimately, the Board granted plaintiff the requested disability retirement. In light of this relief, the parties informed the CFC that dismissal of the case was warranted because the Board "afford[ed] [the plaintiff] a satisfactory disposition of her case." The plaintiff then moved for attorneys' fees and costs under EAJA.

Under EAJA, "[a] party that prevails against the United States in a civil action is entitled, in certain circumstances, to an award of attorney's fees, court costs, and other expenses." The CFC, however, held that the plaintiff was not a "prevailing party" and thus not entitled to attorneys' fees under EAJA because the CFC's prior remand to the Board was "purely procedural" and "issued to promote judicial economy in this case rather than to address administrative error." Under these circumstances, the court explained, the plaintiff is not entitled to relief.

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