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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 William Thomas Young,  
10 Plaintiff,

No. CV-16-02264-PHX-DGC

**ORDER**

11 v.

12 Commissioner of Social Security  
13 Administration,  
14 Defendant.

15 Plaintiff William Young has filed a motion for attorney's fees under the Equal  
16 Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). The motion is fully briefed and no  
17 party has requested oral argument. The Court will deny Plaintiff's motion.

18 **I. Background.**

19 Plaintiff applied for disability and supplemental security insurance benefits on  
20 September 30, 2010, alleging disability beginning August 20, 2010. Doc. 14 at 1. After  
21 a hearing on April 12, 2012, an administrative law judge ("ALJ") issued an opinion on  
22 April 25, 2012, finding that Plaintiff suffered from severe impairments but was not  
23 disabled. The Appeals Council vacated and remanded the ALJ's decision. A second  
24 hearing was held on July 8, 2014. Following this hearing, the ALJ issued a second  
25 decision on October 2, 2014 holding that Plaintiff did not suffer from a severe  
26 impairment or combination of impairments and thus was not disabled. A request for  
27 review was denied by the Appeals Council and the ALJ's opinion became the  
28 Commissioner's final decision.

1 Plaintiff filed a complaint with this Court asking for review of the Commissioner's  
2 decision. Doc. 1. The Court found that the ALJ erred by concluding that Plaintiff did not  
3 have a "severe" medically determinable impairment at step two of the disability  
4 assessment process. Doc. 14 at 7. The Court reversed the agency's decision and  
5 remanded with instructions to review the record as a whole and issue a new decision.

## 6 **II. Legal Standard.**

7 Under the EAJA, the Court must award attorney's fees to a prevailing party unless  
8 the United States shows that its position was "substantially justified or that special  
9 circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A); *see Gutierrez v.*  
10 *Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001); *Flores v. Shalala*, 49 F.3d 562, 567 (9th  
11 Cir. 1995). In this case, Plaintiff is a prevailing party because the final administrative  
12 judgment denying his application for benefits was reversed and remanded for further  
13 consideration. *Gutierrez*, 274 F.3d at 1257.

## 14 **III. Was the Commissioner's Position Substantially Justified?**

15 The Supreme Court has held that a position may be substantially justified "if it has  
16 a reasonable basis in fact and law." *Pierce v. Underwood*, 487 U.S. 552, 566 n.2 (1988).  
17 The Ninth Circuit has provided this additional explanation:

18 The test for whether the government is substantially justified is one of  
19 reasonableness. Substantially justified does not mean justified to a high  
20 degree, but rather justified in substance or in the main—that is, justified to  
21 a degree that could satisfy a reasonable person. Put another way,  
22 substantially justified means there is a dispute over which reasonable minds  
could differ.

23 *Gonzales v. Free Speech Coal.*, 408 F.3d 613, 618 (9th Cir. 2005) (citations and  
24 quotation marks omitted).

25 In deciding this case, the Court found a tension between the de minimis standard  
26 used to evaluate impairments at step two and Ninth Circuit case law instructing that  
27 reviewing courts should "determine whether the ALJ had substantial evidence to find that  
28 the medical evidence clearly established that [the claimant] did not have a medically

1 severe impairment or combination of impairments” at step two. Doc. 17 at 3 (quoting  
2 Doc. 14 at 4 (quoting *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005))). The Court  
3 observed that the standard of review could be applied in two ways: the district court  
4 could ask (1) whether there is substantial evidence to support the ALJ’s finding that non-  
5 severity at step two is clearly established; or (2) whether there is evidence in the record  
6 that clears the de minimis standard. Doc. 14 at 5. The Court found that the Ninth Circuit  
7 had adopted the second approach, and that a court must overturn an ALJ’s finding of no  
8 severe impairment if the record “includes evidence of problems sufficient to pass the de  
9 minimis threshold of step two.” *Webb*, 433 F.3d at 687.

10 The Court found that the administrative record in this case contained such  
11 evidence. Doc. 14 at 6. The Court also found, however, that the ALJ’s 2014 decision  
12 “‘include[d] a careful and thorough examination of the medical record’ and was  
13 ‘supported by at least three doctors . . . all of whom found Plaintiff’s impairments to be  
14 mild.’” Doc. 17 at 3 (quoting Doc. 14 at 6).

15 Given this state of the record and the uncertainty the Court found in Ninth Circuit  
16 law on the de minimis standard, the Court concludes that the correctness of the ALJ’s  
17 decision in this case is a question on which reasonable minds could differ. Applying the  
18 reasonableness standard discussed above, therefore, the Court concludes that the  
19 Commissioner’s position was substantially justified. The Court will deny the request for  
20 fees under the EAJA.

21 **IT IS ORDERED** that Plaintiff’s motion for attorney’s fees (Doc. 16) is **denied**.

22 Dated this 28th day of July, 2017.

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27 David G. Campbell  
28 United States District Judge