

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

Ronald L. Ring,

)

No. CV 10-08217-PCT-NVW

10

Plaintiff,

)

ORDER

11

vs.

)

12

Michael J. Astrue, Commissioner of Social Security,

)

13

Defendant.

)

14

15

Before the Court is Plaintiff’s Motion for Attorney’s Fees Pursuant to the Equal Access to Justice Act (Doc. 18).

16

17

18

I. Background

19

Ring has hepatitis C, liver cirrhosis, and osteoarthritis in his right knee. He also is morbidly obese. Ring protectively applied for disability insurance benefits and supplemental security income, alleging disability since December 7, 2007. On December 9, 2009, Ring appeared and testified at an administrative hearing at which he was represented by counsel. Victoria Rei, an impartial vocational expert, also appeared and testified telephonically at the hearing.

20

21

22

23

24

25

On February 10, 2010, the Administrative Law Judge (“ALJ”) issued a decision that Ring was not disabled within the meaning of the Social Security Act, which subsequently became the Commissioner of Social Security’s final decision. On

26

27

28

1 November 10, 2011, the Court vacated the final decision of the Commissioner and
2 remanded the case for further proceedings.

3 Ring seeks an award of attorney’s fees pursuant to 28 U.S.C. § 2412(d) in the
4 amount of \$6,432.80 and costs in the amount of \$350.00. The Commissioner opposes
5 Ring’s motion only on the ground that his position was substantially justified. The
6 Commissioner does not object to the amount of award requested.

7 **II. Legal Standard**

8 On a motion for attorney’s fees and costs pursuant to the Equal Access to Justice
9 Act (“EAJA”), a prevailing party is entitled to attorney’s fees “unless th[is] court finds
10 that the position of the United States was substantially justified or that special
11 circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). Under the EAJA, the
12 government’s “position” includes both its litigating position and the action or failure to
13 act by the agency upon which the civil action is based. 28 U.S.C. § 2412(d)(2)(D). Here,
14 then, it includes the ALJ’s decision and the Commissioner’s arguments to this Court in
15 defense of the ALJ’s decision.

16 The Supreme Court has defined “substantially justified” as “justified to a degree
17 that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988).
18 The government bears the burden of showing that its position was substantially justified.
19 *Gonzales v. Free Speech Coalition*, 408 F.3d 613, 618 (9th Cir. 2005).

20 **III. Analysis**

21 As previously found, substantial evidence did not support the ALJ’s finding that
22 Ring’s skills acquired from past relevant work are transferable to other occupations with
23 jobs existing in significant numbers in the national economy. Specifically, the ALJ failed
24 to elicit whether the vocational expert’s testimony that a person with Ring’s limitation to
25 occasional kneeling could perform the job of “parts and order clerk,” whether the
26 vocational expert’s opinion conflicted with the *Dictionary of Occupational Titles*, and, if
27 so, whether there was a legitimate explanation for the conflict. The ALJ plainly failed to
28

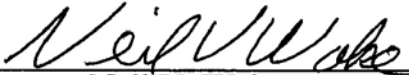
1 fulfill his special duty to fully and fairly develop the record. *See Smolen v. Chater*, 80
2 F.3d 1273, 1288 (9th Cir. 1996).

3 Moreover, the Commissioner was not substantially justified in defending the
4 ALJ's oversight in performing routine questioning of a vocational expert. Special
5 circumstances do not make a fee award unjust, and the EAJA therefore requires the Court
6 to award Ring attorneys' fees and other expenses.

7 IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney's Fees
8 Pursuant to the Equal Access to Justice Act (Doc. 18) is granted. Plaintiff is awarded fees
9 in the amount of \$6,432.80 and costs in the amount of \$350.00.

10 IT IS FURTHER ORDERED that the Clerk enter judgment in favor of Plaintiff in
11 the amount of \$6,432.80 for attorneys' fees and \$350.00 for costs against Defendant, with
12 interest at the federal judgment rate from the date of entry of judgment.

13 DATED this 13th day of March, 2012.

14
15 
16 _____
Neil V. Wake
United States District Judge

17
18
19
20
21
22
23
24
25
26
27
28