

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:19-CV-507-DCK**

KENNETH ALLEN JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	
)	

THIS MATTER IS BEFORE THE COURT on “Plaintiff’s Application For Attorney’s Fees Under The Equal Access To Justice Act” (Document No. 19) filed October 5, 2022. The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c), and immediate review is appropriate. Having carefully considered the motion and the record, the undersigned will deny the motion.

Plaintiff seeks an award of fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412(d)(1)(A) (“EAJA”) in the amount of \$8,439.75. (Document No. 19 and 19-2). Plaintiff notes that the Court issued an Order remanding this case on May 5, 2020. (Document No. 19); see also (Document No. 17).

“Defendant’s Objection To Plaintiff’s Petition...” (Document No. 21) was timely filed on October 18, 2022. In response, Defendant asserts that “[u]nder the EAJA, a prevailing party must file an application for an award of attorneys’ fees and expenses with the court within thirty days of the ‘final judgment in the action.’” (Document No. 21, p. 1) (citing 28 U.S.C. § 2412(d)(1)(B)). “In this case, Plaintiff had until August 3, 2020 to file a petition for EAJA fees.” (Document No. 21, p. 2). Defendant argues that Plaintiff’s motion must be denied because it is over two (2) years

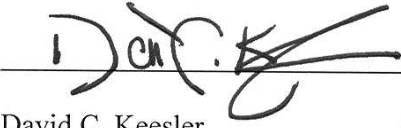
late, and Plaintiff has provided no explanation or justification for not filing the EAJA petition a timely manner. (Document No. 21).

The undersigned notes that Plaintiff failed to comply with Local Rule 7.1(b). Plaintiff has also failed to file a timely reply brief, or notice of intent not to reply, and the time to do so has lapsed. See LCvR 7.1(e). Plaintiff's motion and memorandum offer no explanation, or acknowledgment, regarding the delayed application for EAJA fees. (Document Nos. 19 and 19-2).

Based on Defendant's arguments and cited authority, and the lack of a rebuttal by Plaintiff, the undersigned will deny the pending motion for EAJA fees.

IT IS, THEREFORE, ORDERED that "Plaintiff's Application For Attorney's Fees Under The Equal Access To Justice Act" (Document No. 19) is **DENIED**.

Signed: November 3, 2022



David C. Keesler
United States Magistrate Judge

