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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 VIRGINIA LONGWORTH,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN,

12 Defendant.

CASE NO. C14-5711 BHS

ORDER DENYING PLAINTIFF'S
MOTION

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14 This matter comes before the Court on Plaintiff Virginia Longworth's
15 ("Longworth") motion for Equal Access to Justice Act ("EAJA") fees and costs (Dkt.
16 14). The Court has considered the pleadings filed in support of and in opposition to the
17 motion and the remainder of the file and hereby denies the motion for the reasons stated
18 herein.

19 **I. PROCEDURAL HISTORY**

20 On September 8, 2014, Longworth filed a complaint against Defendant Carolyn
21 W. Colvin, Acting Commissioner of Social Security ("Government"), challenging the
22 Government's denial of her application for benefits. Dkt 1.

1 On March 19, 2015, the Court issued an order affirming in part and reversing in
2 part the Administrative Law Judge’s (“ALJ”) denial of benefits. Dkt. 12.

3 On June 17, 2015, Longworth filed the instant motion requesting fees and costs.
4 Dkt. 14. On June 29, 2015, the Government responded. Dkt. 15. On July 15, Longworth
5 filed a combined motion for extension of time to reply and a reply. Dkt. 16.¹

6 II. DISCUSSION

7 A party is entitled to EAJA fees only if the government was not “substantially
8 justified” in its actions. 28 U.S.C. § 2412(d)(1)(A). The Supreme Court holds that
9 substantially justified means “justified in substance or in the main”; in other words,
10 “justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487
11 U.S. 552, 565–566, n.2 (1988). “It is the government’s burden to show that its position
12 was substantially justified.” *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013)

13 In this case, the Government has met its burden. It is undisputed that the ALJ
14 made an error. Although the Government does not contest this conclusion, it appears that
15 the Government misconstrues the Court’s reasoning regarding reversing and remanding.
16 In the relevant Ninth Circuit case, the court declined to set a standard that an ALJ must
17 expressly state that he or she considered a borderline age classification. *Lockwood v.*
18 *Comm’r Soc. Sec. Admin.*, 616 F.3d 1068, 1071 n.2 (9th Cir. 2010). In fact, if an ALJ’s
19 decision is silent on the borderline age classification, then the reviewing court should
20 presume that the ALJ knew of, considered, and properly applied the law. *Id.* at 1073 n.3.

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22 ¹ The Court grants the motion for an extension of time to file a reply based on counsel’s
representation that the motion is unopposed.

1 The Court did nothing to disturb or extend this precedent. Any assertion by the
2 Government to the contrary is without merit.

3 What the Court concluded, however, was that the ALJ committed harmful error
4 under the facts of this case. Although the ALJ stated that she considered a borderline age
5 situation, the ALJ referenced the *wrong* age classifications. The Court held that this error
6 was harmful because it undermined the ultimate conclusion on the merits. *Ludwig v.*
7 *Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). The Government’s position was that
8 evidence in the record established that the ALJ knew Longworth’s age and properly
9 applied the correct categories. Had the ALJ been silent on the age classifications, the
10 Government’s argument may have been persuasive. The Court, however, concluded that
11 the explicit error was not inconsequential and reversed and remanded for additional
12 clarification.

13 With regard to the current dispute, the Court finds that the Government’s position
14 was substantially justified. Harmless error is a case-by-case, fact-specific inquiry. *Id.* at
15 1053–54. The Government was justified in this case by basing its position on facts that
16 establish that the ALJ merely referenced the wrong age category in the written decision,
17 as opposed to failing to actually consider the proper categories. Although the Court
18 ultimately disagreed with the Government, the Court finds that a reasonable person
19 would find the Government’s opposition justified.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Longworth's motion for EAJA fees and
3 costs (Dkt. 14) is **DENIED**.

4 Dated this 20th day of July, 2015.

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6 BENJAMIN H. SETTLE
7 United States District Judge

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