

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

JAN 19 1989

ROBERT L. HOECKER
Clerk

DUANE MARTINEZ,)
)
Plaintiff-Appellee,)
)
v.)
)
OTIS R. BOWEN, M.D.,)
Secretary of Health and)
Human Services,)
)
Defendant-Appellant.)

No. 87-2785
(D.C. No. 87-K-314)
(D. Colo.)

ORDER AND JUDGMENT

Before McKAY, BARRETT and BALDOCK, Circuit Judges.

This is an appeal from a district court order awarding plaintiff-appellee (claimant) \$2,850 in attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1)(a).¹ Claimant successfully challenged the final decision of the defendant-appellant (Secretary) denying him Supplemental Security Income (SSI) benefits, and the Secretary did not appeal. In awarding attorney's fees, the district court merely stated that the Secretary's position was not substantially justified.

¹ After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); Tenth Cir. R. 34.1.8. The cause was vacated from the oral argument calendar and shall be submitted on the briefs.

Martinez v. Bowen, No. 87-K-314 (D. Colo. Sept. 15, 1987)
(unpublished order). We reverse and remand.

While the district court's order does have the advantage of brevity, it contains insufficient findings to permit meaningful appellate review. If the district court meant that a lack of substantial evidence on the merits may be equated with a lack of substantial justification under the EAJA, we have rejected this position in a case subsequent to the filing of this appeal. See Hadden v. Bowen, 851 F.2d 1266 (10th Cir. 1988). Accordingly, the case is remanded to the district court for adequate findings of fact and conclusions of law, Fed. R. Civ. P. 52(a), in accordance with the standards of Hadden v. Bowen.

The Secretary's motion to strike is denied as moot.

SO ORDERED.

Entered for the Court

Bobby R. Baldock
Circuit Judge