

Exhibit 1

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) BOURKE,DAVID P					2. Social Security Number [REDACTED]		3. Date of Birth [REDACTED]		4. Effective Date 10/25/2009			
FIRST ACTION					SECOND ACTION							
5-A. Code 170		5-B. Nature of Action EXCEPTED APPOINTMENT			6-A. Code		6-B. Nature of Action					
5-C. Code WKM		5-D. Legal Authority SCH A, 213.3102/K/			6-C. Code		6-D. Legal Authority					
5-E. Code		5-F. Legal Authority			6-E. Code		6-F. Legal Authority					
7. FROM: Position Title and Number					15. TO: Position Title and Number TRANSPORTATION CLERK 01100A							
8. Pay Plan	9. Occ. Code	10. Grade/Level	11. Step/Rate	12. Total Salary	13. Pay Basis	16. Pay Plan	17. Occ. Code	18. Grade/Level	19. Step/Rate	20. Total Salary/Award	21. Pay Basis	
						GS	2102	05	01	\$33,639	PA	
12A. Basic Pay		12B. Locality Adj.		12C. Adj. Basic Pay		12D. Other Pay		20A. Basic Pay		20B. Locality Adj.		
								\$27,026		\$6,613		
								\$33,639		\$0		
14. Name and Location of Position's Organization					22. Name and Location of Position's Organization VA MEDICAL CENTER ADMIN SVCS MEDICAL ADMINISTRATION SVC HINES IL							
EMPLOYEE DATA												
23. Veterans Preference						24. Tenure			25. Agency Use		26. Veterans Preference for RIF	
2 1 - None 3 - 10-Point/Disability 5 - 10-Point/Other 2 - 5-Point 4 - 10-Point/Compensable 6 - 10-Point/Compensable/30%						2 0 - None 2 - Conditional 1 - Permanent 3 - Indefinite					X YES NO	
27. FEGLI						28. Annuitant Indicator			29. Pay Rate Determinant			
C0 BASIC LIFE ONLY						9 NOT APPLICABLE			0 REGULAR RATE			
30. Retirement Plan				31. Service Comp. Date (Leave)		32. Work Schedule			33. Part-Time Hours Per			
K FERS & FICA				10/25/2009		F FULL-TIME			Biweekly Pay Period			
POSITION DATA												
34. Position Occupied						35. FLSA Category			36. Appropriation Code			
2 1 - Competitive Service 3 - SES General 2 - Excepted Service 4 - SES Career Reserved						N E - Exempt N - Nonexempt			8298.2580			
37. Bargaining Unit Status 2039												
38. Duty Station Code 17-3975-031				39. Duty Station (City - County - State or Overseas Location) HINES IL								
40. Agency Data 578		41.		42.		43.		44.				
45. Remarks APPOINTMENT AFFIDAVIT EXECUTED 10-26-2009. APPOINTMENT IS SUBJECT TO COMPLETION OF ONE-YEAR INITIAL PROBATIONARY/TRIAL/ PERIOD BEGINNING 10-25-2009. SALARY INCLUDES A LOCALITY-BASED PAYMENT OF 24.47%. FROZEN SERVICE: NONE. CREDITABLE MILITARY SERVICE:*NONE. PREVIOUS RETIREMENT COVERAGE: NEVER COVERED. EMPLOYEE IS AUTOMATICALLY COVERED UNDER FERS CONTINUED EMPLOYMENT IN THIS POSITION IS CONDITIONED UPON FAVORABLE ADJUDICATION OF APPLICABLE BACKGROUND INVESTIGATION OR NATIONAL AGENCY CHECK WITH WRITTEN INQUIRIES (NACI) BASIC LIFE INSURANCE COVERAGE AND ADDITIONAL OPTIONAL COVERAGE (IF ELECTED) ARE BASED ON THE RATE OF ANNUAL SALARY PAYABLE TO YOU AS A PART-TIME EMPLOYEE, NOT THE FULL-TIME SALARY RATE SHOWN IN BLOCK 20 OF THIS SF 50-B. HOWEVER, BASIC LIFE INSURANCE COVERAGE IS ALWAYS AT LEAST \$10,000. POSITION MUST CONVERT TO CAREER CONDITIONAL BY 10/25/2012.												
46. Employing Department or Agency DEPARTMENT OF VETERANS AFFAIRS						50. Signature/Authentication and Title of Approving Official WAYNE H DAVIS						
47. Agency Code VA TA		48. Personnel Office ID 1255		49. Approval Date 10/25/2009		HUMAN RESOURCES OFFICER ELECTRONICALLY SIGNED						

Exhibit 2

Page 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID P. BOURKE,)
)
 Plaintiff,)
)
 vs.) No. 22 C 3164
)
 DENIS McDONOUGH,)
)
 Secretary, U.S.)
)
 Department of Veterans)
)
 Affairs,)
)
 Defendant.)

The deposition of DAVID P. BOURKE, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Kari Wiedenhaupt, a Certified Shorthand Reporter for the State of Illinois, on March 27, 2023, at the hour of 10:30 o'clock a.m.

Kari Wiedenhaupt
License No: 084-004725

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April 3, 2023

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1 APPEARANCES:

2 KENNETH N. FLAXMAN, P.C., by
3 KENNETH FLAXMAN
4 200 SOUTH MICHIGAN AVENUE
5 SUITE 201
6 CHICAGO, IL 60604
7 (312) 427-3200
8 knf@kenlaw.com
9 Representing the Plaintiff;

10 UNITED STATES DEPARTMENT OF JUSTICE, by
11 NICOLE FLORES
12 219 SOUTH DEARBORN STREET
13 5th FLOOR
14 CHICAGO, IL 60604
15 (312) 886-9082
16 nicole.flores3@usdoj.gov

17 -and-

18 UNITED STATES DEPARTMENT OF VETERANS
19 AFFAIRS, by
20 SHELIA FITZPATRICK
21 SENIOR STAFF ATTORNEY
22 OFFICE OF CHIEF COUNSEL
23 MIDWEST DISTRICT
24 PO BOX 1427
25 HINES, IL 60141-1427
Representing the Defendant.

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I N D E X

WITNESS

EXAMINATION

DAVID P. BOURKE

By NICOLE FLORES	5
By KENNETH FLAXMAN	75
By NICOLE FLORES	81

E X H I B I T S

NUMBER	MARKED FOR ID
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BOURKE Deposition Exhibit

No. A	26
No. B	31
No. C	40

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1 THE COURT REPORTER: We are on the
2 record. This deposition is being taken by means
3 of Zoom video conference. The attorneys
4 participating in this deposition acknowledge
5 that I am not physically present in the
6 deposition, and the oath will be administered
7 remotely. The parties and their counsel consent
8 to this arrangement and waive any objections to
9 this manner of reporting.

10 Will all counsel present please
11 state your name, who you represent, and indicate
12 your agreement on the record?

13 MR. FLAXMAN: Kenneth Flaxman,
14 Plaintiff. We agree.

15 MS. FLORES: Nicole Flores for the
16 Defendant, and we agree.

17 MS. FITZPATRICK: Shelia Fitzpatrick,
18 Department of Veteran's Affairs, Defendant, and
19 I agree.

20 (Whereupon, the witness was duly
21 sworn.)
22
23
24
25

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1 DAVID PIERCE BOURKE,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. FLORES:

6 Q. Thank you. Good morning, Mr. Bourke.
7 As I previously introduced myself, my name is
8 Nicole Flores, and I am an attorney for the VA.
9 I am just going to go over a few ground rules or
10 suggestions.

11 We are remote. So it's extra
12 important that the court reporter be able to
13 accurately record our conversation today. So
14 please answer verbally, meaning, no gestures or
15 uh-huh or other nonverbal responses.

16 Please wait for me to finish a
17 question before you answer it even if you know
18 or anticipate what the question is so we are not
19 talking over one another. Does that make sense?

20 A. Yes.

21 Q. Okay. Feel free to ask me to repeat or
22 clarify a question, if you do not understand the
23 question, and let me know if you need a break at
24 any time. I just ask that if there is a
25 question pending, that you please answer the

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1 question first, and then we can break. Okay?

2 A. Yes, ma'am.

3 Q. Do you understand that you are under
4 oath and required to tell the truth at this
5 deposition today?

6 A. I do.

7 Q. And is there any reason why you cannot
8 provide truthful testimony today?

9 A. No.

10 Q. Okay. And did you do anything to
11 prepare for the deposition today?

12 A. We briefly went over the file that you
13 have in your possession, but really not that
14 much. It was just to try to get the dates
15 straight.

16 Q. Understood. Okay. Did you review any
17 documents other than those that are in the file?

18 A. Oh, no.

19 Q. And have you ever given a deposition
20 before?

21 A. I have.

22 Q. Okay. Was that related to any facts at
23 issue in this case?

24 A. Yes, it is.

25 Q. Okay. And what case was that for?

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1 A. This EEO complaint.

2 Q. Was that at the administrative level?

3 A. Yes.

4 Q. Okay. Okay. So now I think we can get
5 started. Can you please state and spell your
6 full name for the record?

7 A. Yes. David Pierce Bourke; D-A-V-I-D,
8 P-I-E-R-C-E, B-O-U-R-K-E.

9 Q. And what is your address?

10 A. [REDACTED]
11 [REDACTED],
12 [REDACTED].

13 Q. And how long have you lived there?

14 A. It's got to be close to ten years,
15 eight to ten years.

16 Q. And do you reside or share the
17 residence with anyone else?

18 A. I do not.

19 Q. Okay. And how long have you worked for
20 the VA?

21 A. I believe my hire date was October 30th
22 of '09.

23 Q. And have you always worked at the Hines
24 campus since --

25 A. Correct.

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1 Q. Okay. What was your first position
2 with the VA?

3 A. I worked in the travel department. So
4 I guess it would be a travel clerk. I'm not
5 quite sure. I don't remember the actual title.

6 Q. Okay. And did you require any
7 accommodation, reasonable accommodations, when
8 you were a travel clerk?

9 A. Not that I know of, although I was a --
10 hired through the work program, CWT, compensated
11 work therapy, provided by the VA for one year
12 before I was hired full-time.

13 Q. Okay. And were you -- that was when
14 you started as a clerk? You started --

15 A. Yeah.

16 Q. -- under that program?

17 A. Yes. I was originally in the travel
18 office as a CWT, a patient we're considered, not
19 employees, but full-time was a year later.

20 Q. Okay. And did you work as a travel
21 clerk when you were hired full-time after that
22 first year?

23 A. I did. I was, yes.

24 Q. And how long were you a travel clerk,
25 approximately?

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1 A. Maybe 18 months.

2 Q. So after you were a travel clerk, what
3 did you move on to?

4 A. I went to central scheduling.

5 Q. Okay. And how long were you with
6 central scheduling?

7 A. I guess approximately a year. It's
8 been so long, I don't really recall.

9 Q. Okay. That's okay. Did you require
10 any reasonable accommodations when you were with
11 central scheduling?

12 A. No.

13 Q. And after that, what was your position?

14 A. At the time, we -- the Chief of PAS,
15 Donna Thagnew (phonetic), she knew I wanted out
16 of central scheduling, and she said she had a
17 hot spot. She had fifth floor surgical services
18 clinics, fifth floor of the main hospital was --
19 in her words, was in trouble. They just weren't
20 getting the job done.

21 She said, "I would like to move
22 you to that position, because you show up, you
23 do your job, and it's going to be very hectic
24 and busy." So I agreed, and she just moved me
25 right into that position on the fifth floor.

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1 **Q. And --**

2 A. And that was an MSA, medical support
3 assistant.

4 **Q. And how long were you an MSA on the**
5 **fifth floor?**

6 A. I am going to guess a year and a half.
7 Just -- I know more than a year.

8 **Q. Okay. Did you require any reasonable**
9 **accommodations as an MSA?**

10 A. No.

11 **Q. And what did you -- what was your job**
12 **as an MSA?**

13 A. Responsible for all categories of an
14 MSA from insurance capture, to running reports
15 as far as encounters, to checking in and
16 checking out patients, scheduling, same-day
17 appointments or future return to clinic
18 appointments, whatever the job required.

19 **Q. And after you were an MSA in the**
20 **surgical unit on the fifth floor, where did you**
21 **move to?**

22 A. At that time, then Fred Jackson, who
23 has since retired, he said they needed someone
24 with computer skills to work in the reproduction
25 department, which is the copy room, and so he

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1 detailed me as a clerk for the reproduction
2 department.

3 Q. And how long was that detail?

4 A. Over a year.

5 Q. Okay. And did you require any
6 reasonable accommodations as a clerk in the
7 reproducing -- reproducing department, in the
8 copy room?

9 A. No.

10 Q. Okay. And after that detail, did you
11 return to the fifth floor surgical, or did you
12 take on another position?

13 A. Well, the positions on the fifth floor
14 were filled. So what happened was, is all MSAs
15 got a raise through the federal government, but
16 they wouldn't give it to me, because I was not
17 in a clinical situation.

18 So I applied for and left
19 reproduction and went to the mental health
20 department.

21 Q. So you were -- just to recap, you were
22 in the mental health department as an MSA?

23 A. Yes. I was in where they first come
24 in. Intake, it's called.

25 Q. Okay. How long were you there?

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1 A. I was in intake for over a year before
2 I went to 4 South, same building.

3 **Q. Okay.**

4 A. Mental health clinics, but it was in
5 trauma service program and addiction treatment
6 programs.

7 **Q. And did you require any reasonable**
8 **accommodations while you were in either of those**
9 **positions with mental health?**

10 A. I did. What happened was, in September
11 of 2014 while I was in the reproduction
12 department, the VA was having the roof, a flat
13 roof stripped and reroofed in Building 1, the
14 old section of the hospital where I worked. And
15 on three different occasions, we were exposed to
16 toxic fumes they were using to strip the roof.

17 After the second exposure, the
18 acting supervisor, Mr. Tom Ozik (phonetic),
19 filed a complaint with safety, and with Fred
20 Jackson, who at the time was the head of the
21 reproduction department, about the exposure and
22 the fumes. And somewhere along the line, safety
23 came down and agreed that they could no longer
24 strip the roof in that area without closing off
25 the vents, so we didn't get that -- there's no

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1 windows in reproduction -- and then notify us
2 when they were going to do it. They did not.

3 The third time I was acting
4 supervisor, because Mr. Ozik was off. He is
5 also a veteran. He was sick at that time, and
6 we were exposed so bad on that September date,
7 2014 -- I believe it was September 11th, too --
8 I had to shut down the reproduction shop, and I
9 ordered everyone to employee health, and I went
10 there myself.

11 And I had an irregular
12 heartbeat and irregular breathing, and why they
13 didn't admit me to the hospital, to this day, I
14 don't know, but I was sent home sick for several
15 days.

16 **Q. And after that, what reasonable**
17 **accommodations did you require when you returned**
18 **to work?**

19 A. Well, it's a little more involved than
20 that, but eventually my doctor said that he
21 wanted a CAT scan of my lungs at the VA. So we
22 CAT scanned that, and his words are, "I lit up
23 the CAT scan". So everyone was notified
24 something was wrong; pulmonary, oncology.

25 It was decided after 90 days

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1 they would re-CAT scan me, which they did in
2 January of '15, and according to them, that CAT
3 scan, my lungs got worse. There were more spots
4 or growths. There was more of them, and they
5 were bigger.

6 So in March of '15, they did a
7 wedge resection biopsy of my left lung, because
8 I think it was a double wedge resection, and
9 they took off the lymph nodes, too, to check
10 them. And they were noncancerous, but the VA
11 eventually misdiagnosed me with sarcoidosis,
12 which is an inflammation of the lungs of unknown
13 origin.

14 Now, prior to that, I was
15 working out and running six to eight miles a day
16 everyday, and after the exposure, the third one,
17 I believe it was the third one, September 11th,
18 I couldn't run anymore. The breathing was
19 wrong. My heart would race. I wasn't sleeping.
20 So the VA said I had sarcoidosis and placed me
21 on 40 milligrams a day of prednisone, a very
22 dangerous steroid, to reduce the inflammation.

23 My pulmonary doctor,
24 Dr. Sheikh, then was getting sick with her first
25 pregnancy, and so she was off for many months,

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1 and I was being then followed by other
2 pulmonists (sic) stepping in for her. What
3 happened was in August coughing, something
4 happened to my center back. I felt something
5 break. I went to the Hines ER, and the EA
6 doctor -- ER doctor took x-rays and got back to
7 me, and said, "Well, we don't see anything. And
8 are you seeking narcotic medications?"

9 I was livid. I said, "How can
10 you say that? I didn't come in here asking for
11 medications. I told you there is something
12 wrong with my back." When my doctor at the VA
13 heard about it, he ordered a CAT scan. Halfway
14 through the CAT scan, they came in and said,
15 "You got to drink this, because we found
16 something. Now we have to put the contrast in."

17 So about two hours of CAT
18 scanning, they came back and said I had a TA
19 multiple compound fracture. Now, I was having
20 that fracture repaired at the VA, and they laid
21 me on my stomach, and unbeknownst to them and to
22 me, the steroids had already done terrible
23 damage to my body.

24 And as -- they did a
25 kyphoplasty, which is they put a clamp around

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1 the vertebrae in the center of my back and
2 cement it in place. It has to be done by an
3 interventional radiologist doctor, because it
4 has to be very precise.

5 My whole spine shifted forward
6 as I was on the OR table when they did the
7 kyphoplasty. As soon as I came out of the
8 kyphoplasty, they asked me, how did I feel. I
9 said, "I don't know what you did, but my lower
10 legs are killing me. Something's wrong."

11 They said, "Ah, we didn't touch
12 your lower spine." So I went back to my doctor.
13 He ordered another CAT scan and MRI then of my
14 lower spine, and through those, they found that
15 my whole spine had shifted so far out of
16 alignment due to I now had degenerative disc and
17 joint disease.

18 The VA did not term it that
19 yet, but the whole spine shifted so far forward,
20 they had to send me to Loyola Hospital, which is
21 affiliated with the VA, and they had to fuse my
22 bottom spine with grafting fusion rods and
23 screws. I could not walk very far. The VA knew
24 that.

25 The VA put me in for a scooter,

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1 which they eventually gave me a scooter. And it
2 just -- it got worse from there. I had
3 fractured the L5. As a matter of fact, they
4 told me a third of it was pulverized, and I also
5 had a fracture up in the T1, in the neck area.

6 I finally decided the VA didn't
7 know what they were doing with me medically, and
8 I believe my first visit to the Mayo Hospital
9 was in 2016. And they said that you were
10 misdiagnosed, for one thing. "You don't have
11 sarcoidosis." Secondly, they told me, "You
12 never should have been put on prednisone, and on
13 that high of a dose for that long without being
14 monitored." So I brought those findings back to
15 the VA, and at that time, the VA didn't quite
16 accept them. They still treated me for the lung
17 disease.

18 Now, what happened is, I was on
19 prednisone. I kept telling the lung doctor,
20 Dr. Sheikh, before she took off because of her
21 difficult -- with her pregnancy, that there was
22 something wrong with my left lung after the
23 biopsy, and it was hurting me bad. She dug in
24 her heels and said, "You are not being CAT
25 scanned for three weeks."

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1 I called her a week later and
2 said, "Listen, I can't breathe. It's a lot of
3 pain. Everyone tells me I am peaked in color.
4 I can barely work four hours today. Something
5 is wrong. She said, "We are not CAT scanning
6 you for two more weeks."

7 So after the three weeks she
8 made me wait, they CAT scanned my lungs. I had
9 to go home. I was sick still. Before I even
10 got home, she was calling me saying, "You have
11 to come back." And I said, "You are going to
12 admit me, aren't you?" She said, "Yeah, we
13 are." She said, "Your left lung has collapsed.
14 You have a --" and so I was hospitalized for two
15 weeks.

16 I got out. They put me back on
17 prednisone. The lung started to hurt again. I
18 called her and told her. This time they didn't
19 wait. They admitted me again, I think, for
20 eight more days. Then, they decided the
21 prednisone wasn't letting the lung heal, so they
22 took me off the prednisone for about two weeks
23 and then placed me back on. And then a couple
24 of months later is when in August I fractured
25 the center of my back by coughing. And that was

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1 the cause of all of this.

2 Q. Thank you, Mr. Bourke, for that
3 explanation.

4 A couple of questions.
5 Throughout that time you mentioned that you were
6 working about four hours a day. Was that that
7 whole span of time, I think you were saying the
8 maybe the early 2015 through 2016?

9 A. Yes, ma'am. I believe my back was
10 fused in 2016 at the Loyola Hospital.

11 Q. Okay. So prior to that surgery at
12 Loyola, what was your work like in terms of how
13 many hours you were working and any
14 accommodations you received?

15 A. I eventually got back to full-time once
16 the lung stopped collapsing and healed.

17 Q. Okay.

18 A. And -- but the bottom spine was giving
19 me great difficulty. I could barely walk. The
20 pain would run from the buttock all the way
21 through the back of the leg, cross over to the
22 front of the leg and into the foot.

23 And again, that was because it
24 had shifted so bad. I know when I went into
25 surgery, Dr. Russ Nockels, he was the head of

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1 neurosurgery at Loyola. It was supposed to be a
2 four to five-hour surgery, and I guess it went
3 over nine hours. And when I came to, he was
4 shaking his head.

5 And I said, "What? Am I going
6 to be able to walk again?" He said, "Oh, yeah.
7 You can walk again." But he said, "Your running
8 days and exercise days, all that's over with."
9 He said, "Your spine shifted so far forward, I
10 could only straighten it so much, and now it
11 looks like have osteoporosis. So I couldn't
12 straighten the spine all the way, afraid the
13 screws or the attachment of the screws would
14 snap off.

15 Q. And that was -- when was that, that
16 first --

17 A. I believe 2016 --

18 THE COURT REPORTER: Sorry. You cut
19 out.

20 BY THE WITNESS:

21 A. I believe it was 2016 when Loyola fused
22 my spine. I think it was late in the year. It
23 may have been like the end of November. I'm not
24 quite sure about the dates. I know it's in the
25 files.

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1 BY MS. FLORES:

2 Q. And so when did you first request an
3 accommodation related to all the health issues
4 that you just explained?

5 A. I'm not -- I am not quite sure. I
6 think 2018. I am guessing on that.

7 Q. Okay.

8 A. I did ask for a -- I know the VA
9 doctors put me in for a scooter. And they gave
10 me what they call a go-go scooter, which is one
11 that can break down and fit in the trunk of your
12 car.

13 The problem was, is that it had
14 a couple of pieces of that scooter, and that was
15 still like 38 or 40 pounds, the two sections. I
16 had an eight-pound weight restriction to lift.
17 So I couldn't break it down to begin with. And
18 I was finally given the scooter. I believe it
19 was 2018.

20 And then it was talked about
21 a -- about getting a lift, but the car that I
22 was leasing at the time, I couldn't put it in a
23 leased car, and No. 2, it wouldn't fit in a
24 regular sedan automobile. So then I started
25 asking about getting a lift installed if I got a

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1 mini SUV. And eventually I was told, yes. The
2 manufacturer looked at a Kia Niro hybrid, which
3 I was looking to buy.

4 They said, yes, according to
5 the blueprints they could install an internal
6 lift that would pick up the scooter and swing in
7 all by electric through remote control, a wired
8 control. So I bought the car, and then after I
9 bought the car, the people in charge of the
10 mobility clinic denied me the lift.

11 Q. Okay. Let me ask you a couple
12 questions about that lift. We can skip ahead,
13 and then maybe I can circle back to some of your
14 employment history.

15 So you mentioned that you
16 requested a lift, and the VA gave you a scooter.
17 Can I ask, are you also a veteran in addition to
18 being a VA employee?

19 A. Yes, ma'am.

20 Q. Okay. Thank you for your service,
21 first of all.

22 Second, did you seek your
23 scooter as part of your veterans benefit?

24 A. You know, that -- that's kind of
25 unclear. I asked for the scooter, and so my

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1 provider, Nurse Practitioner Egan, had -- first
2 had to send me to the physical therapy doctors,
3 which I went and saw. And after reviewing the
4 MRIs and CAT scans -- I can no longer have MRIs
5 because of the inserted metal now -- they agreed
6 and ordered me the scooter because I just
7 couldn't walk that well anymore.

8 **Q. Okay. So you -- is it accurate to say**
9 **that that went through your healthcare provider**
10 **to get the scooter?**

11 A. The -- yes. I believe that was done
12 through healthcare, but I am told that there was
13 an RA. But I don't think the RA was for the
14 scooter itself. I believe the RAs came
15 afterwards in 2018 requesting a reserved parking
16 spot, the internal -- the internal lift, and for
17 a special chair to help with my spine.

18 **Q. Okay. And did you require the scooter**
19 **for your everyday activities or just for work?**

20 A. There was a time that I really wished I
21 could have used it on the weekends, but again, I
22 couldn't break the scooter down, put it in the
23 trunk, come home, assemble it out of the trunk,
24 because I had the eight-pound weight
25 restriction. I couldn't lift it.

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1 So it was left at work. I got
2 permission from the VA to leave it at my work
3 station, and then they finally gave me an RA for
4 parking, which would make me close to my work
5 station.

6 Q. Okay. Still asking about the scooter.

7 Was your understanding when the
8 VA gave you the scooter that it was your
9 scooter, that you could take it home with you if
10 you wanted to?

11 A. Yeah.

12 Q. Or if you could -- yes? Okay.

13 A. No. I -- yeah. I made sure that that
14 was -- they said, "No. That is your scooter.
15 Whether you leave here or go home, whatever you
16 do with it, it's yours."

17 Q. Okay. Now, I would also like to ask
18 about the lift then. Do you remember who you
19 requested the lift from?

20 A. It was through PM&R, which is the
21 physical therapy department, and under that main
22 heading, they have what they call a mobility
23 clinic.

24 Q. Did you also see PM&R, the mobility
25 clinic, when you were being assigned the

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1 **scooter?**

2 A. Yes. I got the scooter through them.

3 **Q. Okay.**

4 A. But at that time it wasn't through
5 Mobility Works yet. It was just still from the
6 physical therapy doctor. Mobility Works came
7 into play when I needed the lift installed.

8 And you asked for the name of
9 the guy that I had requested through e-mails.
10 His name was Joseph Neczyk. I'm not sure. It's
11 spelled, N-E-C-Z-Y-K. First name is Joseph.

12 **Q. And did he work in the mobility clinic?**

13 A. Yes. And as far as I am concerned,
14 that was October of 2018 when we started asking
15 about the lift.

16 **Q. So is it fair to say that then you**
17 **received the scooter from your healthcare**
18 **provider and the physical therapy department --**

19 A. Yes.

20 **Q. -- prior to October of 2018?**

21 A. That is correct.

22 **Q. And did the VA ever install a lift on**
23 **your personal vehicle?**

24 A. Yes. It took almost three more years,
25 two and a half years, and I believe the internal

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1 lift was finally installed August of 2021.

2 Q. I would like to introduce an exhibit,
3 so I have to screen share.

4 A. And, you know, again, you know, a lot
5 of this is just trying to remember all these
6 dates. It's -- so much has happened.

7 Q. I understand. It has been quite a few
8 years.

9 Okay. So do you recognize this
10 document, the Complaint?

11 A. Yeah.

12 Q. It's described as the Complaint, and
13 it's David Bourke versus McDonough. It's the
14 Complaint --

15 A. Yes.

16 Q. -- your attorney filed; is that right?

17 A. Yeah, yeah. I have seen that before,
18 yes.

19 (Whereupon, BOURKE Deposition
20 Exhibit No. A was marked for
21 identification.)

22 BY MS. FLORES:

23 Q. I would like to enter this as Exhibit

24 A. I am going to skip down to I think in
25 paragraph -- okay. Do you see paragraph 14

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1 here?

2 A. No. All I see is the front page.

3 Q. Oh, okay.

4 A. There. Now I can barely read it.

5 Q. I will zoom in as much as I can.

6 A. Okay. I see July of 2020.

7 Q. Correct. That's what I wanted to ask
8 you about. It says here -- can you read it, or
9 do you want me to read it?

10 A. It says, "Provide Plaintiff with a lift
11 that allows him to ride his scooter between his
12 car and workplace."

13 That may have been the request
14 to put in the lift. I don't believe the lift
15 was put in in that year. I thought it was the
16 following year, but again, I am trying to do the
17 best I can on these dates.

18 Q. Sure. I just want to try to understand
19 if there was some sort of delay. Let me show
20 you -- give me one moment, please.

21 A. If I am off a year, then it would be
22 August 2020, but I thought it was '21.

23 Q. This is an e-mail chain that I do not
24 believe you are on. I mean, you should have it
25 as part of the litigation, but at the time you

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1 were not on the e-mail chain. This involves an
2 inquiry I believe you sent to the White House.
3 Do you recall that?

4 A. Yeah. I remember contacting the White
5 House, but I couldn't give you the specifics of
6 that.

7 Q. Sure. So I just wanted to note -- can
8 you see this e-mail?

9 A. No. I still see the document --

10 Q. Correct. It says at the top, Ifabiyi,
11 Candace, Monday, July 6th, 2020?

12 A. Okay.

13 Q. Do you see that?

14 A. Well, I see a document, page 3 of 3,
15 case number and then the document number and
16 then No. 14, the VA provided Plaintiff with a
17 reasonable accommodation for his disability on
18 July 2020.

19 Q. Okay. Let me stop sharing, and I will
20 try to share again. I am not quite sure why
21 that's not changing over. That may not have
22 been the right. Give me one moment.

23 Okay. Mr. Bourke, do you see
24 this e-mail now?

25 A. I do.

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1 Q. Okay. So do you see at the top it
2 says, Ifabiyi, Candace?

3 A. I do.

4 Q. Sent from James Doelling on Monday,
5 July 6th of 2020?

6 A. Yeah. It's hard to see, but, yes, I
7 can see it.

8 Q. Okay. So this is the e-mail chain I
9 mentioned involving your inquiry to the White
10 House.

11 A. Okay.

12 Q. And I just raise this to clarify and
13 ask one question. On page 4 of this e-mail
14 chain they are discussing both your parking spot
15 and the lift, which I believe was the subject of
16 your inquiry. And then here under No. 4, do you
17 see that?

18 A. No. I still just see the top of the
19 e-mail with the date.

20 Q. I think maybe there is just a delay
21 when I move my screen. We can give it a second.

22 A. Okay.

23 Q. And it will hopefully catch up on your
24 end. Please just tell me when you see another
25 page.

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1 A. Nothing yet.

2 Q. Okay. I can see your marks on there.

3 **Maybe if I --**

4 A. Yeah, I was trying to see if I could
5 scroll it or -- I --

6 Q. Do you see this? Actions, progress,
7 and resolution?

8 A. I see your highlighter there.

9 Q. But that's not what it says?

10 A. No. That is the date of July 6th,
11 2020.

12 Q. Oh, okay.

13 A. Yeah, I am just seeing that.

14 Q. That's okay. Let me -- I think it
15 worked when I stopped screen sharing and then
16 started again. So let me see if that works.

17 **Mr. Bourke, do you see --**

18 A. No. I still have it rotating. All it
19 says is you have started sharing the screen
20 again, but it's not come up yet.

21 Q. Okay.

22 MS. FITZPATRICK: Nicole, so I can
23 see your document. I guess I am not sure why he
24 is not seeing it.

25

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1 BY MS. FLORES:

2 Q. Yeah.

3 A. I am on my cell phone. I don't know if
4 that's making a difference.

5 Q. That might -- that might be part of the
6 delay.

7 MS. FITZPATRICK: Mr. Bourke, do you
8 not have a laptop?

9 BY THE WITNESS:

10 A. No, not at home. I do not.

11 BY MS. FLORES:

12 Q. You saw the e-mail, correct, that I
13 had -- the first page of the e-mail chain?

14 A. I did.

15 Q. And you are familiar with the fact that
16 you had filed an inquiry with the White House,
17 and that was what they were discussing in the
18 e-mail?

19 A. Vaguely, yes.

20 (Whereupon, BOURKE Deposition
21 Exhibit No. B was marked for
22 identification.)

23 BY MS. FLORES:

24 Q. Okay. I would like to enter this as
25 Exhibit B, Mr. Bourke. Hopefully this catches

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1 up, but it -- because I would really like you to
2 see. It says that you had contacted -- or you
3 were evaluated for the car lift, and it was
4 ordered on July 2nd of 2020.

5 A. Okay.

6 Q. So my question is, do you know what
7 would have caused the delay between them
8 ordering it in July of 2020 and it being
9 installed in August of 2021, or is it possible
10 that it was installed in August of 2020?

11 A. It is possible. I do know that first
12 they had to find a lift that would be compatible
13 with my Kia Niro. And then after that, that
14 lift had to be ordered. Supposedly this lift
15 was made in England. And then I know I went to
16 Mobility Works on North Avenue. I had to leave
17 my car there almost a week to have it installed.

18 So, again, on the dates, I
19 apologize if I am off. I know it was August. I
20 thought it was 2021, but I -- honestly, I don't
21 know.

22 Q. Okay. Okay. So I would just like to
23 really briefly circle back. When I was asking
24 about your work history, you had mentioned that
25 you were working at the mental health clinic and

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1 the -- I think it was also mental health, but
2 the trauma and addiction clinic?

3 A. Yes, yes.

4 Q. Okay that was after your detail and
5 during your health issues, your health problems;
6 is that right?

7 A. It is.

8 Q. And did you move into any other
9 positions with the VA following that job?

10 A. Yes. Chris Abrido (phonetic), who was
11 the Associate Chief of PAS, contacted me because
12 I was looking to move out of 4 South in building
13 228, the mental health department. She told me
14 that there was going to be an opening down in
15 the ambulatory surgery unit, the basement of the
16 main hospital. And she said they needed someone
17 with experience, and they needed someone who was
18 going to come in and do the job. She thought it
19 would be a good fit.

20 So I accepted that, and she
21 moved me down to the ambulatory surgery unit,
22 and it was on a trial basis. I believe after 30
23 days, the manager of the --

24 THE COURT REPORTER: I'm sorry. You
25 cut out.

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1 BY THE WITNESS:

2 A. I was then sent on the ambulatory
3 surgery unit, and I believe after 30 days the
4 manager, Ms. Diane Cotton, of the ambulatory
5 surgery unit requested that I be assigned there
6 full-time.

7 BY MS. FLORES:

8 Q. And when was that?

9 A. 2000 -- I believe it was 2018. It
10 could have been. Again, on the date, I'm sorry.
11 I'm not that precise. I could contact the VA
12 and find out.

13 Q. Just approximately. I am trying to
14 just obviously move toward the issues of your
15 lawsuit, but just to get background on where you
16 were working.

17 A. It could have been 2019. Honestly, I
18 don't know.

19 Q. Okay. And then is that where you were
20 working when the pandemic hit?

21 A. Yes.

22 Q. Okay. Okay. So were you using the
23 scooter at the workplace in this position?

24 A. Yes. When I got assigned down to ASU,
25 I asked for and received permission to be able

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1 to park my scooter at my work station in a
2 corner where they showed me where they wanted
3 it. It was in a very secure location that was
4 behind locked doors.

5 **Q. And was that location near the entryway**
6 **or near your office?**

7 A. It was near the office I was assigned
8 to, and it was also closest to the back entrance
9 where my RA parking spot was awarded.

10 **Q. Did you need a reasonable accommodation**
11 **to get permission to leave your scooter at the**
12 **workplace?**

13 A. No. There was no RA to leave the
14 scooter. Again, I was given permission by Diane
15 Cotton (phonetic).

16 **Q. But then you did request a reasonable**
17 **accommodation for a parking spot --**

18 A. Yes.

19 **Q. -- closer to your workplace, correct?**

20 A. Yes, yes.

21 **Q. Okay. And --**

22 A. I was in ASU, ambulatory surgery unit,
23 when that request was made for an RA parking
24 spot.

25 **Q. And how did that process go?**

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1 A. There is employees in human resources
2 that are assigned for what they call FMLA
3 approval and oversee the FMLA program and also
4 RA program, reasonable accommodation.

5 **Q. And did they award you or accommodate**
6 **the request and provide you with an assigned**
7 **parking spot?**

8 A. They did. It had to be approved on
9 many levels. Even the police had to be
10 involved. I think they were the ones who
11 finally picked the final spot, and I was given
12 Spot No. 1011 out back of the main entrance of
13 the main hospital.

14 **Q. And prior to the COVID pandemic, what**
15 **was your routine in terms of parking in spot**
16 **1011, and then accessing your scooter.**

17 A. Yes. The back entrance to the hospital
18 on the first floor of the main hospital was the
19 closest entrance for me to enter, and right
20 there is patient pharmacy. And I would take the
21 elevator there down to the basement, and then I
22 would walk around two corners to get into ASU.

23 It was the closest I could get
24 to minimize the walking, because it's very
25 painful. It still is today, and also because of

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1 my lung issues, I run out of breath pretty
2 quickly now.

3 Q. And about how long would it take you
4 from your -- to get from your vehicle to your
5 scooter?

6 A. Oh, several minutes. I am just not
7 that fast. There were times that I would have
8 to stop, and just wait for the pain to subside
9 or for my breathing to return.

10 Q. And prior to the pandemic, was the door
11 that you entered into open when you arrived for
12 work?

13 A. Yes.

14 Q. What time did you arrive for your
15 shift?

16 A. Approximately, 5:00 a.m.

17 Q. And in March of 2020 once the pandemic
18 hit and the VA instituted screening procedures,
19 can you describe your routine from the time you
20 parked your car?

21 A. Prior to or after?

22 Q. After. So in March of 2020 when they
23 just instituted the screening procedures.

24 A. Okay. I was still entering through the
25 back door, and I was told I could no longer do

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1 that by the Hines police. So on my lunch hour,
2 I went to the Hines Police Station and was
3 talking to the associate chief, Eric Ousley, I
4 believe is his last name, and as I was speaking
5 to him, there was a major standing there. His
6 last name was Mr. McFields.

7 When he heard me explain that
8 that's my RA parking spot, and that I am still
9 being screened even though they have -- don't
10 have a screener back there, that every morning I
11 was making my way to my scooter, and before I
12 even removed my jacket, I would take the scooter
13 to the main entrance and get screened and then
14 go back to my work station.

15 At that time, that was March.
16 Major McFields told me, "Okay. I will allow you
17 to enter through that back door under the
18 agreement that you will continue to be screened
19 every day." And that is what we did until, I
20 believe, the middle of May.

21 Q. Okay. Okay. So when you went to the
22 police station and spoke to, I guess maybe
23 Deputy Chief Ousley, and you said Major
24 McFields, was that the first day that the
25 screening procedures were -- went into place?

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1 A. I am going to say March 13th, and I
2 only say that specific date because I know I
3 sent an e-mail to Chief Eric Ousley -- or
4 Associate Chief Eric Ousley.

5 Q. I was going to bring that up. Let's
6 see if our screen sharing will work. This is
7 just a one-page document. So hopefully you will
8 be able to see it.

9 A. I apologize for this, but this is the
10 best I can do today with the cell phone.

11 Q. Yeah. It should work on the phone. I
12 know it will be small.

13 A. If you tell me which document it is, I
14 may have a copy, but I'm not sure.

15 Q. So this is the Friday, March 13th, 2020
16 e-mail from you, Mr. Bourke, to Eric Ousley,
17 sent at 1:06 p.m. It is a marked as Government
18 bates stamped USA000632.

19 A. Okay. I don't see it, but I have a
20 copy of that e-mail.

21 Q. Okay. So let -- and is this the e-mail
22 that you sent that you are referring to?

23 A. Yes, the one at 1:06?

24 Q. Yes.

25 A. Yeah. It explains that because of my

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1 disabilities I can't walk very far, and it also
2 mentions Major McFields and about permission to
3 use his name in case I was stopped by the
4 police.

5 Q. Okay. So let's enter this e-mail from
6 Mr. Bourke to Mr. Ousley on March 13th as
7 Exhibit C.

8 (Whereupon, BOURKE Deposition
9 Exhibit No. C was marked for
10 identification.)

11 BY MS. FLORES:

12 Q. And I see here it says I -- kind of in
13 the middle of the paragraph, "I spoke with Major
14 McFields on my lunch." So when you were just
15 describing that you had gone to the police
16 station during your lunch break, is that what
17 you are referring to in your e-mail here?

18 A. It is. Because my hours were 6:00 to
19 2:30. So I spoke to him approximately 12:00,
20 12:30. And when I got back to work, I sent the
21 e-mail so I had a record of what happened.

22 Q. Okay. And so Major McFields -- what I
23 heard you say previously, and maybe you can just
24 help me fill in the blanks.

25 You said Major McFields said

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1 that you could access -- come in through that
2 back door and to access your scooter, and he
3 would agree to that as long as you would get
4 screened; is that right?

5 A. That is correct.

6 Q. So after you spoke to Major McFields,
7 what was your routine from the time you parked
8 your vehicle to the time you started work?

9 A. If -- the back doors when I arrived
10 approximately at 5:00, if I couldn't access them
11 because they were locked, Major McFields had
12 instructed me to call the Hines Police, to
13 dispatch, use his name, and tell them that I
14 need the back doors unlocked.

15 Most of the time it was open.
16 I think the only time I ran into a locked door,
17 I believe might be a Monday following a weekend.
18 I believe the police would lock it on a Friday,
19 but I am just guessing on that.

20 Q. So sometimes when you arrived, the door
21 was unlocked, and you were able to enter?

22 A. Yeah. I think maybe three, four, times
23 only I had to request that they send a squad to
24 open the door.

25 Q. And were there screeners at that

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1 **entrance?**

2 A. I don't recall at that time. I believe
3 no. I believe what I did is retrieve my
4 scooter, went up to the -- normally I went to
5 the Hines ER, because the front door screeners
6 weren't really on duty yet. So I would go to
7 the ER, and they would take my temperature. And
8 they would give us a sticker that had the day's
9 date proving we were screened.

10 **Q. And to your knowledge, aside from Major**
11 **McFields, did anyone else know about your**
12 **arrangement?**

13 A. Yes. The deputy chief, Mr. Ousley.

14 **Q. Okay.**

15 A. He was there when Major McFields
16 granted me access, and then, again, when I got
17 back to my work station, I realized I had
18 nothing. Therefore, I sent the e-mail outlining
19 what happened.

20 **Q. Did anyone else know about your**
21 **arrangement?**

22 A. Yes. One of the AODs, which is
23 administrator of the day, at the front of the
24 hospital at the eligibility desk, her first name
25 was Karen. I believe she is the one who filed a

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1 complaint. Because in May, middle of May 2020,
2 I was told I could no longer access that door,
3 that I could be arrested for trespassing and
4 that a complaint had been filed.

5 So I requested this -- by the
6 way, this information came from Mr. Ousley. He
7 called me into his office. I went into his
8 office. He picked up a piece of paper off his
9 desk, which I couldn't see, and said he received
10 a complaint, and that I couldn't access that
11 back door. And I requested from him at that
12 time a copy of the complaint, which he refused
13 to give me.

14 **Q. Okay. So from the time you sent your**
15 **first e-mail on March 13th until you spoke to**
16 **Deputy Chief Ousley again in May of 2020, the**
17 **arrangement for you to enter and retrieve your**
18 **scooter and then go be screened worked without**
19 **much interruption; is that true?**

20 **A.** It did. And -- and there were times
21 that the preop nurses who I worked very closely
22 with down in ambulatory surgery unit, they would
23 say to me, "You don't have to go up to the front
24 entrance. We will take your temperature,
25 because we have to screen all the patients who

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1 come up." But I still went to the front, I
2 saved the cards that had the stickers to prove
3 every day that I came to work that I was
4 screened with a sticker of the day.

5 **Q. And after Deputy Chief Ousley said that**
6 **there had been this complaint and called you**
7 **into the -- his office, what happened after**
8 **that?**

9 A. The back of the hospital doors were
10 then permanently locked. And I had complained,
11 and let ambulatory surgery know what was
12 happening. My supervisor at the time, Graham,
13 knew what was happening, and so I tried other
14 parking areas, trying to figure out which would
15 be the shortest route, even though all of them
16 were much longer.

17 And I also let the pain
18 doctor --

19 THE COURT REPORTER: I'm sorry. You
20 cut out.

21 BY THE WITNESS:

22 A. The pain doctor. The head of the pain
23 clinic, his name is Dr. Uppal. It's spelled,
24 U-P-P-A-L. He was at the time chief of the pain
25 clinic at Hines VA. He is since -- now VISN 12.

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1 He is the chief of VISN 12, all of the local
2 hospitals --

3 THE COURT REPORTER: VISN 12, you
4 said?

5 BY THE WITNESS:

6 A. Yeah, VISN 12, which is out of
7 Milwaukee. Hines VA, Jesse Brown VA, North
8 Chicago VA, all the outlying civilian-based
9 outpatient clinics, they all fall under VISN 12.
10 VISN 12 answers to Washington, DC, if I have
11 that order right.

12 BY MS. FLORES:

13 Q. And just for clarification, VISN is,
14 V-I-S-N, correct?

15 A. It is. It is. VISN 12. And again,
16 they are out of Milwaukee, and as far as I know,
17 they are like the hub of the midwest. Again,
18 the Chicagoland area hospitals and outpatient
19 clinics. The Hines answers to VISN 12.

20 Q. Okay. And you were saying that you
21 went to talk to Dr. Uppal?

22 A. Yes. I worked with Dr. Uppal on a
23 weekly basis. I would see him every Thursday,
24 because that was the day that he did procedures
25 down in the ambulatory surgery unit. Each

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1 doctor had their own assigned days, and at the
2 time, he was the pain doctor doing my
3 procedures.

4 And I told him that I was
5 walking two and a half or three times longer
6 because of them stopping me coming in from the
7 back where my parking spot was, and that it was
8 causing great pain to me. And he was upset
9 about that.

10 As a matter of fact, he told me
11 that my right hip was now bone-on-bone due to
12 the degenerative joint disease that the steroids
13 had done to my body, and that I was looking at
14 right hip replacement, and that the left wasn't
15 much better. What he did to help me in the
16 meantime, they did a series of injections to
17 make sure they could hit the right nerve areas
18 for the hips.

19 And then every six to
20 eight months since this happened, the VA does an
21 ablation, and that's a bilateral -- both hips.
22 That's a burning of the nerve endings with a
23 laser to take away two-thirds of the pain to
24 make it livable. It's now every six months, and
25 my next bilateral hip ablation is May 10th in

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1 the ambulatory surgery unit.

2 Q. So you were seeing Dr. Uppal in your
3 capacity as a patient?

4 A. That is correct.

5 Q. Okay.

6 A. Also working for him.

7 Q. Okay. I understand now. Thank you for
8 clarifying.

9 So I want to talk a little bit
10 about -- a little bit more in depth about what
11 happened with your parking space and
12 accommodation. I am trying to think about the
13 best way to do this, given the tech problems.

14 A. If you can read those to me, if I can't
15 see them, I am sure I would recollect.

16 Q. Right. I just wanted to make sure that
17 you are familiar with the precise documents, but
18 maybe what I will do -- let me ask to see what
19 you recall without looking at the documents.

20 A. Okay.

21 Q. So after the door was locked
22 permanently, who contacted you or who did you
23 contact about a new parking space?

24 A. I told the manager of ASU, Diane
25 Cotton. I told the chief of the pain clinic, my

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1 doctor, Dr. Uppal, and I know I told my
2 supervisor, Angela Graham, but the dates, I
3 don't know. I am sure it's after the middle of
4 May, because that's when I was no longer allowed
5 to enter through the back entrance.

6 **Q. Right. Was that May 14th that the back**
7 **entrance was locked?**

8 A. I would have to say I agree with that.
9 Without having it in front of me, that sounds
10 about right. I know it was almost exactly two
11 months from when Major McFields gave me
12 permission.

13 **Q. Okay. Let's -- since it was working a**
14 **little bit before, let's try one more time to**
15 **see if this will pop up on your phone.**

16 A. Okay. I'm sorry to say it's just
17 spinning around.

18 MS. FLORES: Can we go off the record
19 for a minute?

20 MR. FLAXMAN: Sure.

21 (Whereupon, a short break was
22 taken.)

23 BY MS. FLORES:

24 **Q. Okay. Mr. Bourke, so I am just going**
25 **to run through some questions and just get your**

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1 memory of what happened after May 14th and
2 the -- after the doors at the back of the
3 hospital were shut permanently.

4 A. Okay.

5 Q. Okay. So you said that you had
6 discussed this with a few people; Diane Cotton
7 and your supervisor, Angela Graham. And do you
8 recall if Angela Graham or other Hines staff
9 identified another possible parking space for
10 you?

11 A. I recall that -- I'm not sure if it was
12 Deputy Ousley, but something about through your
13 supervisor they could try to get you another
14 parking spot. I do recall that.

15 Q. Okay. And do you recall whether the
16 parking spot that either Angela Graham or
17 somebody else in the accommodations department
18 found you was near Building 1, the C Section of
19 Building 1, do you recall?

20 A. Yes. As a matter of fact, I recall
21 that Angela Graham had me come down there on my
22 scooter, and she was also -- had a scooter, and
23 she showed me the area where she wanted me to
24 park my scooter, which was basically unguarded,
25 unlocked on the weekends or at night. We had

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1 homeless veterans. You know, we are a 24/7
2 hospital.

3 And the main reason why I told
4 her I would not accept that parking spot -- and
5 I rejected it right away. I don't care what
6 anybody else has to say. I told her, "I have a
7 breakdown scooter. You have a completely
8 assembled scooter bigger than mine. A doctor
9 parked his scooter down there, bigger than both
10 of ours." I said, "Mine is so easy to steal.
11 They would just take it apart and throw it in
12 the trunk of any car. This spot is not going to
13 work for me." "Secondly," I told her, "it's
14 way, way too far away from my work station."

15 Quite honestly, I would
16 guesstimate three blocks away, and she wanted me
17 to park in the handicapped spot, disabled spot,
18 outside the C Section, Building 1, come into the
19 hospital, and in this open voyeur where anyone
20 could see it would be my scooter. And I told
21 her that's unacceptable. It's not a safe -- my
22 counter was if you can find me a spot where
23 there is a room or a closet --

24 (Background noise interruption.)
25

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1 BY THE WITNESS:

2 A. Hello?

3 BY MS. FLORES:

4 Q. You can continue, I think that was
5 background.

6 A. If you can find me a closet or a room
7 at the front of the hospital, C section,
8 Building 228, mental health entrance where there
9 were screeners, that I could lock the scooter up
10 in, that I would accept that.

11 And they told me no. They are
12 not giving me a key. They're not giving me a
13 closet. They are not giving me a room to lock
14 my scooter in. So I rejected all that they gave
15 me and told them that it was unsafe. I am not
16 going to have my scooter stolen, which I rely on
17 very heavily.

18 Q. I understand. Can I ask -- there is a
19 few questions I want to ask about what you said.

20 But first about your concern
21 about theft, you said other people also parked
22 their scooters near C Section of Building 1, but
23 they were not breakdown scooters?

24 A. That's correct. In other words, to
25 take -- there was a doctor. I don't even know

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1 who at the doctor was, or at the time my
2 supervisor, Angela Graham, their scooters were
3 not only larger than mine, they were completely
4 assembled. Someone would actually need a lift
5 to steal their scooters.

6 Where, in other words, now, you
7 would have to have a van or a pickup. You would
8 have to have a lift or a ramp or something.
9 Mine you could have a compact automobile, take
10 it apart, and throw it in the trunk, and it's
11 gone.

12 **Q. And had there been any thefts that you**
13 **had known about? Any --**

14 **A.** Yes. C Section, Building 1, is not
15 very far from the reproduction shop where I used
16 to work, the print shop, where I got exposed
17 from the roofing. And Tom Ozik, who was the
18 acting supervisor down there, had his charger
19 for his scooter stolen twice.

20 And I couldn't confirm this,
21 but I was told that somebody else had a scooter
22 parked, I believe, on the back hallway. There
23 is two parallel hallways. And I want to say --
24 I don't know if it was the mailroom or the
25 credit union, and that they had a scooter

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1 stolen. And, therefore, Tom, the VA refused to
2 replaced his chargers, and he had out of pocket
3 chargers.

4 And where I worked at down in
5 ambulatory surgery in the locked room, I could
6 leave my scooter overnight to charge, which I
7 did, and on the weekends. I could let it charge
8 all weekend, and then there was never an issue,
9 again, because it was locked.

10 **Q. What would have happened, do you think,**
11 **if your scooter had been stolen?**

12 A. I don't know how I could work. I --
13 and I -- I couldn't come in the back entrance
14 anymore. The entrances -- I tried the front
15 entrance. I actually requested that they give
16 me a spot at the very upfront disabled parking
17 spot. Right outside the emergency room there is
18 a driveway, and across from that driveway was a
19 spot.

20 And then if I could park there,
21 I could then come in, be screened, then take the
22 elevator not far from the front entrance.
23 Right -- right past the front entrance, I could
24 take that to the basement and work my way down
25 to ambulatory surgery. True, it was a little

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1 longer than the back of the hospital, but it
2 would have been a heck of a lot shorter than all
3 the other areas that they had asked me to go to
4 outside of C Section, Building 1.

5 If I would have accepted that,
6 and it would have been locked down there, it
7 would have been a short walk to get my scooter,
8 but they wouldn't accommodate me. The police
9 refused to give me that parking spot at the
10 front of the hospital outside the emergency
11 room, because they said they would have to
12 monitor and throw people out of that spot and
13 write tickets and tow their cars every day of
14 the week. So you can forget that one.

15 **Q. In the C Section of Building 1, were**
16 **there screeners at the entry?**

17 A. Yeah, but, you know, all these other
18 entrances were always limited screening.
19 Eventually when they opened up the back of the
20 hospital again, they had a hard time getting the
21 screening to come from 5:00 to 10:00 a.m., and
22 then after 10:00 a.m., that door would only be
23 used for exit.

24 But even then when I came in, I
25 still had to get my scooter and normally go to

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1 the ER to get screened. The lady who was in
2 charge of the screeners down there, who I had
3 talked to on many a times, her name is somewhere
4 in these files. She was, I believe, of Latin
5 descent, but very friendly lady. She said if
6 they would have talked to her when they closed
7 the back of that hospital, she would have
8 accommodated me and found a screener for that.
9 But that's here nor there now.

10 Q. So where you -- so I just want to get
11 it straight. So they offered you the parking
12 spot near the C Section of Building 1, and you
13 declined --

14 A. Not a parking spot. I'm sorry to
15 interrupt. They offered me an area to store my
16 scooter.

17 Q. Okay.

18 A. But they wouldn't even give me a
19 reserved parking spot there. They said, "No.
20 You take your chances."

21 Q. Okay. So on that note -- let's see.
22 Sorry. Just give me one second.

23 A. No problem.

24 Q. So when you spoke to Angela, your
25 supervisor, Angela Graham, about using the

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1 **entrance in Building 1, Section C, are you**
2 **testifying that you did not also discuss a**
3 **parking space?**

4 A. No. What I did was -- and I know from
5 reading what she said. She said something
6 different than what happened, and I actually
7 pointed that out at any deposition or EEO
8 hearing we had. I never ever, ever, ever
9 accepted any other parking spot. I insisted
10 that I be allowed to enter in my original spot.

11 And I remember them telling me,
12 "You will get that spot back eventually." I
13 remember the deputy chief telling me that, "That
14 spot is yours until you either pass away or
15 retire from VA employment. You wouldn't lose
16 that spot." But I told him, "What you are
17 offering me is not helping."

18 And sure enough, the extra
19 walking, I am now facing hip replacement
20 surgery, and every six months I have to suffer a
21 very painful procedure of ablations done to my
22 hip, and they come through the crotch, and they
23 are very painful.

24 Q. So considering the pain that -- and the
25 additional procedures you have had to undergo

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1 since this time -- I understand you had concerns
2 about your scooter, but considering your
3 disability, would the new -- would the other
4 parking space and entry have been a shorter
5 distance in Building 1 from the arrangement that
6 you were using after that door was locked?

7 A. No. I never used Building 1, C
8 Section. I never agreed to it, and I never once
9 used that spot.

10 Q. I understand. I understand,
11 Mr. Bourke. You said earlier that Angela Graham
12 had taken you down to take a look at that as an
13 option?

14 A. That's correct.

15 Q. And if you had a parking space near
16 that entrance -- and I understand your concerns
17 about the safety of your scooter.

18 But putting aside the safety of
19 your scooter, considering the pain that you were
20 enduring, would it have been a shorter walk for
21 you if you parked near Building 1, Section C,
22 left your scooter overnight and had entered
23 there to get to your scooter?

24 A. Yes. If I was offered a locked spot, I
25 would have accepted, but since they would not

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1 give me a locked room and a key, I refused the
2 spot. But, yes, your answer is, yes.

3 Q. And did you see -- you said that you
4 had -- or that you were told -- I believe you
5 just testified that you were told that you could
6 keep your original parking spot as long as you
7 worked at the VA?

8 A. I was --

9 Q. So was it your understanding that any
10 other arrangements; such as, entering the
11 building -- Building 1, Section C, that such an
12 arrangement would be temporary until you could
13 go back to using your other parking spot?

14 A. It was, but it was a temporary without
15 a time limit because of COVID. So it -- but, I
16 do remember being told that RA parking spot 1011
17 is mine until I either retire or I were to pass
18 away.

19 Q. Were you offered any other spots aside
20 from the Section C?

21 A. No. I alternatively asked for the
22 front of the hospital, for the No. 1 spot
23 outside the emergency room, that I would have to
24 cross the driveway, a circular driveway, that
25 space, to that spot. That would have been close

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1 to what I was originally walking. A little bit
2 longer, but not three -- two or three times
3 longer.

4 Q. And so throughout this time, were you
5 parking at -- did you continue to park in spot
6 1011?

7 A. What I did is I would look at the front
8 of the hospital for any disabled parking spot,
9 and they were always so filled and so far back.
10 The majority of my time I parked in Building 228
11 and had to walk.

12 I usually could find a
13 handicapped parking spot across the road from
14 the 228 entrance, and then I would have to walk
15 to the 4 elevators, take it to the basement and
16 make -- make my way around to ambulatory surgery
17 in the basement. But that was two and a half,
18 three times further walking, and that's what
19 damaged my hips to the point of now I am -- very
20 painful.

21 And I am -- I actually just
22 started the inquiry about hip replacement. So
23 they are starting to move that along. I was
24 told it would take six months to a year to get
25 it scheduled. So they started the procedure or

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1 the process now.

2 Q. And do you recall when you were able to
3 access that back door again?

4 A. You know, I -- I am not sure. I
5 actually -- I want to say five months after they
6 closed it, five months from March, but I'm not
7 sure of that. I am thinking what happened was
8 is I got again ahold of the lady in charge of
9 screening, and I think she got somebody back
10 there to start screening us again.

11 And I know when I started to
12 use the back of the hospital again and park in
13 my RA parking spot, several times the Hines
14 police were standing there when I came in. And
15 they said to me, "You are trespassing. You are
16 not allowed entrance through this door."

17 And I said, "That's not true.
18 I see other people coming through this door. I
19 get screened every time I come through the door.
20 And you are going to have to do what you are
21 going to do, and I am going to do what I am
22 going to do. You are going to either have to
23 let me pass, or you are going to have to arrest
24 me, and then we will take this into a court and
25 talk to a judge.

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1 And that -- every time they
2 stepped back, and finally they stopped
3 confronting me about my entering through the
4 door. But I don't have the exact date on that,
5 but I still did my original agreement. If there
6 was no screener there, I took my scooter to the
7 ER and got screened.

8 **Q. And when they reopened -- so obviously**
9 **they closed and locked the door in May, and they**
10 **reopened it. Was there a screener there when**
11 **they reopened it? Would it be around the end of**
12 **June, does that sound right, that they reopened?**

13 A. No, no. End of June sounds too soon
14 for that. I thought it was more like the
15 beginning of fall. I thought it was five months
16 from March, and as far as I know, March is when
17 they started locking those doors back there.

18 But after I had my verbal
19 agreement with Major McFields, he said, "If you
20 come to the door, and it's locked, call the
21 police." And I did. But I didn't have to do
22 that very often. As far as I remember, it was
23 always like a Monday or a Tuesday after a
24 three-day holiday, I would have to wait for them
25 to unlock the door. Otherwise, I believe they

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1 left it unlocked until Friday.

2 Q. Okay.

3 A. For some reason, I am thinking August
4 or September.

5 Q. Well, the --

6 MR. FLAXMAN: I need to break away
7 for two minutes. Can I do that?

8 MS. FLORES: That's okay with me.
9 We'll go off the record then. Okay?

10 MR. FLAXMAN: Thank you.

11 (Whereupon, a short break was
12 taken.)

13 BY MS. FLORES:

14 Q. Okay. We already introduced Exhibit B.
15 I am tempting fate here one last time just to
16 clarify the date on which that back door
17 reopened. Okay. Well, I will once more try to
18 screen share, but I just want to be at the right
19 place.

20 A. By the way, Attorney Peres (sic), I
21 actually looked, and I am still showing the
22 scooter as being installed August of 2021. Now,
23 maybe my notes are wrong on that, but that's
24 what I am showing in the file.

25 Q. I will look. That doesn't sound

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1 familiar to me. So maybe I can work with your
2 attorney to -- if there is something that we
3 don't have, that we can supplement.

4 Okay. Do you see this,
5 Mr. Bourke?

6 A. Yeah, I am reading it now.

7 Q. Okay. So this is from Exhibit B, which
8 is the e-mail chain about the White House
9 inquiry.

10 A. It says July 6th is the date of the
11 e-mail? Is that what we are talking about?

12 Q. Correct, yes.

13 A. Okay. Okay. Yeah, I see where they
14 are saying June 29th a screener was placed.

15 Q. Right, which is -- and you had
16 mentioned that the screener when they were there
17 was only -- was there only until about 10:00 in
18 the morning?

19 A. That's correct. They were there 5:00
20 to 10:00.

21 Q. Okay.

22 A. At least that was what they were
23 supposed to be.

24 Q. Sure. And so does that then track with
25 your recollection or does that jog your

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1 **recollection about when you returned to that --**
2 **using that entrance?**

3 A. I would -- yeah, I would assume so,
4 because that would be like April, May, June. So
5 it was four months then? Three and a half, four
6 months that it was closed. I thought it was
7 longer than that, but I'll go by the date they
8 sent you.

9 **Q. Okay.**

10 A. I know it was -- I thought it was early
11 fall, but --

12 **Q. Okay. I understand. So -- and then on**
13 **this e-mail it also mentions that May 18th**
14 **Mr. Shawn Scheirer reached out to the police to**
15 **try to identify an additional parking space,**
16 **which we have already discussed. And so it was**
17 **from May 18th until about June 29th; is that**
18 **accurate, the time that you were having to find**
19 **alternate parking?**

20 A. Yeah. I think it was from May 14th
21 until whenever they opened up the back, so
22 whatever that would be was the -- when I had to
23 do the extra walking.

24 **Q. Okay. Can I ask just what your routine**
25 **is right now for arriving at work?**

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1 A. Yeah. Now, I am assigned to the main
2 office of PAS, which is the very north end of
3 Building 1, and I park in the third disabled
4 parking spot. I enter through the north end of
5 Building 1, and then as soon as I come in, I
6 immediately make a left and go through the
7 entrance that the director's office people use
8 to take the elevator, the private elevator to
9 the fourth floor.

10 When I go through that door, on
11 the left is where the attorneys for the VA sit.
12 To the right they gave me a key to open up that
13 locked door where I go directly into the PAS
14 main office, which is Building 1, G Section,
15 Room G100, and my -- they allow me to park my
16 scooter there. And it is a short walk. It's
17 actually a shorter walk than if I was at the
18 back of the hospital, and -- but that's the
19 entrance that I use now.

20 **Q. Okay.**

21 A. For the last four months, maybe.

22 **Q. So you do not -- I mean, just for work**
23 **purposes, you are not using the lift every day?**

24 A. No.

25 **Q. The vehicle, okay.**

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1 A. No. And the reason why is, is even
2 though I have that lift, I have to partially
3 break down the scooter. I have to take the seat
4 off, fold the steering column down and hook up
5 the lift. But there are days with my spine so
6 bad -- because now these problems are in my
7 neck, and Hines deemed these medical procedures,
8 injections into my neck, too dangerous, so they
9 sent me to Loyola under Community Care.

10 So I have had a series of
11 injections into my neck. I have another set of
12 injections on June 6th of this year at Loyola
13 Medical Center. And then if these are
14 unsuccessful, then I go back to see the
15 neurosurgeon who fused my bottom spine about
16 fusing my neck.

17 So then I was told if that's
18 the case, you are going to have to make a
19 decision on whether they -- if they have to fuse
20 your neck or replace the hip. So we just have
21 to see where this goes.

22 **Q. Okay. But you have been using your**
23 **current arrangement, you said, for about four**
24 **months?**

25 A. About four months now.

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1 **Q. And is that -- did that change because**
2 **you moved positions or why did that --**

3 A. Well, I got -- I got reassigned by the
4 upper management of PAS. What happens was this
5 is the third time since I have been down in
6 ambulatory surgery that the VA changed all my
7 management. They changed the chief, the
8 associate chief, my section chief, and my
9 supervisor three times. On this last change,
10 again, cleared all those people out and a whole
11 new set of people.

12 There was a disagreement down
13 in ambulatory surgery, and they said that a
14 complaint was filed. I asked for a copy of the
15 complaint, and they said, "Nope. Not until we
16 finish your investigation. We are going to move
17 you up in PAS, and you are going to do
18 analytical work on the computer."

19 I have been doing that now for
20 four months. I have contacted the union, and
21 they are waiting for them to finish this
22 supposed investigation, and we are going to
23 petition to return me to ambulatory surgery, and
24 because of what they did, part of my RA says --
25 one of my RAs, that they cannot rotate me out of

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1 ambulatory surgery unit, and the RA, which is
2 approved, specifically states they are to reduce
3 my stress levels because of acute severe PTSD,
4 which I am treated for still at the VA, and that
5 they are to reduce my stress, not add to it.

6 Since they have moved me, I
7 have had to use FMLA because of not sleeping, a
8 lot of it due to stress, at least eight or nine
9 days, and I have also used FMLA sick leave on
10 that least three or four days, which we are
11 petitioning back when they complete their
12 investigation to reinstate all that time back,
13 because it's another violation, which Hines
14 seems to think it's okay for them to do what
15 they choose to do, that the rules, laws,
16 regulations don't apply to them.

17 I will say this, and I will add
18 this. My supervisor and section chief at first
19 were very rough on me when I was removed and
20 sent to the PAS main office. In my four months
21 working with them and them keeping an eye on me,
22 they have both completely changed. They have
23 admitted to me such, and I have got to say they
24 treat me pretty respectfully now.

25 They have been very -- I would

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1 say the last two months, they have been very
2 accommodating for me, been very understanding.
3 So what went from a very uncomfortable, almost
4 confrontational, after working with me and being
5 around me has changed.

6 Q. So I think we are getting to the end of
7 my questions, Mr. Bourke. I just want to ask
8 some specific questions about your complaint.

9 A. Okay.

10 Q. And the claims and allegations in your
11 complaint.

12 Do you have that document with
13 you, or shall we see if it works to screen
14 share?

15 A. Well, put it up, or tell me what it is.
16 I will see if I can find it. I do have some
17 documents that I got to print from the file.

18 Q. So this is the Complaint that your
19 attorney filed in court.

20 A. Okay.

21 Q. Can you see it? Is the screen sharing
22 working this time?

23 A. Yes. I can actually see questions 12
24 and 13.

25 Q. Okay.

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1 A. But what is the -- what is the title of
2 this? Is this Defendant's rule initial
3 disclosure?

4 Q. I can show you. So this is just the
5 Complaint. So this is the initiating document
6 for the lawsuit in federal court. But if you
7 can see it, this has already been entered as
8 Exhibit A, and I can read to you --

9 A. Go ahead. Yeah, I am pulling it very
10 close. I can see it.

11 Q. So paragraph 12 alleges, "The VA did
12 not engage in any interactive process with
13 Plaintiff when it unilaterally rescinded the
14 reasonable accommodation parking space.

15 So my question for you is, when
16 are you alleging that your reasonable
17 accommodation parking space was rescinded?

18 A. It was -- March 13th I was told, but
19 then through the verbal agreement with Major
20 McFields, that that actually took place, I
21 believe I want to say May 14th.

22 Q. Okay, okay. And that paragraph also
23 alleges that the VA did not engage in any
24 interactive process with you when that back door
25 was closed. Is it your allegation that the VA

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1 **did not try to identify a new parking spot for**
2 **you?**

3 A. Well, it -- they really didn't interact
4 with me, because what they did is they showed me
5 C Section, Building 1 and said, "That's it."
6 And I said, "No, no, no. I can't lock my
7 scooter. It's unsafe." So I proposed an
8 alternate, and they refused. They wouldn't even
9 hear it. Don't want to hear it. "Your spot is
10 Building 1, C Section."

11 I said, "What about safety?
12 What about locking my scooter? It's a breakdown
13 scooter." "Mr. Bourke, you have your parking
14 spot. We are done. The conversation is done."
15 So I don't call that interacting. I call that
16 dictating.

17 Q. So they found the one spot. Did they
18 ever have -- did you have a discussion with
19 anybody about your -- the places where you
20 proposed to enter and lock your scooter?

21 A. Yeah. The --

22 Q. And did --

23 A. Earlier we talked about I talked about
24 it with my supervisor, and with the Hines police
25 about giving me that first spot, handicapped

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1 spot right outside the emergency room, and that
2 was just rebuked and said, "Go your way. We are
3 done. We are not talking anymore." That was
4 from the Chief Ousley.

5 **Q. Were you provided any explanation for**
6 **why that entry would not -- was not practical**
7 **from the VA's perspective?**

8 A. Yes. As I testified before, he said
9 that they could not keep that spot clear, that
10 that's the spot everybody wants. That spot is
11 occupied 24/7, seven days a week, and they would
12 be writing tickets and calling people to remove
13 their car or having it towed away, and that that
14 spot was not feasible, and that's it.

15 **Q. What about the parking for your**
16 **scooter?**

17 A. That's --

18 **Q. Did they did they explain why that was**
19 **not feasible?**

20 A. Yeah. Because I asked them, I am
21 willing to take that spot up front here. And I
22 said, "Okay. If you can't give me the No. 1
23 spot, if I can find one close enough still to
24 the ER entrance, where I can park my scooter, or
25 where is there a closet or a room that I could

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1 look it in?"

2 And they said, "No. We are not
3 giving you any locked closet. We are not giving
4 you any locked room. You had your designated
5 parking spot out in C Section, and that's the
6 end of that."

7 Q. Okay. So on -- paragraph 15 alleges,
8 "Plaintiff incurred pain and suffering while he
9 was denied his reasonable accommodation." And I
10 understand you have testified today about the
11 hip issues that you experienced during this
12 time. Is there any other pain and suffering
13 that you are alleging?

14 A. Yes. Like I said, the issues with my
15 spine, directly due to the prednisone steroid of
16 such a high dose over too long of a period,
17 without monitoring my body. All it would take
18 is a simple blood test to tell them what was
19 going on with my body, and none of them, none of
20 them thought of that.

21 Q. Mr. Bourke, I am just going to
22 interrupt you very briefly. Just -- I am
23 talking about just the parking space. I
24 understand that you have another lawsuit about
25 those issues.

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1 So I am just talking right now
2 about the allegations in this Complaint about
3 pain and suffering that you incurred while you
4 claim you were denied your reasonable
5 accommodation parking space.

6 A. Right. I was trying to get to that.

7 Q. Oh, okay.

8 A. Because of the degenerative disc and
9 degenerative joint disease, it's now -- my whole
10 spine is damaged almost beyond repair. I have
11 curvature of the spine forward and back, side to
12 side. I have multiple fractures in the bottom
13 spine, the center spine, and in my neck, and now
14 the neck has progressed.

15 All of this is from the extra
16 walking. I have bent my cane. I rely on it so
17 hard that I now have spinal damage and hip
18 damage all from what was done to me, and it's
19 very painful. As a matter of fact, I did not
20 ask them to do it, but I blessed them for doing
21 it. They increased my narcotics because of they
22 could see the pain that I was in, whenever they
23 looked at my CAT scan or previous MRIs. So I am
24 now on 30 milligrams a day of morphine, and I am
25 on six to ten of percocet just to get me by the

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1 pain.

2 Q. Are there any other -- is there any
3 other pain and suffering or damages that you are
4 seeking from this lawsuit?

5 A. From this EEO complaint?

6 Q. Correct.

7 A. Or the tort case?

8 Q. Correct.

9 A. From here?

10 Q. Yes.

11 A. It was the -- the revoking of my
12 parking spot and forcing me to walk further has
13 caused permanent damage, per the VA doctor,
14 Dr. Uppal.

15 And it didn't help my lungs
16 either, but I don't know what I could claim
17 about the lungs other than that I run out of
18 breath very quickly, like even talking to you, I
19 am starting to run out of breath.

20 Q. On that note, that was my last question
21 I had for you, Mr. Bourke. So thank you. I
22 won't belabor my questioning. Thank you.
23 That's it for me.

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EXAMINATION

BY MR. FLAXMAN:

Q. When -- I have a few questions about the pain and suffering stuff.

When your reasonable accommodation parking spot was rescinded, did you have to walk from where you parked your car to your workplace?

A. Yes.

Q. Was that a longer walk than it was when you had the RA parking spot?

A. Yes, at least, depending upon where I parked, two and a half to sometimes three times further.

Q. Did you experience any pain and suffering when you walked that distance?

A. Very much so to the point that I had Dr. Uppal increase my narcotics to try to help me.

Q. Okay. Could you explain to us what that pain and suffering consisted of? Where did you feel it? What was it like?

A. Relying on the cane so heavily, I actually bent it, and it's because the right hip pain is so sharp and acute that I would have to

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1 stop two, three times, lean on a railing or if
2 there was a chair in the hallway, try to sit
3 down to get the initial pain to release.

4 It's almost like if you've ever
5 had like a hip planer or a pinched nerve, that's
6 how acute the pain was in the right hip, and
7 it -- at night it will keep me up most of the
8 night. So much so that because of lack of
9 sleep, per the VA, I now have an irregular heart
10 beat, and I have heart disease. They attribute
11 it to my lack of sleep. And now I am on heart
12 medication, three pills, some of those pills
13 twice a day. They have returned my heart to a
14 regular heartbeat, but the damage has been done.

15 **Q. Before you lost your RA parking spot,**
16 **were you taking pain medication of any sort?**

17 A. Yes, I was.

18 **Q. Could you tell us what that -- what**
19 **that was immediately before you lost the RA**
20 **parking spot?**

21 A. I believe I was on 15 milligrams of
22 morphine a day, one a day, because it was like a
23 24-hour, and I believe I had gotten down to
24 maybe three to four percocet a day, and when the
25 walking increased three-fold, the pain was

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1 awful.

2 Q. My next question is, did that
3 medication change when you lost the RA parking
4 spot, and how did it look?

5 A. I believe, yes, it -- oh, yes, it did,
6 and I believe that is when Dr. Uppal increased
7 me from 15 morphine to my current dose of
8 30 milligrams a day, and they used to prescribe
9 me 120 percocet a month. I now am up to 180 a
10 month.

11 Q. Okay. And any other pain medication
12 that changed?

13 A. Yeah. For a while there they tried to
14 put me on another medication. I honestly don't
15 know the name, but it -- it is a medication that
16 was for people with an opiate disorder, but they
17 didn't put me on it for that. They put me on it
18 to get me off the narcotics, and we tried it,
19 and it wasn't working, so they doubled the dose.
20 It wasn't working, and then they just abruptly
21 said, "That's it. We are stopping all of that.
22 You are going back on the morphine and
23 percocet." And that's what I am on today.

24 Q. Was that -- and who is the doctor who
25 is in charge of that medication?

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1 A. It would be two of them, Dr. Uppal,
2 U-P-P-A-L. He is now chief of VISN 12 pain
3 throughout the VISN, and my provider, Doc Egan,
4 E-G-A-N. So I think Mike Egan is the one now
5 who renews my 30-day dosage for both percocet
6 and morphine, but I think it was Dr. Uppal who
7 ordered the increase from 15 to 30 milligrams on
8 the morphine.

9 **Q. Now, you referred during your earlier**
10 **testimony to PTSD. Did the loss of the RA**
11 **parking spot do anything with your PTSD?**

12 A. Oh, yeah, it exasperated it. You know,
13 it -- just the pain making me -- I just still
14 remember the pain of just walking on a hip
15 that's bone-on-bone. I don't know if any of you
16 have ever had pain from your hip, but it's
17 awful. And it doesn't go away when you get off
18 your legs, you stop walking, and it would
19 radiate at night. It's that bad. It's that
20 bad.

21 **Q. And --**

22 A. None of the -- none of the narcotics I
23 take right now really work anymore, and we have
24 tried cutting back on some, and stopping one and
25 trying another, and we went back to where I am

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1 at now, because it does offer some relief. I
2 also had to have a spinal stimulator installed
3 into my spine because of the increased pain to
4 help me with the spinal pain.

5 **Q. And which provider did that?**

6 A. That, the VA sent me to Loyola, and I
7 believe that was 2018, at the end of it.

8 **Q. But that was before you lost the RA**
9 **parking spot, wasn't it?**

10 A. Yeah. It was just the -- the
11 degenerative disc and joint disease along with
12 the bone disease, all attributed to steroids
13 that caused --

14 **Q. Did you -- did the loss of the RA**
15 **parking spot trigger the PTSD symptoms you had**
16 **before?**

17 A. Absolutely. I mean --

18 **Q. Okay. Could you explain that to us?**

19 A. Yeah. I mean, to come in to work, and
20 to be told that you are trespassing and breaking
21 the law, and you are going to be arrested. And
22 I am like, "How can -- how can you say this?"

23 I had a verbal agreement. I
24 got screened every day. I was normally screened
25 twice a day by preop nurses. I would walk in

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1 and talk to them about something, and they would
2 just take the thing and go across my forehead to
3 check my temperature. I was being as careful as
4 I can be.

5 I am such a high risk for
6 COVID, per Hines employee health, that when
7 COVID first hit, they took all the MSAs and
8 said, "All of you are going to be rotated out of
9 different areas in the hospital to screen people
10 for COVID." Employee health said, "No way. No
11 how." He not only is so high risk because of
12 his lung disease and his underlying health
13 issues with bone, degenerative disc and
14 degenerative joint disease, I can't even wear an
15 N95 mask. An N95 is the only approved mask to
16 be used around COVID patients. So I can't even
17 use that because my lungs won't support it.

18 MR. FLAXMAN: Okay. I have nothing
19 further.

20 FURTHER EXAMINATION

21 BY MS. FLORES:

22 Q. I have one additional question,
23 Mr. Bourke.

24 How do you -- how are you
25 mobile when you are not at work? How do you get

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1 **around for daily activities?**

2 A. I don't. I -- I limit my going out on
3 Saturday mornings to get groceries, if I need to
4 go to an ATM or to get gas, and then I come
5 home. I am fortunate where I live -- one of the
6 reasons why I took this apartment is I am on the
7 ground floor. Parking is right outside my door,
8 and I can place my groceries inside and then
9 park the car. It's very close.

10 I don't have a life anymore.
11 As a matter of fact, when we have family
12 get-togethers at Christmas, I was taking
13 narcotics already during the day, and the
14 agreement was with the VA that I cannot work or
15 drive my automobile when I start taking
16 narcotics.

17 So I almost always only take
18 them after I get off of work and I get home. I
19 am only four miles or less from the VA. That's
20 another reason why I moved here. And I had to
21 rely on family to come get me and take me home.
22 And anytime I go out, I have to let people know,
23 especially if I rode with them, "I am going to
24 come to a point where I need to go home, and I
25 can't have you say we are in the middle of the

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1 party. Otherwise, I can't come." It can be
2 that bad at times.

3 So to answer your question, I
4 have a brand new automobile. I bought it. It's
5 a 2019 Kia Niro. It's three years old, and I
6 just crossed 15,000 miles, which means, I don't
7 drive at all. I don't go anywhere. I haven't
8 had a vacation since 2014.

9 MS. FLORES: Thank you, Mr. Bourke.
10 I have no additional questions.

11 MR. FLAXMAN: Thank you. We will
12 reserve signature. Thank you.

13 THE COURT REPORTER: Did you need to
14 order the transcript written?

15 MS. FLORES: Yes.

16 MR. FLAXMAN: And I will take a copy,
17 and I will arrange for signature.

18 THE COURT REPORTER: Thank you.

19 (FURTHER DEPONENT SAITH NOT.)
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ERRATA SHEET

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID P. BOURKE,)
Plaintiff,)
vs.) No. 22 C 3164
DENIS McDONOUGH,)
Secretary, U.S.)
Department of Veterans)
Affairs,)
Defendant.)

I, DAVID PIERCE BOURKE, being first duly
sworn, on oath say that I am the deponent in the
aforesaid deposition taken on March 27, 2023;
that I have read the foregoing transcript of my
deposition, and affix my signature to same.

DAVID PIERCE BOURKE

Subscribed and sworn to
before me this day
of , 2023

Notary Public

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1
2 I, Kari Wiedenhaupt, do hereby certify
3 that heretofore, to-wit, on March 27, 2023,
4 personally appeared before me, DAVID PIERCE
5 BOURKE, in a cause now pending and undetermined
6 in the Northern District of Illinois, wherein
7 DAVID P. BOURKE is the Plaintiff, and DENIS
8 McDONOUGH, Secretary, U.S. Department of
9 Veterans Affairs is the Defendant.

10 I further certify that the said DAVID P.
11 BOURKE was first duly sworn to testify the
12 truth, the whole truth and nothing but the truth
13 in the cause aforesaid; that the testimony then
14 given by said witness was reported
15 stenographically by me in the presence of the
16 said witness, and afterwards reduced to
17 typewriting by Computer-Aided Transcription, and
18 the foregoing is a true and correct transcript
19 of the testimony so given by said witness as
20 aforesaid.

21 I further certify that the signature to
22 the foregoing deposition was reserved by counsel
23 for the respective parties and that there were
24 present at the deposition the attorneys
25 hereinbefore mentioned.

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1 I further certify that I am not counsel
2 for nor in any way related to the parties to
3 this suit, nor am I in any way interested in the
4 outcome thereof.

5
6 I have hereunder subscribed my hand on
7 the ____ day of _____, 2023.

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11 _____
12 KARI WIEDENHAUPT, CSR
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Exhibit 3



Certification of Military Service

This certifies that

David Pierce Bourke
[REDACTED]

was a member of the

United States Navy

from

February 3, 1978

to

October 13, 1978

Service was terminated by

Under Honorable Conditions
Discharge

Last Grade, Rank, or Rating

SR

Active Service Dates

Same As Above

Date of Birth: [REDACTED]

Place of Birth: [REDACTED]

Given at St. Louis, Missouri on November 30, 2007

National Personnel Records Center
(Military Personnel Records)
National Archives and Records Administration

THE ARCHIVIST OF THE UNITED STATES IS THE PHYSICAL CUSTODIAN OF THIS PERSON'S MILITARY RECORD

This Certification of Military Service is issued in the absence of a copy of the actual Report of Separation or its equivalent. This document serves as verification of military service and may be used for any official purpose. Not valid without official seal.

Exhibit 4



Department of Veterans Affairs

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST

1. NAME OF EMPLOYEE David Bourke		2. DATE FORM COMPLETED 6/21/2019	
The purpose of this form is to confirm that your request for accommodation was received and to provide information to you. If our information regarding your request is incorrect, please contact me as soon as possible.			
I will be the Designated Management Official (DMO) for this request.			
3. MY NAME IS Angela Graham	4. MY PHONE NO. IS [REDACTED]	5. MY EMAIL IS angela.graham@va.gov	6. DATE OF REQUEST 6/17/2019
7. MY ALTERNATE IS		8. ALTERNATES PHONE NO.	9. ALTERNATES EMAIL
10. YOU REQUESTED THE FOLLOWING ACCOMMODATION(S) To be exempt from surgical services rotation and to remain as an AMSA in the ambulatory surgery unit.			
11. THIS ACCOMMODATION WILL ALLOW YOU TO <input type="checkbox"/> ACCESS THE APPLICATION/INTERVIEW PROCESS <input checked="" type="checkbox"/> PERFORM ESSENTIAL JOB FUNCTIONS OR ACCESS THE WORK ENVIRONMENT <input type="checkbox"/> ACCESS A BENEFIT OR PRIVILEGE OF EMPLOYMENT (e.g., attend a training program or a social event)			
12. OUR RECORDS SHOW THAT THIS REQUEST <input type="checkbox"/> IS TIME SENSITIVE <input checked="" type="checkbox"/> IS NOT TIME SENSITIVE; IF IT IS TIME SENSITIVE, PLEASE NOTIFY ME IMMEDIATELY			
NEXT STEPS: I will meet with you to discuss your request and any options for providing an effective accommodation. If necessary, I will consult with the Local Reasonable Accommodation Coordinator (LRAC), VA's National Reasonable Accommodation Coordinator, and/or the Job Accommodation Network. I will keep you informed as to my progress. It is my goal to decide on your request and provide the accommodation, if approved, within less than 30 calendar days. Time sensitive requests will be processed as soon as possible to meet the deadline.			
If you have any questions, please contact me via the email address or phone number provided above. You may also contact the LRAC identified below.			
13. NAME OF LRAC Carmen Smith	14. PHONE NUMBER OF LRAC [REDACTED]	15. EMAIL ADDRESS OF LRAC carmen.smith2@va.gov	
<p style="text-align: center;">This form should be retained separately from the employee's Official Personnel Folder.</p>			

VA FORM
MAY 2013**0857b****000275**

USA000322



Department of Veterans Affairs

WRITTEN CONFIRMATION OF REQUEST FOR ACCOMMODATION

An oral request from an employee is sufficient to begin the reasonable accommodation process. Completion of this form is voluntary. However, individuals who have requested an accommodation are asked to fill out this form for record-keeping purposes.

The Paperwork Reduction Act (PRA) of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of Section 3507 of the PRA. We cannot sponsor or require you to respond to a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average ten minutes including the time it will take to read the instructions, gather the necessary facts, and fill out the form.

Privacy Act Information: The information requested on this form is solicited under the authority of Executive Order 13164 that requires the collection of data that will allow measurement and evaluation of the efficiency and appropriateness of the actions taken by the Department of Veterans Affairs in processing accommodation requests. Information from the data collection will become part of a System of Records that complies with the Privacy Act of 1974. This System of Records is identified as "Reasonable Accommodation Processing Records" as set forth in the Compilation of Privacy Act issuances via online GPO access at <http://www.gpoaccess.gov/privacyact/index.html>.

If you need assistance in completing this form, please contact the Local Reasonable Accommodation Coordinator.

NAME OF EMPLOYEE DAVID P. BOURKE	PHONE NUMBER OF EMPLOYEE [REDACTED]	DATE OF REQUEST 6-17-19	TODAY'S DATE 6-18-19
EMAIL ADDRESS OF EMPLOYEE david.bourke@va.gov		OFFICE OF EMPLOYEE AMBULATORY SURGERY UNIT	
SUPERVISOR'S NAME ANGELA GRAHAM		SUPERVISOR'S PHONE NUMBER [REDACTED]	
ACCOMMODATION REQUESTED <i>(Be as specific as possible)</i> TO BE EXEMPT FROM SURGICAL SERVICES ROTATION OF CLERKS AND TO REMAIN AS ADVANCE MSA IN THE AMBULATORY SURGERY UNIT. BLDG-200 BASEMENT ROOM B019. ALSO PARKING RESERVED SLOT IN THE BACK OF BLDG. 200 BY OUTPATIENT PHARMACY AREA, HANDICAP PARKING SPOT.			
REASON FOR REQUEST I SUFFER FROM AND HAVE PERMANENT DISABILITIES FROM LUNG, BONE AND DEGENERATIVE DISC DISEASES. I CANNOT WALK VERY FAR AND WALKING IS PAINFUL. MY LUNG DISEASE ALSO RESTRICTS MY WALKING ANY DISTANCE AND I HAVE A VA PROVIDED SCOOTER FOR USE. MY DOCTORS HAVE WRITTEN AND VERBALLY TOLD ME TO AVOID STRESS, AS MUCH AS POSSIBLE, DUE TO ITS RETARDING MY MEDICAL TREATMENTS OF BOTH LUNG & BONE DISEASE. I CANNOT SAFELY WALKING ANY DISTANCE - FALL-RISK.			
IF ACCOMMODATION IS TIME SENSITIVE, PLEASE EXPLAIN BELOW			
Employees should give this form to their immediate supervisor or the LRAC.			
NAME OF LRAC Carmen Smith	PHONE NUMBER OF LRAC [REDACTED]	LOG NUMBER ASSIGNED	

This form should be retained separately from the employee's Official Personnel Folder.

VA FORM
MAR 2011**0857A****000276**

USA000323



Department of Veterans Affairs

WRITTEN CONFIRMATION OF REQUEST FOR ACCOMMODATION

An oral request from an employee is sufficient to begin the reasonable accommodation process. Completion of this form is voluntary. However, individuals who have requested an accommodation are asked to fill out this form for record-keeping purposes.

The Paperwork Reduction Act (PRA) of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of Section 3507 of the PRA. We cannot sponsor or require you to respond to a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average ten minutes including the time it will take to read the instructions, gather the necessary facts, and fill out the form.

Privacy Act Information: The information requested on this form is solicited under the authority of Executive Order 13164 that requires the collection of data that will allow measurement and evaluation of the efficiency and appropriateness of the actions taken by the Department of Veterans Affairs in processing accommodation requests. Information from the data collection will become part of a System of Records that complies with the Privacy Act of 1974. This System of Records is identified as "Reasonable Accommodation Processing Records" as set forth in the Compilation of Privacy Act issuances via online GPO access at <http://www.gpoaccess.gov/privacyact/index.html>.

If you need assistance in completing this form, please contact the Local Reasonable Accommodation Coordinator.

NAME OF EMPLOYEE DAVID P. BOURNE	PHONE NUMBER OF EMPLOYEE (Include Area Code) [REDACTED]	DATE OF REQUEST	TODAY'S DATE
EMAIL ADDRESS OF EMPLOYEE david.bourne@va.gov	OFFICE OF EMPLOYEE (708) 904-1119 PAS. EVT. 2275-8		
SUPERVISOR'S NAME ANGELA GRAHAM	SUPERVISOR'S PHONE NUMBER [REDACTED]		

ACCOMMODATION REQUESTED (Be as specific as possible)

I agree with attached email requests for patient to maintain current work duties if possible. *[Signature]* APA, R & 6/11/2019

REASON FOR REQUEST

I agree with statements on attached email regarding suggestion to limit psychological and physical stressors given patient's comorbidity. He has regular use of motorized scooter, frequent exacerbation of pain and shortness of breath. *[Signature]* APA, R & 6/11/2019

IF ACCOMMODATION IS TIME SENSITIVE, PLEASE EXPLAIN BELOW

Employees should give this form to their immediate supervisor or the LRAC.

NAME OF LRAC Carmen Smith	PHONE NUMBER OF LRAC [REDACTED]	LOG NUMBER ASSIGNED
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This form should be retained separately from the employee's Official Personnel Folder.

VA FORM
MAR 2011

0857A

000277

USA000324

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID BOURKE,)
Plaintiff,)
vs.) No. 22-CV-3164
DENIS McDONOUGH, SECRETARY,)
U.S. DEPARTMENT OF)
VETERANS AFFAIRS, UNITED)
STATES OF AMERICA,)
Defendant.)

The deposition of ANGELA GRAHAM, called
for examination pursuant to the Rules of Civil
Procedure for the United States District Courts
pertaining to the taking of depositions, taken
remotely before Johnetta Stafford Taylor, a
Registered Professional Reporter within and for
the State of Illinois, on May 10, 2023 at the
hour of 1:00 p.m., via Zoom videoconferencing.

Johnetta Stafford Taylor
License No. 084-001583



1 APPEARANCES:

2 KENNETH N. FLAXMAN LAW OFFICES

3 BY: MR. KENNETH N. FLAXMAN

4 200 South Michigan Avenue

5 Suite 201

6 Chicago, Illinois 60604

7 (312) 427-3200

8 knf@kenlaw.com

9 Representing the Plaintiff;

11 UNITED STATES ATTORNEY'S OFFICE

12 BY: MS. NICOLE FLORES

13 219 South Dearborn Street

14 9th Floor

15 Chicago, Illinois 60604

16 (312) 886-9082

17 nicole.flores3@usdoj.gov

18 Representing the Defendant.

19
20 *****
21
22
23
24



I N D E X

WITNESS EXAMINATION

ANGELA GRAHAM

By Mr. Flaxman 5

By Ms. Flores 40

By Mr. Flaxman (Further) 47

By Ms. Flores (Further) 49

E X H I B I T S

NUMBER MARKED FOR ID

Exhibit No. 1 31

Exhibit No. 2 35

Exhibit No. 3 39

(Exhibits previously marked by counsel.)



1 THE COURT REPORTER: On the record.

2 This deposition is being taken by means
3 of Zoom audio/videoconference, and the oath will
4 be administered remotely by the court reporter
5 pursuant to Executive Order 2020-14 and by
6 agreement of counsel.

7 will all counsel present please state
8 your name and agreement with this procedure.

9 MS. FLORES: Nicole Flores on behalf of the
10 Secretary, and I agree.

11 MR. FLAXMAN: Kenneth Flaxman for the
12 Plaintiff. I agree.

13 THE WITNESS: I'm Angela Graham. I agree.

14 (Whereupon, the witness was
15 duly sworn.)

16 MR. FLAXMAN: Thank you. Good afternoon,
17 ma'am.

18 THE WITNESS: Good afternoon.

19 MR. FLAXMAN: If you can't understand me,
20 sometimes I mumble, so tell me that and I'll try
21 to --

22 THE WITNESS: I will ask you to repeat.

23 MR. FLAXMAN: Thank you.

24 THE WITNESS: You're very welcome.



1 ANGELA GRAHAM,

2 called as a witness herein, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. FLAXMAN:

6 Q. Have you ever given a deposition
7 before?

8 A. Yes.

9 Q. Do you know David Bourke?

10 A. Yes.

11 Q. For how long have you known Mr. Bourke?

12 A. I've been in Memphis going on
13 three years, so I'll say I've been knowing
14 Mr. Bourke -- I was his supervisor at Hines for
15 maybe two years. And prior to that, we worked
16 together. So I've been knowing Mr. Bourke for
17 maybe about seven years.

18 Q. Okay. Are you still employed at Hines?

19 A. No. I'm not.

20 Q. Where are you employed now?

21 A. I'm employed at the Memphis V.A. now.
22 I'm employed with Memphis, Tennessee now with
23 their V.A. I've relocated.

24 Q. Well, I'm glad that we didn't have to



1 go to Memphis or bring you up here.

2 A. I wouldn't have minded coming back home
3 now.

4 Q. When did you stop working at Hines?

5 A. Almost three years ago -- almost
6 two years ago. So I transferred to Memphis in
7 2021.

8 Q. At the time you transferred, were you
9 Mr. Bourke's supervisor?

10 A. Yes.

11 Q. Did you look at any documents or papers
12 or anything to prepare for this deposition?

13 A. Prior to the deposition, I probably
14 wrote myself.

15 Q. Did you look at any emails that you
16 wrote or received?

17 A. I did.

18 Q. Okay. Do you remember back in 2019
19 when Mr. Bourke got a close-in parking spot?

20 A. Back in 2019 when Mr. Bourke first
21 applied for his reasonable accommodations, I
22 wasn't the supervisor that initiated for his
23 parking. But it was informed to me when he came
24 over to my supervision, that he had applied for



1 parking.

2 Q. okay. And did you also have an RA
3 parking spot?

4 A. That is correct also.

5 Q. And you have -- am I correct that you
6 use a scooter of some sort to --

7 A. That is also correct.

8 Q. Is your scooter a different type of
9 scooter than Mr. Bourke's scooter?

10 A. It is.

11 Q. Could you explain to us what's
12 different about it?

13 A. I guess mine was more of an up-to-date
14 model, if that's what you're asking me. I don't
15 know what the difference in the scooters.
16 Because you get from Point A to Point B with a
17 scooter.

18 So define what do you mean by --

19 Q. I'll be glad to use my best words.

20 Is your scooter bigger than
21 Mr. Bourke's?

22 A. It's more of a -- actually I could show
23 you a picture of my scooter.

24 Q. okay.



1 A. Okay. It's in my office. And that's
2 the scooter there (indicating).

3 Q. Oh, okay.

4 A. Okay?

5 Q. Do you get your scooter into a vehicle
6 of some sort when you go to and from work?

7 A. No. My vehicle is only to get me from
8 Point A to Point B while I do my job.

9 Q. Okay. And does your scooter
10 disassemble?

11 A. I'm not the one that disassembles it.
12 If it needs to be disassembled, I would have to
13 send it over to logistics and they would need to
14 take it apart.

15 Q. Okay. How do you get from your
16 workplace to your -- well, do you drive a
17 vehicle to get to work?

18 A. Yes, I do.

19 Q. How do you get to your -- from your
20 vehicle to your workplace?

21 A. Well, I am so glad you asked that
22 question, because I'm also in a battle of
23 fighting right now my reasonable accommodations
24 at this V.A.



1 So how I get a close park, I have made
2 friends that work overnight that hold a park for
3 me that gets me close to my office as they
4 possibly can. So I have two men actually that
5 help me every morning.

6 Q. And is that a reasonable accommodation
7 arranged for you by the V.A.?

8 A. It is not. However -- however, you
9 cannot -- I'm not going to say you cannot,
10 because that would be the wrong thing to do.

11 With this V.A., I can't do a comparison
12 on how my reasonable accommodations is at this
13 V.A. to compare to how my reasonable
14 accommodations were at Hines V.A.

15 Q. oh.

16 A. Yes. So this V.A. was a little
17 different than Hines V.A.

18 Q. Did there come a time when -- well,
19 okay.

20 I think I asked you, Miss Graham, and
21 you told me that you had an RA parking spot at
22 Hines; is that --

23 A. That is correct.

24 Q. Did that parking spot change back in



1 **early 2020 with COVID?**

2 A. It did.

3 Q. And at the Hines V.A., how did you get
4 from your parking space to the place where you
5 worked?

6 A. I'm glad you asked that question.

7 So when we went into COVID and they
8 started locking the doors down, they told me
9 what was going on and they relocated my parking
10 spot to the C Section of the building. So they
11 took the poles. They had engineering to come
12 out and removed my parking reserved pole and put
13 it in the C Section. So I had the first
14 assigned parking spot in the C Section.

15 Q. And how did you get from the C Section
16 to --

17 A. To my place of employment?

18 Q. Right.

19 A. Once I got out of the car, I walked
20 into the building and I was screened for COVID.
21 My scooter was parked right there. So I was
22 able to park my scooter in an area where it was
23 secured. So I parked my scooter right there. I
24 was able to charge it at night. And I was able



1 to get on the scooter and I was able to ride the
2 scooter to my office.

3 Q. Was it a longer walk during -- when --

4 A. Even the door that I came through with
5 my RA was a longer walk for me.

6 Q. Well, let me ask the question so when
7 we pick up the transcript, we'll understand what
8 we're talking about.

9 When your RA parking space changed
10 during the beginning of COVID, did you have a
11 longer walk from the changed parking space to
12 your work to the hospital than you had from your
13 earlier parking space to the hospital?

14 A. No. It was a shorter walk. And the
15 reason that it was a shorter walk is from where
16 the -- well, before COVID where I was parking
17 the scooter at, I would get out of the car,
18 catch the elevator and I would have to walk down
19 to my office. Where the scooter was always
20 stored inside the office.

21 So when we went into COVID, I was able
22 to park the scooter, even though the location
23 went further down, but they were able to get my
24 scooter secured in a secured location. That way



1 I would not have to walk that far to get to my
2 office.

3 Q. Okay. Now, do you know whether or not
4 Mr. Bourke's RA parking spot was changed when
5 COVID started?

6 A. Actually, Mr. Bourke's parking spot was
7 not changed at first. So I did not know that
8 David had made an agreement with someone on the
9 police department at the V.A. to let him through
10 a door that was not screened in for COVID. I
11 was unaware of that. So I came to work and my
12 boss, my big boss, contacted me and asked me
13 what was going on. Well, I didn't know what was
14 going on because David had never expressed to me
15 that he had made these accommodations with this
16 officer. So once I found out what was going on,
17 I contacted David and I offered David a
18 reasonable -- to move his reasonable
19 accommodations around to where my reasonable
20 accommodations parking spot was. I offered
21 David the location where to park his scooter and
22 everything. I asked David if he would meet me.
23 David met me in the C Section.

24 I took David to where we would put his



1 poles, his reserved parking spot pole and where
2 he would store his scooter. David went back to
3 his place of employment and contacted me and
4 told me he would not accept that, he did not
5 want that because he didn't feel that his
6 scooter would be secured. I tried to explain to
7 David that I parked my scooter there every day,
8 Dr. Silver parks his scooter there every day and
9 no one since we have went into COVID has messed
10 with either of our scooters. They're the same
11 every day. No one messed with them. They were
12 secured. But David didn't want that
13 accommodation. He declined to accept that
14 accommodation.

15 Q. You mentioned a doctor. Could you
16 spell his or her last name?

17 A. Dr. Silver? S-I-L-V-E-R.

18 Q. Is it a male or a female?

19 A. It's a male. He's a male.

20 But Dr. Silver also had a reserved
21 parking spot in the back also.

22 Q. Now, when you would get home, did
23 you -- did you use a scooter to get around your
24 house?



1 A. No.

2 Q. Okay. Do you know if David used a
3 scooter --

4 A. To get around his house?

5 Q. Right.

6 A. I can't answer that, because I never
7 visited David at his home.

8 Q. Do you know if David took his scooter
9 home every night?

10 A. No, he didn't.

11 Q. Okay.

12 A. He would park his scooter in his
13 office.

14 Q. Did he ever tell you that his scooter
15 could be easily disassembled?

16 A. We never talked about disassembling of
17 scooters.

18 Q. Okay. Now, before the V.A. changed the
19 location of your RA parking spot, did you meet
20 with the V.A. to discuss moving that spot?

21 A. No, I didn't.

22 So what happened was I received an
23 email and the email said that they were going to
24 be doing construction and that they would have



1 to move the spot. So we wasn't in COVID then.
2 So when I met with the reasonable accommodations
3 coordinator, I asked why are we moving the
4 spots, and she explained to me that they were
5 going to be doing construction and that I would
6 be notified once the parking was moved.

7 And then after that, we went into
8 COVID. So everything started happening faster
9 than we anticipated the move of everything. So
10 it was like, okay, we need to get these moved
11 and we need to get them moved now.

12 Q. Do you remember when it was that you
13 were told about the construction?

14 A. No. No one ever asked me that
15 question.

16 Q. And who was it that you met with to --
17 when you learned that your parking -- RA parking
18 spot would be changed?

19 A. My supervisor.

20 Q. And what's his or her name?

21 A. Her name was Cris Mabrito.

22 Q. Could you spell the last name for us?

23 A. Why are you asking me to spell -- can I
24 look it up?



1 Q. Oh, sure.

2 A. Okay. Because I hate to spell
3 someone's name incorrectly.

4 Q. I think we all appreciate that.

5 A. Let me -- it's not there.
6 M-A-B-R-I-T-O.

7 Q. And when you left Hines, was Mabrito
8 still there?

9 A. She was still my supervisor when I
10 left.

11 Q. Do you know if she's still there now?

12 A. She's at the VISN now. She's still a
13 part of the V.A., but she's at the VISN. She's
14 not at Hines --

15 Q. What's it --

16 A. It's a part of Hines, but it's more of
17 an up uppity-uppity part, I guess.

18 Q. Are you familiar with the phrase
19 interactive process?

20 A. Yes.

21 Q. Would you tell us what your
22 understanding of that phrase means?

23 A. So with the interactive process at this
24 particular moment, I was his frontline



1 supervisor. So that means that he came to me
2 and he told me about his reasonable
3 accommodations. We at that particular moment
4 contacted the reasonable accommodations. They
5 sent him the paperwork. He filled out the
6 paperwork. He turned it back into reasonable
7 accommodations. At that particular moment, we
8 had to have an interactive process with him,
9 myself, and HR. And we had that interactive
10 process and we signed off on his RA.

11 Q. Now, you've been referring to he and
12 him. Is that David Bourke?

13 A. Yes.

14 Q. Okay. And was there -- do you remember
15 who the person was in HR that you consulted with
16 about this?

17 A. At the time that Mr. Bourke did his RA,
18 it was Carmen Smith.

19 Q. Now, when your RA parking space was
20 moved originally because of the construction,
21 was there an interactive process like that that
22 you were involved in?

23 A. No.

24 Q. Okay.



1 A. Well, before I answer that as a no,
2 repeat the question what you just said so I can
3 get a full understanding.

4 Q. Okay. You just told us about the
5 interactive process for David Bourke's parking
6 spot.

7 when your parking spot was moved
8 because of the construction, was there an
9 interactive process like what you described for
10 Mr. Bourke?

11 A. No.

12 Q. Okay. Was there to your knowledge any
13 interactive process before Mr. Bourke's parking
14 spot was changed?

15 A. Yes.

16 Q. And who was involved in that
17 interactive process?

18 A. At that particular moment, I was
19 involved in it at that time, and then I believe
20 his name was Shawn. And I'll spell his last
21 name. I think it's S-C-H-E-I-R-E-R.

22 Q. Okay. I don't want to interrupt you.
23 Is there anything more you wanted to say?

24 A. Yes. Shawn was the one that was



1 involved in that process, because I don't know
2 how Shawn at that particular moment got involved
3 with that, but he was the HR rep at that time.

4 **Q. Does that interactive process start**
5 **before Mr. Bourke's parking spot was changed?**

6 A. Mr. Bourke's parking spot was never
7 changed. That's the whole thing. He declined
8 to have it changed.

9 So what happened was we were in the
10 process of having an interactive process with
11 him, and Mr. Bourke at that particular moment
12 sent me and Shawn a letter and declined to have
13 his parking space moved.

14 **Q. To your knowledge, was his parking**
15 **space ever moved?**

16 A. His parking spot was never moved.
17 We -- when we met with him, when I met with
18 David, I took David down to the C Section and I
19 showed him exactly where the parking spot would
20 be moved and where he would park his scooter.
21 At that particular moment, David went back to
22 his office and sent an email to me and told me
23 he declined it.

24 So on that email, I believe he had me,



1 I believe he cc:'d Tiffany, if I'm not mistaken,
2 Alexander and Shawn on there. Because at that
3 particular moment, I think Tiffany was still
4 there.

5 Q. I might be missing something, but let
6 me ask a more direct question.

7 Was David's parking space, RA parking
8 space ever changed?

9 A. No. Because he declined to have it
10 changed.

11 Q. And you talked about David and an
12 accommodation with somebody from the police
13 department to go in through a back door.

14 Do you know the name of who that person
15 was?

16 A. I never -- they never told me who the
17 police officer was. All I received when I came
18 to work that morning was a phone call and a
19 bunch of emails that I had to fix this issue
20 fast.

21 Q. And how did -- what was the issue?

22 A. The issue was that we had to get --
23 David was RA, we had to try to get David's
24 accommodations as to feasible for him to enter



1 into the building.

2 Q. And what was the accommodation that
3 came out of that?

4 A. He declined it. So there were no
5 accommodations that came out. David declined
6 all of the accommodations that I offered him.
7 He declined it.

8 So I offered David -- the parking spot
9 in the C Section was offered to David and to
10 park his scooter in the C Section was offered to
11 David. David sent me out a letter -- an email
12 stating that he declined all the accommodations
13 that he will walk in -- he will check in for the
14 screening in Building 200 and he would walk to
15 his work area. So David declined the
16 accommodations that were offered to him.

17 Q. So am I understanding you correctly
18 that his RA parking spot was never relocated?

19 A. It was never relocated because he
20 declined it. He declined every accomodation
21 that was offered to him.

22 Q. Are you familiar with the kind of
23 scooter that David had back in the beginning of
24 2020?



1 A. All I know it was a blue scooter. I'm
2 not familiar with the names of the scooter. It
3 was a blue scooter.

4 Q. Was it smaller than your scooter?

5 A. I don't remember if it was smaller or
6 larger. Like I say, I don't have a large
7 scooter myself, but I can't recall the size of
8 his scooter. I mean I'm not engineering or
9 anything, so I don't do measurements.

10 Q. And did Mr. Bourke tell you why he was
11 not accepting the parking spot outside of the
12 C section building?

13 A. He said he didn't feel secure with
14 parking his scooter there.

15 Q. And -- go ahead.

16 A. Go ahead. Go ahead.

17 Q. Was he offered a locked room in which
18 to place his scooter?

19 A. No. I didn't offer him a locked room,
20 because everybody's -- my scooter was out,
21 Dr. Silver's scooter was out. I mean nobody
22 touched our scooters. So why would I offer him
23 a locked room? What made his scooter any better
24 than our scooter?



1 Q. Do you know if his scooter came apart?

2 A. No. All scooters come apart if you
3 take them apart.

4 Q. Okay. Well, was his scooter lighter
5 and smaller than Dr. Silver's scooter?

6 A. No. Dr. Silver's was a little bit
7 heavier than David and I. So he had a larger
8 scooter. Dr. Silver's scooter was larger than
9 mine. Dr. Silver's scooter was larger than
10 David's.

11 Q. Did David continue to enter the
12 workplace through that rear door, the --

13 A. No, he didn't. His email stated after
14 all of this transpired that he will go through
15 the emergency room or -- of Building 200. So he
16 will enter through that way and he will walk to
17 his office.

18 Q. Did he ever complain to you about the
19 pain he felt, if any, walking to his office?

20 A. David complained about pain every day.
21 So him and I complained about daily pain. So
22 again, David, let's talk about the pain that
23 you're in, if you're in this pain, then why
24 don't we do these accommodations? And he



1 refused to do the accommodations because he felt
2 as though somebody was going to take his
3 scooter. No one is going to take your scooter.
4 My scooter locks up out there every day.

5 I even left the key in my scooter one
6 time. I'm just going to be honest. I'm looking
7 for my keys and they were left in the scooter.
8 So that means that nobody is in that section
9 after hours. Not even the cleaning crew.

10 Q. Could you describe for us the area in
11 the hospital where David could have left his
12 scooter when he was offered the parking spot
13 behind the C Section building?

14 A. You're asking me to describe where we
15 were locking our scooters at?

16 Q. Well --

17 A. It was a secluded area. They had like
18 a mirrored window there. There were seats
19 there, because it was our company -- no. It was
20 a patient advocate location. It was a patient
21 advocate location where patients would go and
22 fill out their complaints. So it was a secure
23 area until the next day when the patients
24 started coming in again. So no one was in that



1 area at night when we left. The area was locked
2 down.

3 Q. You talked about locking up your
4 scooter. How would you go about doing that?

5 A. No. You asked me was there a locked
6 office for David to lock his scooter. I never
7 said I would lock up my scooter.

8 Q. Oh. would you do anything to secure
9 your scooter when you would leave it at --

10 A. I mean I didn't worry about securing of
11 the scooter as long as I can get onto the
12 scooter when I left. And when I came back as
13 long as it was there, I was fine.

14 Q. And was it always where you had left
15 it?

16 A. It was always where I left it.

17 Q. Were you upset with David when he would
18 not take the RA parking spot in the C Section
19 building?

20 A. I can't get upset with anybody that
21 turns down an RA. And the reason I can't get
22 upset with you is because now you're telling me
23 that you have this disability. How can I be
24 upset with you and I'm trying to accommodate



1 your disability? I can't get upset with you
2 about that. You're actually bringing more harm
3 to yourself, because you're telling me that you
4 can't walk. And that when you walk, you're in
5 pain. But I'm offering you these
6 accommodations. So you couldn't have been in
7 that much pain.

8 Q. Were you working in Building 200 when
9 you supervised David?

10 A. Yes. I was -- yes. Just say my
11 clinics were in 200. I was located in Building
12 1.

13 Q. And were there handicapped spaces
14 behind Building 200?

15 A. It was.

16 Q. Was Mr. Bourke's RA parking spot among
17 those handicapped spaces behind Building 200?

18 A. Yes, it was.

19 Q. Do you know someone named Robert
20 Hoogerhyde, H-O-O-G-E-R-H-Y-D-E?

21 A. No.

22 Q. Do you know if Mr. Bourke ever tried
23 parking behind the C Section building?

24 A. He didn't because he declined it.



1 Q. Was any other accommodation offered to
2 him to your knowledge?

3 A. No. Not to my knowledge. Because that
4 was the feasible -- most feasible accommodations
5 I could get David at the time. Because, see, in
6 front of Building 200, he would have had to
7 utilize the handicapped and he would have had to
8 walk a further distance. So to get him a
9 shorter distance of a walk, it would have been
10 feasible for him to take the C Section and park
11 his scooter.

12 Q. Do you know if David ever changed his
13 parking spot from where it was at the beginning
14 of COVID?

15 A. He didn't change it while he was under
16 my supervision. No.

17 Q. When did he stop being under your
18 supervision?

19 A. When I left Hines.

20 Q. And I don't know if I wrote that
21 down --

22 A. You did.

23 Q. You told me the exact date. I was
24 impressed with it. Can you tell me again?



1 A. I left Hines in December 2021.

2 Q. All right. Did David's physical
3 condition become worse during the time you
4 supervised him?

5 A. I'm not a doctor.

6 Q. Well --

7 A. Okay. Okay. Okay.

8 Q. Did it appear to become worse to you?

9 A. So my appearance of someone's condition
10 becoming worse, if you're saying that you're
11 having this much pain and that much pain, why
12 are you always out of your area walking around
13 without your scooter?

14 So David used to get caught walking
15 around without his scooter. So my question to
16 him is: David, why are you out of the area?
17 why are you up here? where is your scooter?

18 Oh, I just came up because I needed
19 take care of this patient.

20 No. You need your scooter.

21 Because you're telling us that you
22 can't get around the hospital without a scooter,
23 but yet and still you're up here on this floor.
24 Even though it's two floors down, that's fine.



1 But you can't be up on the floor without your
2 scooter, because you're saying you're in this
3 much pain.

4 Q. Do you know whether or not David filed
5 an EEO complaint about the parking space in June
6 or July of 2020?

7 A. Well, he told me he was going to do it.
8 Yeah, he did. He was like, 'I'm going to sue
9 you. I'm going to sue this V.A.'

10 I mean a person will tell you what
11 they're going to do. So he said he was going to
12 do it.

13 Q. Do you remember ever being questioned
14 or asked to provide a statement for an EEO
15 investigator?

16 A. I did.

17 Q. Was that after June of 2020?

18 A. That was, I believe, in December. So
19 yes, it was after.

20 Q. Okay. And did you do a written
21 statement for the investigator?

22 A. What I did was there were questions. I
23 had to provide answers to the questions, and I
24 had to submit all my documentation that I



1 submitted.

2 Q. And when you submitted the answers to
3 the questions, did you try to be accurate?

4 A. As much as I possibly could.

5 Q. And you were, to the best of your
6 ability, truthful; is that correct?

7 A. That is correct.

8 Q. Did you tell David back in -- at that
9 time after June of 2020 that you were filling
10 out a questionnaire for the EEO investigation?

11 A. No. I don't think that should have
12 been a conversation David and I was having.
13 Because at that particular moment, again, I am
14 his supervisor, I'm his superior, so I shouldn't
15 be discussing what I'm doing for someone else
16 with David.

17 MR. FLAXMAN: I need a minute or two.

18 THE WITNESS: That's fine.

19 MR. FLAXMAN: Why don't we take a break for
20 5 minutes, and then I can not make everybody sit
21 and watch me. Okay?

22 THE WITNESS: Okay.

23 MR. FLAXMAN: Thank you.



1 (whereupon, a short break was
2 taken.)

3 MR. FLAXMAN: Miss Graham, are you able to
4 see Exhibit 1, Page 1 on your screen?

5 (Exhibit No. 1 was previously
6 marked.)

7 THE WITNESS: Yes.

8 BY MR. FLAXMAN:

9 Q. And Exhibit 1, Page 1 seems to start
10 with an email from you dated May 15, 2020 at
11 10:43 a.m.?

12 A. Uh-huh.

13 Q. You have to say yes or no for the
14 reporter.

15 A. Yes. Yes.

16 I'm sorry.

17 Q. Okay. And is that an email that you
18 sent to Christopher W-I-R-T --

19 A. Wirtjes. Wirtjes, which was my chief.

20 Q. Well, let me finish the question so
21 that the transcript is easier to read.

22 Is this an email that you sent to
23 Christopher W-I-R-T-J-E-S back on May 15 of
24 2020?



1 A. Yes. That is correct.

2 Q. And then it looks like there's a second
3 email that you wrote at 10:30 -- that you wrote
4 earlier, maybe it was the first email, at 10:32.
5 The subject was Re: Sorry about on the phone for
6 EEO complaint.

7 Do you see that?

8 A. Right. That's David. So all the
9 emails were attached to his complaint.

10 Q. Well, do you know what EEO complaint is
11 being referred to in that email from May 15,
12 2020 at 10:32 a.m.?

13 A. I guess he was filing his complaint
14 about this situation here. I didn't ask him
15 what he was filing. It's not my business to ask
16 him what he was filing. That's between him and
17 Equal Opportunity.

18 Q. Okay. There's an email underneath that
19 from Christopher W-I-R-T-J-E-S to you and Shawn
20 Scheirer about a scooter parked in the ED.

21 What is the ED -- do you know what the
22 ED refers to?

23 A. Emergency department.

24 Q. And was there a proposal for David's



1 scooter to be stored in the emergency
2 department?

3 A. I proposed everything I could. When
4 David said that he wanted to go through the
5 emergency room, I asked would it be feasible to
6 park the scooter close to the ED.

7 Q. Is the ED a 24-hour facility?

8 A. It is. It's the emergency room.

9 Q. And did Mr. Wirtjes tell you about he
10 couldn't park the scooter near the emergency
11 department?

12 A. Well, what he indicated was he didn't
13 think that you could park a scooter near the
14 emergency room. And I believe once talking to
15 whoever he needed to talk to, I don't know at
16 that particular moment who he had spoken with,
17 but that was the last information I received
18 about the emergency room.

19 Q. And then at the bottom of this page, is
20 that an email that you wrote or sent on Friday,
21 May 15 of 2020 at 9:49 a.m.?

22 A. When I said that David did not wish to
23 use the C Section to enter and park his scooter,
24 that is correct. That is from me.



1 Q. And did you propose a solution where
2 David could park his scooter by the emergency
3 room waiting area against the back wall?

4 A. I asked if it would be feasible for
5 David to park his scooter there. I did ask.

6 Q. And what happened with that proposal?

7 A. Nobody ever came back with an answer
8 with that proposal.

9 Q. And was that proposal ever presented to
10 David?

11 A. I told -- David was right there, and I
12 told him everything that I was doing.

13 Q. Do you know who it was who did not
14 respond to the proposal of parking the -- David
15 parking his scooter against the back wall in the
16 ER waiting area?

17 A. Again, it's indicated in black and
18 white there that they didn't think that it was
19 feasible for the scooter to be parked in the
20 emergency room. So nobody ever came back to
21 David -- I don't know if they came back to
22 David, but they never came back to me and said,
23 'Okay. Angela, this was okay for him to park it
24 there.' Nobody ever came back to me.



1 So again, it would have been a longer
2 walk for David to walk from Building 200 to the
3 emergency room. It was a longer walk.

4 Q. well, do you know if there was ever any
5 study done by an accommodation person about
6 whether the scooter could be parked in the ED on
7 off hours?

8 A. No. I didn't -- I don't know anything
9 about that.

10 Q. Are you aware of any work that was done
11 to investigate the feasibility of David parking
12 his scooter in the ED on off hours other than
13 this email from Christopher Wirtjes?

14 A. No. I don't know anything about that.

15 MR. FLAXMAN: And then let's look at what's
16 been marked as Exhibit 2, which is a whole bunch
17 of emails.

18 THE WITNESS: Uh-huh.

19 (Exhibit No. 2 was previously
20 marked.)

21 BY MR. FLAXMAN:

22 Q. The first one is from you, May 18, 2020
23 at 9:57 a.m.; is that correct?

24 A. well, actually no. The first email is



1 from Chris Wirtjes on May 15 at -- is that 8:00
2 a.m.?

3 Q. Right. Okay.

4 I'm using first just from the top of
5 the page down --

6 A. Okay. Okay.

7 Q. -- rather than chronologically.

8 A. Okay. That email would be from me.

9 Q. Okay. And this was when you met David
10 down in the C Section?

11 A. Yes.

12 Q. Okay. Further down on that page,
13 there's an email from Tiffany Alexander?

14 A. Yes.

15 Q. Who is Tiffany Alexander?

16 A. She was my section chief.

17 Q. And did she -- well, the next to the
18 last email on that page talks about her asking
19 or ordering you to please work with David and
20 Shawn prior to address?

21 A. Yes.

22 Q. Did she ever have a -- did you ever
23 have a discussion with her about David's
24 parking -- reasonable accommodation parking



1 spot?

2 A. Yes. I communicated with everyone
3 about this.

4 Q. But did you communicate with Tiffany
5 Alexander --

6 A. Yes. Again, she was my section chief.
7 Yes.

8 Q. Did you talk with her in person?

9 A. I don't know if it was in person, if I
10 went down to her office or if I spoke with her
11 over the phone. I don't know. Because
12 everybody that supervised me -- or I added them
13 on these emails. So my section chief, my
14 assistant chief, and my chief. Everybody was on
15 every email. I made sure everybody was involved
16 in what was going on.

17 Q. Okay. Other than communicating by
18 email, did you communicate with Tiffany
19 Alexander in person about --

20 A. I can't recall whether or not I went
21 down to Tiffany's office or whether or not she
22 came up to my office. I'm not going to recall
23 that, because I can't.

24 Q. Okay. You can't recall whether she



1 came to your office or you came to her office --

2 A. And that is correct what I just stated.
3 I cannot recall that.

4 Q. Can you recall whether or not you had a
5 face-to-face conversation with her that --

6 A. That's the same thing that you just
7 asked me. I cannot recall whether or not I had
8 a face-to-face oral conversation about this with
9 her.

10 Q. And I'll ask you the same question.
11 Can you recall whether or not you had a
12 conversation with Tiffany Alexander by telephone
13 about David's reasonable accomodation parking
14 spot?

15 A. I can't recall whether or not it was
16 face-to-face or over the phone. I cannot recall
17 that. Like I said, this was an ongoing process.
18 It was an all-day process. I mean it just kept
19 going on and on and on. I can't recall every
20 step.

21 Q. Okay. Let me ask you to look at
22 Page 2, which should be now on the screen.
23 what is a PAS employee?

24 A. So PAS is Patient Administrative



1 Services. So that is the organization that's
2 named that we were under. We were under PAS,
3 which is Patient Administrative Services.

4 Q. And then there's an email from Jodi,
5 J-O-D-I, Yenerall, Y-E-N-E-R-A-L-L.

6 who was Jodi Yenerall?

7 A. She is also a part of HR. I believe
8 she was like a chief of HR.

9 Q. Do you know if she's still at Hines?

10 A. I'm not quite sure if she's still over
11 there or not.

12 Q. Looking at Page -- well, Page 3 was --
13 2 and 3 is an email from David.

14 MR. FLAXMAN: Let's look at Exhibit 3.

15 (Exhibit No. 3 was previously
16 marked.)

17 BY MR. FLAXMAN:

18 Q. Is that an email that you wrote on
19 May 18, 2020 at 1:48 p.m.?

20 A. That is correct. Yes.

21 Q. Then there's the sentence: He will
22 need to have assistance with getting to his car
23 when this is completed.

24 Do you see that?



1 A. Yeah, I see it.

2 Q. Okay. What did you mean by assistance?

3 A. Because if David denied the
4 accommodations, then he's going to have to have
5 some sort of assistance getting back and forth
6 to his car.

7 Q. Do you know if he was ever provided
8 assistance getting to and from his car?

9 A. No, I don't. But I'm just making sure
10 that he's my employee, that he's getting the
11 help that he actually needs.

12 Q. Do you know whether or not he ever got
13 that help?

14 A. I don't know.

15 Q. I have --

16 MR. FLAXMAN: Well, I have nothing further.

17 THE WITNESS: Okay.

18 MS. FLORES: I'm trying to unmute myself.
19 Okay.

20 EXAMINATION

21 BY MS. FLORES:

22 Q. Angela, you mentioned earlier I
23 believe, that Mr. Bourke was walking two floors
24 up or down during the course of his job without



1 his scooter.

2 Can you tell me more about why he was
3 walking without his scooter during the workday?

4 A. I can't tell you why he was walking
5 without his scooter; but in doing rounds, I have
6 seen David several times in our other area
7 without his scooter because he was up and
8 walking.

9 That was my surgical area. So was he
10 up there for an appointment? I can't say. But
11 it's like you don't have your scooter, why are
12 you without your scooter?

13 Q. And when you said you can't say why
14 when he was in the surgical area, do you mean
15 whether he was there for personal reasons or for
16 work reasons?

17 A. Correct.

18 Q. Okay.

19 A. All I know is that he was seen without
20 the scooter.

21 Q. Okay. And did you personally see him
22 without the scooter?

23 A. I did.

24 Q. And as part of David's job, would he



1 need to leave the area where he was mainly
2 located?

3 A. No.

4 Q. Okay.

5 A. So where David was sectioned at to
6 work, all he needed to do was to check the
7 patients in for the appointments. That's it.
8 He didn't need to escort a patient to the rooms
9 or anything. All he needed to do was check the
10 patients in for the appointments.

11 David sometimes -- and I understand
12 David's work ethics, but he goes over and above
13 his job. And he would escort the patient to,
14 say, the exam rooms or he would go back to the
15 nurse's office. But, David, you've got to
16 remember that you're saying that you're in pain.
17 why are we doing all this walking?

18 So there was many times that he would
19 get up and escort a patient or go back to the
20 nurse's office without his scooter.

21 Q. Going back to parking, the offered
22 parking space and scooter storage in the
23 C section.

24 If you remember, at the point when you



1 discussed David parking there, how long had you
2 and Dr. Silver been parking your scooters in the
3 C Section?

4 A. I can't recall how long me and
5 Dr. Silver had been parking there. Because
6 again, when my poles were relocated, first it
7 was supposed to be because of the construction
8 that they had going on. Then all of a sudden we
9 went into COVID, and it looked like everything
10 just started moving fast. So I can't say how
11 long me and Dr. Silver had been parking back
12 there. I think I was the first to move my poles
13 back there.

14 Q. Would that have been in March of 2020?

15 A. Maybe around something like that.

16 Q. Okay. And then when you offered -- I
17 think we just saw some of the email discussions
18 about offering David an alternative parking
19 spot.

20 Would that have been in May when you
21 discussed him moving to the C Section?

22 A. David was offered -- this is around the
23 same time COVID hit that we offered David --
24 well, I offered David, because I was his



1 frontline supervisor, when I offered David these
2 accommodations to park his scooter in the back.
3 So it was around the same time COVID hit. So
4 that's when they started shutting down all the
5 entrances and we could only go through the
6 entrance that we could be COVID screened to come
7 into the hospital.

8 Q. Okay. Do you know, did you speak to
9 David about moving his parking spot before or
10 after he had the arrangement with the police?

11 A. It was after, because I never knew
12 David had made an arrangement with the police.

13 Q. Okay.

14 A. So it was after David -- I guess
15 someone else was on duty, I'm not quite sure.
16 I'm speculating. If another officer was on duty
17 and if David came through that door and that's
18 when all -- everything fell apart. So his
19 agreement he had made and everything had fell
20 apart. So that's how all of this happened.

21 Q. Okay.

22 A. So I don't know if that officer was off
23 duty that day or what.

24 Q. And so it was after that point that you



1 talked to David about moving to the C Section?

2 A. Yes.

3 Q. Okay. So that would have been just
4 calculating if you had moved there -- if you had
5 moved your scooter and parking space at the
6 beginning of the screening for COVID, when that
7 started at Hines, and then David at some point
8 later, that would have been perhaps months later
9 that you had been discussing with David him
10 moving to the C Section?

11 A. Yes.

12 Q. So you had already been parking your
13 scooter in the C Section for some months?

14 A. Yes.

15 Q. And I think Mr. Flaxman asked you about
16 disassembling your scooter.

17 I just wanted to ask: You stated that
18 you never broke down your scooter or
19 disassembled it, but it could be taken apart; is
20 that right?

21 A. That is correct.

22 Q. And is that by design to make the
23 scooter easier to disassemble or --

24 A. It's by design for shipping purposes.



1 So my scooter was broken down and shipped to
2 this Memphis V.A., because it's a part of my
3 accommodations. So they broke it down and the
4 RA person told me exactly how it was going to
5 come. It had to be broken down and then it was
6 shipped here. So when the guys here put it back
7 together, they brought it over to the office and
8 they told me, 'Hey, we put this back together
9 and we did this, this, this, and this.' And I'm
10 like, 'okay. Thank you.'

11 So they had to put it back together.

12 Q. When you were moved to the C Section in
13 terms of your parking and scooter storage, did
14 you see that as a permanent move or did you see
15 it as temporary just during the pandemic
16 screening?

17 A. No one knew how long COVID was going to
18 be. So I adjusted myself to say, 'Okay. This
19 is a permanent move.' That's how I did.

20 I mean the move didn't bother me.
21 Because, again, it was a walk, a screen, a
22 scooter. So it was actually less feet that I
23 had to walk that I wasn't supposed to be
24 walking. So it was within my reasonable



1 accommodations. So it was actually better for
2 me. That move was actually one that was really
3 better for me. But I can only speak about me at
4 that time.

5 I mean to lessen David's steps, I think
6 this would have been a feasible move for him
7 also, especially after you're saying how much
8 pain you're in. It was less steps. It was less
9 walking.

10 Q. And just to clarify one thing about
11 walking. When we spoke earlier about David
12 walking during his job, was this during 2020,
13 like during the time that David was moving his
14 parking spot or being asked to move his parking
15 spot?

16 A. Yes.

17 MS. FLORES: I think that's all my questions.

18 MR. FLAXMAN: I think you have Exhibit 3 in
19 front of you. Am I correct?

20 THE WITNESS: Yes. That is correct.

21 MR. FLAXMAN: Thank you.

22 EXAMINATION (Further)

23 BY MR. FLAXMAN:

24 Q. Was this -- this is dated May 18, 2021,



1 1:48 p.m.

2 Was this before or after David had told
3 you he didn't want the C Section parking spot?

4 A. This was before David had told me he
5 didn't want the spot.

6 Q. Okay.

7 MR. FLAXMAN: And let me turn that off.

8 BY MR. FLAXMAN:

9 Q. Do you know the make and model of your
10 scooter?

11 A. It's a Premier. It's a Premier 2.

12 Q. Premier 2?

13 A. Yes. Premier and the number 2.

14 Q. All right. How long have you had it?

15 A. (No audible response.)

16 Q. About.

17 A. I'm guessing around time. So it wasn't
18 the first scooter that I was issued at the V.A.
19 So I had a hand-me-down at first. So I've had
20 this scooter for about maybe six years.

21 Q. Okay. Thank you very much.

22 MR. FLAXMAN: I have nothing further.

23 Nicole, are you --

24 MS. FLORES: Just one follow-up question



1 about the scooter.

2 EXAMINATION (Further)

3 BY MS. FLORES:

4 Q. Angela, I know you testified that you
5 don't know what scooter type David had or if
6 yours was bigger or smaller; but looking in a
7 room of scooters, is there a big variation in
8 terms of the size of scooters and -- if you were
9 to see your scooter -- I'm sorry. Let me start
10 again. That was confusing.

11 If you were to see your scooter,
12 Dr. Silver's scooter, and David's scooter all
13 parked near each other, is there a big variation
14 between the three in terms of size and how they
15 look?

16 A. Yes. David is baby, I'm the momma,
17 Dr. Silver the daddy.

18 MR. FLAXMAN: And which one is just right?

19 THE WITNESS: Dr. Silver's scooter was
20 bigger. It was really big. So my scooter -- my
21 scooter is just a little bit bigger than
22 David's.

23 MS. FLORES: Thank you. That's all.

24 MR. FLAXMAN: All right. Signature?



1 MS. FLORES: We will not waive signature.

2 MR. FLAXMAN: Okay. Thank you.

3 We'll be ordering, and I'll email you
4 the exhibits immediately.

5 MS. FLORES: We would want to order as well.

6 FURTHER DEPONENT SAITH NOT.

7 (Deposition concluded at 2:11 p.m.)
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID BOURKE,)
Plaintiff,)
vs.) No. 22-CV-3164
DENIS McDONOUGH, SECRETARY,))
U.S. DEPARTMENT OF)
VETERANS AFFAIRS, UNITED)
STATES OF AMERICA,)
Defendant.)

This is to certify that I have read the transcript of my deposition taken in the above-entitled cause by Johnetta Stafford Taylor, Certified Shorthand Reporter, on May 10, 2023 and that the foregoing transcript accurately states the questions asked and the answers given by me as they now appear with any attached errata sheet(s).

ANGELA GRAHAM

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____ 2023.

Notary Public



1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, JOHNETTA STAFFORD TAYLOR, a
5 Certified Shorthand Reporter within and for the
6 County of Cook County and State of Illinois, do
7 hereby certify that heretofore, to-wit, on
8 May 10, 2023 remotely appeared before me via
9 Zoom videoconferencing, ANGELA GRAHAM in a cause
10 now pending and undetermined in the United
11 States District Court for the Northern District
12 of Illinois, Eastern Division, wherein DAVID
13 BOURKE is the Plaintiff, and DENIS McDONOUGH,
14 SECRETARY, U.S. DEPARTMENT OF VETERANS AFFAIRS,
15 UNITED STATES OF AMERICA is the Defendant.

16 I further certify that the said witness was
17 first duly sworn to testify the truth, the whole
18 truth and nothing but the truth in the cause
19 aforesaid; that the testimony then given by said
20 witness was reported stenographically by me in
21 the presence of the said witness, and afterwards
22 reduced to typewriting by Computer-Aided
23 Transcription, and the foregoing is a true and
24 correct transcript of the testimony so given by



1 said witness as aforesaid.

2 I further certify that the signature to the
3 foregoing deposition was reserved by counsel for
4 the respective parties.

5 I further certify that the taking of this
6 deposition was pursuant to Notice, and that
7 there were present at the deposition the
8 attorneys hereinbefore mentioned.

9 I further certify that I am not counsel for
10 nor in any way related to the parties to this
11 suit, nor am I in any way interested in the
12 outcome thereof.

13 IN TESTIMONY WHEREOF: I have hereunto set my
14 verified digital signature this 17th day of May
15 2023.

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NOTARY PUBLIC, COOK COUNTY, ILLINOIS



MC CORKLE LITIGATION SERVICES, INC.
200 North LaSalle Street
Suite 770
Chicago, Illinois 60601

May 18, 2023

Ms. Nicole Flores

United States Attorney's Office
219 South Dearborn Street, 9th Floor
Chicago, Illinois 60604

IN RE: Bourke vs. McDonough

Dear Ms. Flores:

Attached is your copy of the deposition of Angela Graham taken on May 10, 2023 in the above-entitled action.

Please submit the transcript to the deponent for review and signature. The errata sheets have been provided for any changes or corrections the deponent wishes to make. All changes or corrections must be made on the errata sheets, not on the transcript itself. Then have the deponent sign the signature page and have the signature notarized. All errata sheets should also be signed.

After the deponent has completed the above, please email the signature page and errata sheet(s) to me at the email address below, and I will provide copies to the respective parties.

If you have any questions regarding the above procedure, please feel free to contact me at (312) 263-0052.

Sincerely,
Cynthia Alicea, calicea2@mcdeps.com
McCorkle Litigation Services, Inc.

cc: All Attorneys Ordering Transcript



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Exhibit 6

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID BOURKE,)
)
Plaintiff,)
)
vs.) No. 22 CV 3164
)
DENIS MCDONOUGH, SECRETARY,)
U.S. DEPARTMENT OF VETERANS)
AFFAIRS, UNITED STATES OF)
AMERICA,)
)
Defendants.)

The remote deposition of CHRISTOPHER
WIRTJES, called by the Plaintiff for
examination, pursuant to notice, and pursuant to
the Rules of Civil Procedure for the United
States District Courts, taken before
Jennifer A. LeBlanc, CSR, RPR, on May 11, 2023,
commencing at the time of 1:00 p.m. and
concluding at 1:22 p.m.

Reported by: Jennifer LeBlanc, CSR, RPR
appearing remotely
License No. 084-003366



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I N D E X

WITNESS

CHRISTOPHER WIRTJES

EXAMINED BY

PAGE

BY MR. FLAXMAN

4

BY MS. FLORES

18

EXHIBITS

NUMBER

IDENTIFICATION

NO EXHIBITS MARKED



(Witness duly sworn.)

MR. FLAXMAN: And we're all stipulating that this deposition may be taken by Zoom and that the oath may be administered remotely?

THE WITNESS: Yes.

MS. FLORES: Yes.

CHRISTOPHER WIRTJES,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FLAXMAN:

Q. Sir, could you state your name and spell your last name for us, please.

A. Yes, Christopher, last name is w-i-r-t-j-e-s, Christopher Wirtjes.

Q. And what is your business or occupation?

A. I am in the healthcare administration.

Q. And have you ever worked for the VA?

A. I work for the VA currently.

Q. How long have you worked for the VA?

A. With the computation date, just shy of 30 years, 30 years and a month or so.

Q. Are you going to be retiring soon and



1 moving out of the country?

2 A. I don't know.

3 Q. All right. In the course of your work
4 at the VA, did you have occasion to meet a man
5 named David Bourke, B-o-u-r-k-e?

6 A. Yes.

7 Q. How did you first meet Mr. Bourke?

8 A. I was the chief of the service. I
9 don't recall the first meeting. I was the chief
10 of patient administration service. I started
11 in -- I don't know the exact time, but about
12 11 years ago.

13 Q. Were you working at the Hines VA back
14 in March of 2020?

15 A. Yes.

16 Q. During your work at the VA, did you
17 ever become aware that Mr. Bourke had a
18 reasonable accommodation parking space?

19 A. Yes.

20 Q. When did you first become aware of
21 that?

22 A. I don't recall.

23 Q. Well, do you remember when there were
24 door closings in March of 2020, at the Hines VA?



1 A. I do remember that very well.

2 Q. Do you recall whether you knew about
3 Mr. Bourke's RA parking spot before the door
4 closings or after the door closings?

5 A. I believe I knew he had one before.

6 Q. Were you involved in selecting the
7 doors that would be closed?

8 A. No.

9 Q. How did you become aware that doors
10 would be closed in March of 2020, at the Hines
11 VA Hospital?

12 A. A couple different ways. There were I
13 believe emails sent to all staff, and because I
14 was asked to do some screening or have my staff
15 do some screening, I believe I was involved in
16 some of the preliminary discussions leading up
17 to the doors being closed.

18 Q. Did you ever become aware of the
19 impact, if any, on Mr. Bourke and his RA parking
20 spot and his ability to walk from his vehicle to
21 his workplace that was related to the door
22 closings in March of 2020?

23 A. I did become aware of that. I don't
24 recall when.



1 Q. How did you become aware of it?

2 A. I don't know if it was -- I think it
3 was probably the supervisor may have mentioned
4 it. I believe his direct supervisor may have
5 mentioned it, Ms. Graham.

6 Q. Did you ever learn about any
7 interactive process that involved Mr. Bourke and
8 his RA parking spot?

9 A. I am aware it occurred, and not much
10 beyond that, that there was an interactive
11 process between the supervisor and the LRAC.

12 Q. Are you aware of any interactive
13 process that began before the door closings in
14 March of 2020?

15 A. If I did, just to know that it was
16 occurring, I wasn't involved. I may -- I don't
17 recall whether I was aware that it occurred
18 prior to that.

19 Q. Could you describe for us what your
20 understanding of that phrase interactive process
21 is?

22 A. Yeah, no, that's where the employee and
23 supervisor discuss options to accommodate an RA,
24 and that's coordinated with the facility LRAC.



1 Q. Were you ever involved personally in an
2 interactive process with Mr. Bourke after the
3 door closings in March of 2020?

4 A. No.

5 Q. Let me show you -- if I can do this --
6 what has previously been marked as Exhibit 4.

7 Did you look at any documents to
8 prepare for this deposition?

9 A. Just one email string that was from --
10 I think it started out with David and then I am
11 on the email where I discuss the -- one of the
12 options that came up with the scooter being
13 parked in the emergency department.

14 Q. Do you have that email chain in front
15 of you?

16 A. I do.

17 Q. Could you read to us on the first page
18 of that email chain the number -- the bottom
19 right that starts USA?

20 A. Where? I'm sorry, I'm not following --

21 Q. No, do you have -- are there numbers at
22 the bottom of the document that you have?

23 A. Yes. I may have just misheard the
24 number it was. What page?



1 Q. The first page, what's the -- is there
2 a number in the middle at the bottom marking?

3 A. Okay, yeah, there is a middle -- a
4 number in the middle of the bottom marking, yes.

5 Q. Could you read us that number?

6 A. The number I have open in front of me
7 right now?

8 Q. Yes.

9 A. 000184.

10 Q. Is that the first page of the packet
11 that you have?

12 A. No, I'm scrolling down, sorry. I just
13 got the packet, so I haven't really looked it
14 over completely. I just saw that -- really I
15 just saw the tail-end of it.

16 First -- the first number in the packet
17 that I have is 000652.

18 Q. Do you have 000181 in your packet?

19 A. Let me look.

20 I'm sorry, I'm trying to search for it.
21 000181 you said?

22 Q. Right.

23 A. I do.

24 Q. Okay. If you have that in front of



1 you, do you see that it appears to be an email
2 from Angela Graham to you dated May 15th of
3 2020?

4 A. Yes.

5 Q. Do you remember receiving this?

6 A. Vaguely. There was a lot going on in
7 the beginning of COVID.

8 Q. Do you remember that the second email
9 in the chain which is -- appears to be from
10 you --

11 A. Yeah.

12 Q. -- to Angela Graham asking -- it starts
13 out by saying, Doors are scheduled to be open at
14 5:00?

15 A. Yes.

16 Q. Do you remember asking that?

17 A. Do I specifically remember? I don't
18 specifically remember. I don't doubt that I did
19 it.

20 Q. Well, as you sit here now, do you know
21 why you sent that email?

22 A. Yeah, I believe Angela was looking for
23 a solution -- like was wanting to park the --
24 David wanted to park the scooter in the ED, and



1 I knew I wasn't going to be able to get approval
2 for that, so I was wishing her to look at other
3 options.

4 Q. Who would have to approve parking the
5 scooter in the emergency department?

6 A. During COVID?

7 Q. Yes.

8 A. Probably chief of staff.

9 Q. Did you ever become aware of an
10 arrangement that David had worked out with the
11 Hines police about access to a door?

12 A. I do recall seeing some emails between
13 David and Chief Owsley.

14 Q. Do you remember having a conversation
15 with David in which he asked you to intercede on
16 his behalf with the Hines police?

17 A. I don't -- I don't recall that.

18 Q. Do you remember him ever mentioning a
19 Hines police officer named McFields?

20 A. I know McFields. I don't remember -- I
21 don't remember that conversation.

22 Q. Tell us how you know Officer McFields.

23 A. In my job I would interact with Officer
24 McFields quite a bit, a lot of times I would



1 work with him quite a bit, because I had the
2 AODs, which are the off-tour administrators, and
3 they would have a lot of frequent interaction
4 with the police.

5 Q. What accommodation, if any, was offered
6 to Mr. Bourke after March of 2020, if you know?

7 A. I don't know specifics. I was -- that
8 would have been with Ms. Graham, and I think
9 Shawn Scheirer was our LRAC at the time. I
10 believe it was parking in the C section.

11 Q. Okay. Well, if you're still looking at
12 page 181, do you see where the next email is
13 from you to Angela Graham dated May 15, 2020,
14 10:17 a.m.?

15 A. Yes.

16 Q. And you inquired about a place to store
17 his scooter?

18 A. I don't see where I'm inquiring about a
19 place to store the scooter.

20 which page is it?

21 Q. Well, it's the email that's dated
22 May 15, 2020, at 10:17 a.m. The one that's in
23 front of me says I don't think we can have --

24 A. Oh, that, yeah.



1 Q. Do you see that?

2 A. Yes, I do, I do see that.

3 Q. Do you remember what the response was
4 to your inquiry about is there a place to store
5 his scooter near the C section?

6 A. I don't recall -- I remember talking to
7 Angela, that David did not want to park down
8 there. I don't recall specifics.

9 Q. Did you ever learn why David said he
10 didn't want to park there?

11 A. I think it was about security. I don't
12 know how I heard that or when I heard that. I
13 think he was worried about the scooter being
14 secured.

15 Q. Have you ever seen David's scooter?

16 A. Yes.

17 Q. And do you know whether or not it's
18 easily disassembled?

19 A. I don't know that.

20 It looked to me like -- from my
21 recollection I don't remember anything notable
22 about the scooter.

23 Q. Did you have any further involvement
24 after you learned that -- any further



1 involvement in the reasonable accommodation on
2 the interactive process after May 15th of 2020?

3 A. Not that I recall.

4 Q. Well, I'm not trying to trick you, but
5 I'm looking at the exhibits before we -- feel
6 free to look through the pages in front of you
7 to see if that refreshes your recollection about
8 whether involvement after --

9 A. No, I don't see anything -- on the
10 papers I have I don't see anything beyond -- the
11 last email is May 15, 2020.

12 Q. Do you know someone named Shawn
13 Scheirer?

14 A. Yeah, he was the facility LRAC at the
15 time.

16 Q. I missed that word, the health
17 facility?

18 A. He was the facility LRAC.

19 Q. What is an LRAC?

20 A. I wish I knew what the acronym stood
21 for, but it is the person in HR whose
22 responsibility it is to document and coordinate
23 reasonable accommodations.

24 My guess would be local reasonable -- I



1 don't know what the L stands for -- reasonable
2 accommodation coordinator, something.

3 Q. Do you know --

4 A. I'm guessing.

5 Q. Do you know where Mr. Bourke parked
6 during COVID, when he came to work --

7 A. No.

8 Q. -- after that -- the May 18, '20,
9 where -- yeah, the May 18th --

10 A. I don't know -- I don't know exactly
11 what was determined with the supervisor working
12 with the LROC.

13 Q. Did you ever become aware of an email
14 from Angela Graham May 18, 2020, 1:48 p.m. in
15 which she stated that -- she stated that David
16 will need to have assistance with getting to his
17 car when this is completed?

18 A. No.

19 Q. Do you remember anything --

20 A. About assistance?

21 Q. Well, let me finish the question.

22 A. Sorry.

23 Q. I'm sure you remember something about
24 something.



1 Do you remember Angela Graham back in
2 May of 2020, stating that Mr. Bourke will need
3 to have assistance with getting to his car at
4 the new RA parking spot?

5 A. No, assistance -- assistance to and
6 from -- no, I don't -- outside assistance to get
7 to the car from the door?

8 Q. Right, need to have assistance with
9 getting to his car from the hospital.

10 A. No, that's not something that was
11 discussed with me, that I recall.

12 Q. Okay. When is the last time that you
13 had an interaction in person with Mr. Bourke?

14 A. A little over a year ago.

15 Q. Okay.

16 A. About a year ago probably.

17 Q. And at that time were you still working
18 at the Hines VA?

19 A. Yes.

20 Q. Why did you leave the Hines VA?

21 A. Why did I leave? Supervision in the
22 federal government is very difficult and I
23 needed a break.

24 Q. So are you still a supervisor?



1 A. NO.

2 Q. Oh. what do you do now?

3 A. I am the HSS to the deputy network
4 director. I work in the VISN office.

5 Q. what is an HSS?

6 A. It's health systems -- health systems
7 support assistant, so I am basically an
8 executive assistant to the deputy network
9 director.

10 Q. And where are you located?

11 A. I am in Westchester right now.

12 Q. Westchester, Illinois, or Westchester,
13 New York?

14 A. Westchester, Illinois.

15 Q. Okay. One minute.

16 Did you ever look at the complaint that
17 Mr. Bourke has filed in this case?

18 A. No, I don't think I was -- I think I
19 knew he was moving forward with something, but I
20 don't recall actually seeing a complaint -- the
21 complaint itself.

22 Q. Did you give a statement in the EEO
23 investigation of Mr. Bourke's complaints?

24 A. I don't recall. I mean, I have a lot



1 of employees. I don't remember what I -- what I
2 was involved in to be honest.

3 MR. FLAXMAN: I have nothing further.

4 EXAMINATION

5 BY MS. FLORES:

6 Q. I just have a couple questions,
7 Christopher. In discussing the emergency room
8 as a possible parking -- or storage space for
9 Mr. Bourke's scooter, why did you advise -- if
10 you remember, why did you advise Ms. Graham that
11 that was not a viable option or not a reasonable
12 option?

13 A. Yeah, that was at the very beginning of
14 the COVID pandemic and the emergency room was
15 the heart of the intake of all our COVID
16 patients. There -- we were putting up tents and
17 different things to try to mitigate the flow,
18 keep sick people from healthy people, and there
19 was constant rearranging and planning and how to
20 run the emergency room, and any sort of
21 restriction or anything in the way, we were
22 trying to get everything out of there that
23 didn't need to be there. So adding something to
24 that during that environment was just not



1 reasonable for the health and safety of our --
2 of the patients coming in, and staff.

3 Q. And was the emergency room or emergency
4 department waiting area, was that open 24 hours
5 a day?

6 A. Yes, open 24 hours a day.

7 Q. And from what you recall, do you know,
8 did Mr. Bourke plan to leave his scooter in the
9 waiting area or in a secure closet?

10 A. I don't know exactly where on my -- I
11 don't remember anyone telling me that there was
12 a secured closet or anything, so it would have
13 been in -- the only place would have been in the
14 hallway or the waiting area.

15 MS. FLORES: Okay, thank you. That's
16 it.

17 MR. FLAXMAN: Signature?

18 MS. FLORES: We will reserve.

19 MR. FLAXMAN: Okay.

20 THE COURT REPORTER: Ordering?

21 MR. FLAXMAN: Yes, etran.

22 MS. FLORES: Etran.

23 (Witness excused.)
24



DECLARATION UNDER PENALTY OF PERJURY

I, CHRISTOPHER WIRTJES, do hereby certify
under penalty of perjury that I have read the
foregoing transcript of my deposition taken on
May 11, 2023; that I have made such corrections
as appear noted herein in ink, initialed by me;
that my testimony as contained herein, as
corrected, is true and correct.

Dated this day of , 2023,
at , Illinois.

CHRISTOPHER WIRTJES



REPORTER'S CERTIFICATE PAGE

I, Jennifer A. LeBlanc, CSR, RPR, do
hereby certify:

That prior to being examined, the witness
in the foregoing proceedings was by me duly
sworn to testify to the truth, the whole truth,
and nothing but the truth;

That said proceedings were taken remotely
before me at the time and places therein set
forth and were taken down by me in shorthand and
thereafter transcribed into typewriting under my
direction and supervision;

I further certify that I am neither
counsel for nor related to any party to said
proceedings, not in anywise interested in the
outcome thereof.

In witness whereof, I have hereunto
subscribed my name.

Dated: May 22, 2023



Jennifer LeBlanc, CSR, RPR
CSR No. 084-003366



McCorkle Litigation Services, Inc.
200 North LaSalle Street, Suite 770
Chicago, Illinois 60601-1014
(312) 263-0052

DATE: May 23, 2023

Ms. Nicole Flores
United States Attorney's Office
219 South Dearborn Street, 9th Floor
Chicago, Illinois 60604

IN RE: Bourke vs. McDonough, et al.
COURT NUMBER: 22 CV 3164
DATE TAKEN: May 11, 2023
DEPONENT: Christopher Wirtjes

Dear Ms. Flores:

Enclosed is the deposition transcript for the
aforementioned deponent in the above-entitled
cause. Also enclosed is the signature page(s)
and errata sheet(s).

Per your agreement to secure signature, please
submit the transcript to the deponent for review
and signature. All changes or corrections must
be made on the errata sheet(s), not on the
transcript itself. All errata sheet(s) should
be signed and the signature page needs to be
signed and notarized.

After the deponent has completed the above,
please return the signature page and errata
sheet(s) to me at the above address, and I will
handle distribution to the respective parties.

If you have any questions, please call me at the
above phone number.

Sincerely,

Cindy Alicea	Court Reporter Present:
Signature Department	Jennifer A. LeBlanc

cc: Mr. Kenneth N. Flaxman

MCCORKLE LITIGATION SERVICES, INC.
(312) 263-0052



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Exhibit 7



Department of Veterans Affairs

REQUEST FOR MEDICAL DOCUMENTATION

1. DATE 06/21/2019

2. Dear Health Care Provider:

Your patient David Bourke has requested an accommodation (describe the requested accommodation here)
To be exempt from surgical services rotation and to remain as an AMSA in the ambulatory surgery unit.

because of functional limitations caused by his/her disability. Since the disability is not visible, and we do not have documentation on file, I would appreciate information that would allow me to determine whether this individual has a disability covered by the Rehabilitation Act of 1973. The information that you provide will also help me determine whether the requested accommodation will be effective in eliminating or minimizing the limitations caused by the disability.

3. The key duties that your patient has advised that he/she is unable to perform, or benefits and privileges of employment that he/she is unable to enjoy are:

4. I have been given the responsibility for determining if your patient is covered by the Rehabilitation Act. I cannot proceed until I receive the requested information. If you have any questions, please contact me at the telephone number below.

5. MY NAME IS
Carmen Smith

6. MY PHONE NO. IS
[REDACTED]

7. MY TITLE IS
Human Resources Specialist (LRAC)

8. Please return this form and the requested information to me at:
(Enter complete mailing address and fax number.)
Department of Veterans Affairs
5000 S. 5th Ave Bldg 17
Hines, IL 60141
Fax: 708-202-7345

9. Please do NOT provide a copy of the patient's complete medical history.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. 'Genetic information' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. At present, we only need the following information:

(a) the nature, severity, and duration of the impairment;

- Following conditions are permanent disabilities:
1. PTSD
 2. Low back condition with history of thoracic and lumbar fractures
 3. COPD with asthma with hypoxia.
 4. Osteoporosis
- (b) one or more of the activities the impairment limits (walking, reaching, breathing, etc.):
- Veteran is with following impairments.
1. Difficulty in functioning in high stress environments.
 2. Confined to motorized scooter cannot walk > 15 feet without aid of cane or walker
 3. Short of breath with exertion with walker/cane 40-50 feet.
 4. Significant pain related to spinal fractures.

(c) the extent or degree to which the impairment limits an activity;

1. Veteran requires work setting with limited stress due to PTSD.
2. Unable to walk > 15 feet without cane/walker due to shortness of breath due to underlying lung condition.
3. With cane/walker, still unable to walk > 40 feet due to back pain and breathing.

(d) the reason the individual requires accommodation or the particular accommodation requested, and/or

Diagnoses listed in 9a.

Veteran is at risk for aggravation of PTSD, Falls, and severe shortness of breath.

(e) how the accommodation will assist the individual in applying for a job, performing the essential functions of the job, or to enjoy a benefits of employment.

He will be able to continue being safely employed until retirement without worsening physical and psychiatric conditions.

10. NAME OF HEALTH CARE PROVIDER

Michael Egan

11. SIGNATURE OF HEALTH CARE PROVIDER

[Signature]

12. DATE OF SIGNATURE

7/2/19

13. MEDICAL/PROFESSIONAL LICENSE CATEGORY AND NUMBER

Family Nurse Practitioner
License # 209 001343

This form should be retained separately from the employee's Official Personnel Folder.

Exhibit 8

Department of Veterans Affairs
Washington, DC 20420

VA Handbook 5975.1
Transmittal Sheet
November 27, 2013

PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION FROM EMPLOYEES AND APPLICANTS WITH DISABILITIES

1. REASON FOR ISSUE: This Handbook updates the Department of Veterans Affairs (Department or VA) procedures on providing reasonable accommodations to employees or applicants with disabilities, in compliance with all applicable laws and regulations.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This Handbook includes multiple revisions based on the expanded legal requirements of the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 and guidance from the U.S. Equal Employment Opportunity Commission (29 CFR 1630, March 25, 2011, pages 16978-17017). The changes will be incorporated into the electronic version of VA Handbook 5975.1 that is maintained on the Office of Diversity and Inclusion's (ODI) web site at <http://www.diversity.va.gov/programs/pwd.aspx>. The revisions include, but are not limited to:

a. Adding and/or revising several definitions for terms such as: "an individual with a disability," "mitigating measures," "qualified," and "major life activities."

b. Updating procedures related to processing and tracking reasonable accommodation requests.

c. Expansion of disabilities covered by these procedures, and changing/removing the emphasis on the question of coverage.

d. Clarifying the official source of guidance for Reasonable Accommodations.

3. RESPONSIBLE OFFICE: Office of Diversity and Inclusion (06), Office of Human Resources and Administration.

4. RELATED DIRECTIVE: VA Directive 5975, Diversity and Inclusion

5. RESCISSIONS: VA Handbook 5975.1, Processing Requests for Reasonable Accommodation by Employees and Applicants with Disabilities, September 17, 2010.

CERTIFIED BY:

/s/
Stephen W. Warren
Acting Assistant Secretary for
Information and Technology

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Gina S. Farrisee
Assistant Secretary for
Human Resources and Administration

DISTRIBUTION

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VA HANDBOOK 5975.1

November 27, 2013

November 27, 2013

VA HANDBOOK 5975.1

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November 27, 2013

VA HANDBOOK 5975.1

PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION FROM EMPLOYEES AND APPLICANTS WITH DISABILITIES

1. PURPOSE. To revise the Department of Veterans Affairs' (Department or VA) policy on providing reasonable accommodations to employees and applicants with disabilities in compliance with the Americans with Disabilities Act Amendments Act (ADAAA) of 2008. Although federal agencies are covered by the Rehabilitation Act of 1973, the Act was amended in 1992 to incorporate Title 1 of the ADA. The policy designates responsibilities, prescribes procedures for submitting and responding to requests for reasonable accommodations, and clarifies the reassignment process.

2. DEFINITIONS.

a. Designated Management Official (DMO): The DMO is the person who has authority to decide whether the organization will provide accommodation; and if so, the nature of the accommodation. The DMO who makes the decision concerning a request for reasonable accommodation shall also be referred to as the "decision-maker." The employee's first or second line supervisor or other designated official may serve in this capacity. For applicants, the DMO is usually the Human Resources Director.

b. Direct Threat: A significant risk (high probability) of substantial harm to the health or safety of the employee or to others that cannot be eliminated or reduced by a reasonable accommodation. The DMO and Local Reasonable Accommodation Coordinator (LRAC) must engage in an individualized assessment that is based on the medical documentation and the best available objective evidence. Thus, this decision cannot be based on assumptions, unwarranted fears, generalizations, stereotypes, or myths about a particular disability.

c. Effective: The accommodation provided does not need to be the one that was requested, but if an alternative is suggested by VA, the alternative accommodation must be effective in meeting the needs of the individual by addressing the barrier created by the functional limitations. An example of an effective accommodation for a deaf individual who does not use sign language would be real-time captioning that accurately records what is said. An ineffective accommodation would be captioning that was garbled or having a co-worker share meeting notes at the end of a meeting. If a deaf employee who relies on sign language requests an interpreter, providing an employee who knows some signs, or asking the employee to read lips is not effective. If a reader is hired as an accommodation for an employee who is blind, the employee must be able to understand the speech of the reader. Similarly, giving the course materials to an employee in lieu of her taking supervisory skills training, because the building is not physically accessible, is not effective.

When there are two or more accommodations that would be equally effective, the DMO may choose the one that is easier or less expensive to provide. If more than one accommodation is effective, the preference of the employee should be given consideration. However, the DMO has the ultimate discretion to choose between effective accommodations.

d. Essential Functions: The essential functions of a job are the occupational duties that are fundamental to the position to the extent that the individual cannot do the job without being able to perform them. A function can be “essential” if, among other things, the position exists specifically to perform that function, a limited number of other employees can perform the function if given the assignment, or the function is specialized and the incumbent is hired based on his or her ability to perform it. If a function is listed in the position description as an essential function, but is not performed by the incumbent or takes only a few hours per week, it is not usually considered “essential” for purposes of accommodation. The following factors are considered in determining whether a job function is essential:

- Whether the reason the position exists is to perform that function;
- The number of other employees available to perform the function or among whom the performance of the function can be distributed;
- The degree of expertise or skill required to perform the function;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time actually spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;
- The terms of any collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs.

An example of an essential function for a social worker would be the ability to understand what the Veteran is saying. Speaking and hearing would not be essential functions, as the social worker could use an interpreter or other methods for communication. An essential function for a management analyst would be the ability to obtain information, synthesize it, and prepare reports.

e. Extenuating Circumstances: Factors beyond the Department’s control which make it impossible for a reasonable accommodation to be provided within the time frame are considered to be extenuating circumstances. Examples of extenuating circumstances include, but are not limited to, delays encountered when ordering equipment that must be back-ordered, the vendor normally used has gone out of business, or there are unexpected delays by the vendor or CAP. Therefore, the office/facility is encouraged to use charge cards when possible to avoid contracts, ratification, etc. Review of medical documentation, the absence of the DMO or LRAC, and other situations within VA’s control are not considered to be extenuating circumstances and should not delay the processing of a request.

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f. Individual with a Disability: An "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. This shall be viewed in the broad sense and not analyzed extensively. The ADAAA reduced the emphasis on whether an individual has a disability, specifying that the determination should not demand extensive analysis. For example, a person who has asthma can have trouble breathing, and is covered under the Rehabilitation Act as an individual with a disability. The individual, with reasonable accommodation when requested, can perform the essential functions of the position without being a direct threat to the health or safety of the individual or others. As to duration of the disability or functional limitation, if a disability has effects that are not both transitory and minor, it is covered by applicable law. (Note: A healthy pregnancy is not considered a disability and is not eligible for accommodation under the Rehabilitation Act, but if there are complications, such as gestational diabetes, that would be covered.) Pregnancy can be a temporary disability. See <http://www.eeoc.gov/eeoc/publications/fs-preg.cfm>.

g. Light Duty: Generally, "light duty" refers to temporary or permanent work that is physically or mentally less demanding than normal job duties. When an employee has been injured on the job but wishes to return to work, light duty can be offered. There is no obligation to create a light duty position for an employee with a disability or injury that was not acquired on the job.

h. Major Life Activities: Under the ADAAA, the definition of major life activities is very broad. Walking, seeing, hearing, talking, lifting, and breathing are major life activities. Under the ADAAA, major bodily functions are also considered to be major life activities. Thus, major life activities include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions. Consequently, under the ADAAA, cancer is a disability even if it is asymptomatic (neither causing nor exhibiting symptoms of disease), since it affects normal cell growth. A longer list of major life activities is in Appendix A, but it is to be considered as non-exhaustive. Most disabilities affect one or more major life activities. Facility LRACs will check with Office of General Counsel (OGC), Regional Counsel (RC), or National Regional Accommodations Coordinator (NRAC) when in doubt.

i. Mitigating Measures: Medications and assistive devices that an individual uses to eliminate or reduce the effects of functional impairment caused by a disability. The only mitigating measures that may be considered in determining disability are ordinary eyeglasses or contacts intended to fully correct the vision of an employee or applicant for employment. Other mitigating measures may not be considered in the determination of an individual's disability status. For example, if an individual has a prosthetic leg, the person is still considered to have a disability covered by the Rehabilitation Act. In addition, non-ameliorative effects of mitigating measures, such as a reaction to medication, can be considered when determining disability status.

j. Physical or Mental Impairment: A condition or disorder, including serious side effects of a prescribed medication, which limits the individual in performing a major life activity. A non-exhaustive list includes any physiological disorder or condition, cosmetic disfigurement, or

anatomical loss affecting one or more major life activities. This includes any mental or psychological disorder such as post-traumatic stress disorder, traumatic brain injury, severe intellectual disability, organic brain syndrome, emotional or mental illness, and learning disabilities. Impairments include conditions that are episodic in nature or in remission, such as cancer or epilepsy. An impairment of a single organ is now covered under the ADAAA.

k. Qualified Individual: The term “qualified,” with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. Requiring the ability to perform “essential” functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions.

l. Reasonable Accommodation: A “reasonable accommodation” is a change in the work environment or in work processes that enables an individual with a disability to enjoy equal employment opportunities.

Types of reasonable accommodations include, but are not limited to: modification or adjustment to a job application process to permit an individual with a disability to be considered for a job, modification or adjustment necessary to enable an individual with a disability to perform the essential functions of the job, and modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

Examples of reasonable accommodations include, but are not limited to, the following:

- (1) Making facilities readily accessible to, and usable by, individuals with disabilities;
- (2) Restructuring of marginal job functions;
- (3) Allowing a modified work schedule, telework on a regular or intermittent basis, and/or alternate work locations;
- (4) Obtaining or modifying equipment or devices;
- (5) Appropriately adjusting or modifying examinations and training materials to make them accessible (but retaining the substance);
- (6) Providing readers, interpreters, and other auxiliary aids and assistive technologies; and
- (7) Non-competitive reassignment to another position for which the individual is qualified, as a last resort accommodation.

m. Record of Impairment: A “record of impairment” is a history of or having been classified (or misclassified) as having a mental or physical impairment that substantially limits

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one or more major life activities. On request, VA is required to consider an accommodation request from an employee with a record of impairment.

n. Regarded as Having an Impairment or Disability: An individual is “regarded as having a disability” if the individual has been subjected to an action prohibited by the ADAAA because of an actual or perceived impairment/disability that is not both transitory and minor. VA is under no obligation to provide reasonable accommodation to an individual who meets only the definition of “regarded as having a disability,” but must be careful to not discriminate against these individuals by treating them disparately because of a perceived disability.

o. Substantially Limits: In the regulations implementing the ADAAA, the EEOC stated: “In keeping with the instruction that the term ‘substantially limits’ is not meant to be a demanding standard, the regulations provide that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. However, to be substantially limited in performing a major life activity an individual need not have an impairment that prevents or significantly or severely restricts the individual from performing a major life activity.” We are required to construe the term ‘substantially limits’ broadly in favor of expansive coverage.

p. Transitory and Minor: If an impairment is both transitory (temporary) and minor (does not affect any major life activities), VA is not required to provide an accommodation. The DMO or LRAC must provide evidence that the impairment is actually transitory and minor. If the disability substantially limits one or more major life activities, there is no minimum duration that the disability must last; the previous six-month minimum has been struck-down by Congress through the ADAAA.

q. Undue Hardship: An “undue hardship” is the significant difficulty or expense incurred or anticipated should the organization provide a particular accommodation. The following criteria are used to determine undue hardship:

(1) Nature and cost of the accommodation. (Note: Only the Secretary, VA, can deny a request based on cost. In determining whether an accommodation is too costly, the financial resources of the organization or the Department as a whole should be considered, not just those resources of the individual facility or staff office.)

(2) Overall size of the organizational unit with respect to the number of employees, facilities, and size of the budget.

(3) Type of operation, including composition and structure of the workforce.

(4) The impact of the accommodation on the operation of the organization, including the impact on the ability of other employees to perform their duties and the impact on the organization's ability to conduct business.

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The Office of General Counsel (OGC), Regional Counsel (RC), or National Reasonable Accommodations Coordinator (NRAC) in the Office of Diversity and Inclusion (ODI must be consulted before a denial is communicated to the employee.

3. POLICY.

a. VA shall provide reasonable accommodations to individuals with disabilities to allow them to fully participate in the application process, perform essential job functions, and enjoy equal benefits and privileges of employment, in accordance with all applicable laws, regulations, and VA policies, unless to do so would cause a direct threat to health and safety or undue hardship to the operation of the unit. Note that whether cost is an undue hardship is determined by the Department's budget and thus, a denial based on cost must be decided by the Secretary of VA.

b. The responsibility for funding the cost of reasonable accommodations resides with the Department. However, for most requests, the Facility, Administration or Staff Office where the requestor is employed or in the case of recruitment, the organization where the applicant seeks to be employed should make the purchase. VA facilities and offices can obtain at no cost accommodations that are electronic equipment or information technology from the U.S. Department of Defense's Computer/Electronic Accommodations Program (CAP). In many cases, reimbursement for the cost of reasonable accommodations not provided by CAP may be obtained at the Department level, through the VA Centralized Reasonable Accommodation Fund in the ODI. Thus, the facility or office that follows the guidance and expended the funds will be reimbursed in a few weeks.

c. This policy applies to accommodation requests from all VA employees and applicants with disabilities. Reasonable accommodation requests will be processed in accordance with the procedures contained in this Handbook. Offices and Facilities are not permitted to write their own Handbook, procedures, or policy. They may prepare a cover sheet listing the office/facility-level contacts responsible for various aspects of processing requests for accommodation, and logistical details on how the office/facility will comply with these procedures. Training shall only be conducted by the Office of Diversity or Inclusion (ODI) or OGC, or by an approved designee.

d. It should be noted that if an employee is no longer qualified or able to perform the essential functions of the job, VA is not ordinarily absolved of the duty to provide reasonable accommodation.

4. RESPONSIBILITIES.

a. Secretary of Veterans Affairs. The Secretary or Deputy Secretary will ensure that an effective process for responding to all requests for reasonable accommodations is established.

b. Assistant Secretary for Human Resources and Administration. The Assistant Secretary for Human Resources and Administration (ASHRA), through the Deputy Assistant Secretary (DAS) for Diversity and Inclusion, will:

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(1) Maintain oversight for the Department-wide accommodation policy and process, especially denials.

(2) Monitor the timeliness of accommodation request processing, via the Reasonable Accommodation Compliance System.

c. Assistant Secretary for Information and Technology. The Assistant Secretary for Information and Technology will:

(1) Designate an Electronic and Information Technology (EIT) Accessibility Officer (508 Officer) to ensure that all EIT hardware and software are fully accessible to employees with disabilities in the VA workplace, in compliance with Section 508 of the Rehabilitation Act of 1973, as amended.

(2) Ensure that reasonable accommodations related to EIT are provided and installed expeditiously and properly. Ensure that OIT practices, policies, and procedures facilitate the prompt purchase and installation of EIT accommodations.

(3) Work collaboratively with the ASHRA, the Deputy Assistant Secretary for Diversity and Inclusion, the National Reasonable Accommodation Coordinator (NRAC), and 508 Officer to provide legally compliant, timely, and effective reasonable accommodations and EIT accessibility services.

(4) Ensure that IT procurement procedures do not hinder the purchase of items needed as a reasonable accommodation.

(5) Assign staff to assist the NRAC and LRAC/ALRAC when IT issues arise regarding an accommodation request and the issues are not addressed by the employee's office.

(6) Instruct IT staff to assist in sending software and hardware to an employee's new location if an employee transfers.

d. General Counsel or Regional Counsels will:

(1) Serve as a legal expert on reasonable accommodation matters.

(2) Serve as a consultant with regard to prospective denial of reasonable accommodation requests.

(3) Conduct training.

e. The Counselor to the Inspector General will:

(1) Serve as a legal expert on reasonable accommodation matters within the Office of the Inspector General (OIG).

(2) Serve as a consultant with regard to prospective denial of reasonable accommodation requests in the OIG.

f. Under Secretaries, Assistant Secretaries, Deputy Assistant Secretaries, Facility Directors, and Other Key Officials, within their respective organizations will:

(1) Ensure that the organization or facility has a Local Reasonable Accommodation Coordinator (LRAC) and an alternate (ALRAC). If a new LRAC or ALRAC is appointed, provide to the VA Disability Program Manager the contact information for that individual. Ensure that the LRAC and ALRAC schedule their travel, training or leave so that they are not both out of the office at the same time.

(2) Publicize to all employees via email announcements and posters in public areas the name of the LRAC and ALRAC. Ensure that employees and supervisors know to contact the LRAC with disability accommodation questions.

(3) Provide sufficient resources to ensure effective implementation and management of the process for responding to requests for reasonable accommodation.

(4) Ensure training for all managers, supervisors, team leaders, and designated LRACs and ALRACs regarding their roles in processing requests for reasonable accommodations, including how to submit requests for assistive technology to CAP.

(5) Ensure that the facility is using the VA Handbook and forms. If the facility creates their own approval/denial letters, they must comply with the VA Handbook and include the appeal options listed in VA Form 0857f, Accommodation Request Determination.

(6) Require that the organization or facility have a system for sending any software or hardware, provided as reasonable accommodation, with the employee when an employee transfers to another VA facility. (The employee should notify the LRAC of his or her departure two weeks in advance or as soon as the transfer is confirmed, to ensure arrangements are made).

(7) Periodically evaluate the effectiveness of the process for responding to requests for reasonable accommodations, to ensure that responses are appropriate and timely.

(8) Ensure records of requests for reasonable accommodation are maintained in accordance with procedures outlined in this Handbook.

(9) Ensure that accommodation requests are approved or denied at the lowest possible level, usually at the level of the employee's immediate supervisor.

(10) Refrain from being the Designated Management Official (DMO), except for employees who report directly to him or her, so that he or she can be part of the appeal process when an employee requests reconsideration.

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(11) Ensure that each facility designates someone to review requests for reconsideration of the decision made concerning an accommodation request. If the designated individual is also the DMO for the employee requesting appeal, the reconsideration request should be given to a higher level official.

(12) Ensure that all contracts for the use of external facilities and services reflect the obligation that such facilities and services must be fully accessible to individuals with disabilities.

g. The Deputy Assistant Secretary for Diversity and Inclusion will:

(1) Develop a Department-wide reasonable accommodation policy and provide guidance to managers, supervisors, and employees and applicants with disabilities.

(2) Designate the Disability Employment Program Manager and the National Reasonable Accommodation Coordinator.

(3) Maintain the Department-wide Reasonable Accommodation Compliance System (RACS) to monitor the process for responding to requests for accommodation at the Department, Administration, Regional and Facility Levels.

(4) One year from publication of this Directive, will analyze and evaluate the effectiveness of the process for responding to requests for accommodations and will provide recommendations for improvement.

(5) Maintain a current roster of LRACs and Alternate LRACs (ALRACs), and ensure public access to that list.

h. The National Reasonable Accommodation Coordinator in ODI will:

(1) Serve as the Department's subject matter expert on reasonable accommodation procedures and provide guidance and training as required.

(2) Receive and compile summary data from the Administrations and Staff Offices for annual reporting purposes.

(3) Serve as a consultant with regard to prospective denial of reasonable accommodation requests.

(4) Serve as the Department's liaison to the Computer Assistance Program (CAP) at the U.S. Department of Defense.

(5) Administer the VA Centralized Reasonable Accommodation Fund.

i. The Human Resources Management Officer (HRMO) will:

- (1) Work with the LRAC, the DMO and requestors to ensure that accommodations are provided in a timely manner.
- (2) Consult with DMOs, as needed, to review the essential functions of positions and assist with identifying possible accommodations.
- (3) When appropriate, in the case of employees, work with DMOs, LRACs, and employees to identify positions for potential reassignment.
- (4) In the case of applicants, serve as the DMO for requests for accommodation from applicants for employment during the application and interview phase.
- (5) If an employment physical is required and the candidate does not pass the physical because of a disability, the HRMO will ensure that the candidate is aware of the reasonable accommodation process. If the candidate requests an accommodation that appears to effectively address the functional limitations posed by the disability, the HRMO will ensure that the offer is not rescinded because of the results from the physical. The normal accommodation procedures will then be followed.

j. DMOs, Supervisors, and Group or Team Leaders (within their respective organizations) will:

- (1) Be knowledgeable about the policy and procedures for processing requests for reasonable accommodation.
- (2) Explain to the requestor VA's process for handling accommodation requests and who will issue the decision.
- (3) Be aware that as Federal law, the Rehabilitation Act is superior to any office, facility, Administration, or VA policy on telework, hours of duty, parking, etc. Understand the need to be flexible when considering accommodation requests.
- (4) Make the decision regarding a request for reasonable accommodation in consultation, if necessary, with the LRAC and legal counsel, in accordance with the guidance provided in this directive and all applicable laws and regulations. Consult with OGC, RC or the NRAC before issuing a denial.
- (5) Maintain confidentiality of requests for reasonable accommodation and maintain records consistent with the guidance in this Handbook.
- (6) Refrain from reviewing the medical documentation or, if the employee is a Veteran, accessing the Veteran's patient/client files. The LRAC will review the medical documentation and advise the DMO whether the employee has a disability that is covered

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by the Rehabilitation Act and, if so, the functional limitations caused by the disability.

(7) When serving as the DMO, ensure that requests for reasonable accommodation and the process for deciding on those requests are properly documented and provided to the LRAC.

(8) When an employee's request for software or equipment should be granted, inform the LRAC, so that the LRAC can request the items from CAP.

(9) When appropriate, search for and propose an alternative effective accommodation that meets the needs of the employee after discussion with the OGC, RC, or NRAC.

(10) Ensure that accommodation decisions are made as expeditiously as feasible, and that accommodations granted are provided timely, usually within thirty (30) or fewer calendar days from the date of the request. As stated in 2 e above, this timeframe may be extended due to extenuating circumstances.

(11) Designate an alternate to process requests in the absence of the DMO.

(12) Alert the LRAC when an employee with an accommodation is transferring to a new VA location so that the accommodation can be transferred with the employee when such transfer is feasible.

k. Local Reasonable Accommodation Coordinators (LRACs) will:

(1) Avoid allowing their primary role at VA to unduly influence their role and decisions as a LRAC.

(2) Explain to employees that Form VA 0857a, Written Confirmation of Request for Accommodation, which is used to confirm the request is optional, but encouraged.

(3) Explain to employees that the requested accommodation must be directly related to the functional limitations caused by the disability.

(4) Assist supervisors and management officials at all levels with processing requests for reasonable accommodation; interpreting regulations and statutes; reviewing existing policies and procedures; and recommending appropriate changes in policy and procedures when necessary to be consistent with this guidance.

(5) Ensure that VA does not request documentation if the disability is obvious or documentation for the same functional limitations has already been provided in support of a request for reasonable accommodation. When the disability is not obvious or documented, the LRAC may request medical documentation but must use VA Form 0857e.

(6) Check with the OGC, RC, or NRAC for agreement before requesting more documentation than is provided on the completed VA 0867e.

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- (7) Determine whether the employee or applicant is an “individual with a disability,” as defined by Section 4 (f) in this Handbook. Inform the DMO whether the individual has a disability covered by the Rehabilitation Act and the functional limitations caused by the disability.
- (8) Refrain from sharing the specific disability or medical documentation with the DMO or other supervisory officials.
- (9) Ensure that all requests outside the authority of the normal DMO, such as parking, facility renovations, information technology, etc. go to the appropriate individual and are processed timely.
- (10) Submit to CAP all requests for assistive technology and software.
- (11) Consult with EEO offices, ODI, OIT, CAP, the Job Accommodation Network <www.askjan.org> or other resources to identify reasonable accommodation options, if needed.
- (12) Maintain the confidentiality of reasonable accommodation requests and related documentation (e.g., keeping medical records separate from personnel records) and maintain records at their facility in a locked file cabinet.
- (13) Provide accommodation information to employees and applicants for employment and answer questions about the reasonable accommodation process.
- (14) Track and report all requests for reasonable accommodation and the disposition of those requests by using the RACS.
- (15) Assist with securing funding for reasonable accommodations not provided by CAP, including those that may be reimbursed through the Centralized Reasonable Accommodation Fund.
- (16) Attend reasonable accommodation training.
- (17) Ensure that Facility or Staff Office managers and supervisors receive training on their role and responsibilities for providing reasonable accommodation.
- (18) Serve as LRAC for another component’s virtual employee who is physically located at their facility. (In these situations the employee’s supervisor remains responsible for any purchase necessary to provide accommodation. Facility modifications will normally come from the Facility’s budget.)
- (19) Assist an employee who transfers within VA by sending any equipment to the new location when possible. Work with IT to ensure that any software or hardware is sent to the

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new VA location when an employee transfers. Send the accommodation file to the LRAC at the employee's new VA location.

(20) Alert other LRACS of the availability of equipment after an employee separates from VA, and arrange to send the equipment to an LRAC who has identified a VA employee who needs the equipment.

I. Managers and supervisors who are not the DMO or LRAC but receive a request will:

(1) Forward the request to the LRAC, ALRAC, and the DMO as soon as possible, but in no more than five (5) calendar days.

(2) Inform the requestor of the name and contact information of the facility's LRAC and ALRAC.

m. Employees with Disabilities who Request Accommodation will:

(1) Inform their supervisor, any manager in their chain of command, or the LRAC of their need for an accommodation. Requests may be verbal, written, or entered directly into the automated system, known as the Reasonable Accommodations Compliance System (RACS). The URL is: <https://va-ra.entellitrak.com/>

(2) Engage in the interactive process by working collaboratively with their supervisors or DMO, HRMO representatives, VA's Section 508 Accessibility Testing and Training Center, and CAP, to identify accommodations that will enable them to perform the essential functions of their job, participate in VA activities, and/or enjoy the benefits and privileges of VA employment.

(3) Refrain from submitting requests to CAP. The LRAC and ALRAC are the only individuals authorized to submit requests to CAP.

(4) Provide to the LRAC the Form VA 0857e completed by the employee's health care provider if the disability is not visible, sufficient documentation is not on file, and the LRAC requests documentation of the disability. Note that the time frame for processing the request stops when medical documentation is requested and resumes when the medical documentation is provided.

(5) Inform the LRAC if transferring to a different VA facility so that, when feasible, any equipment can be sent to the new facility. This should be done as soon as the transfer is confirmed, usually at least two weeks before the transfer.

(6) Cooperate with the LRAC, the agency, or CAP by participating in the interactive process and/or providing medical documentation upon request. Ensure that the health care provider completes the requested VA Form 0857e. Failure to cooperate can result in denial of the request for accommodation.

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(7) Employees are encouraged to complete VA Form 0857h, Employee Limitations on Reassignment Options, if reassignment is being considered.

n. Applicants with Disabilities who Request Accommodation will:

(1) Make a request for an accommodation to the HRMO staff, the HR Liaison arranging the interview, or the hiring official. Requests may be verbal, written, or entered directly into the automated system, RACS.

(2) Engage in the interactive process by working collaboratively with HRMO representatives, LRAC, or ALRAC to identify accommodations that will help them apply or interview for the job.

Note: Because time is limited during the application process (pre-job offer), applicants will not be asked to provide documentation of a disability.

5. ENSURING REEMPLOYMENT OF EMPLOYEES INJURED ON THE JOB

When an employee has incurred a serious workplace injury or illness, but is ready to return to work if an accommodation is provided, VA will work with the employee to identify and provide an appropriate accommodation. It is VA's goal to identify injured employees, as defined under the Federal Employees' Compensation Act (FECA), who would benefit from accommodations and reassignment so that we can increase return-to-work outcomes. Accommodations are provided to employees with temporary injuries or disabilities regardless of whether an Office of Worker's Compensation Programs claim is approved. Once the employee's physician clears the employee to return to work, it is VA policy that we will provide accommodation when appropriate.

If an on the job injury results in a temporary condition or limitation, light or limited duty, a detail, or a voluntary leave of absence may be offered. If the limitation is permanent, the duties may need to be restructured, non-essential duties be eliminated, or a reasonable accommodation provided. In some situations, the employee may need to be reassigned to a different position.

6. TIME FRAMES

All requests for accommodation should be processed as expeditiously as feasible. Requests from applicants should be expedited and processed within ten (10) calendar days. Requests from employees should ordinarily be processed within thirty (30) calendar days, not counting the time waiting for medical documentation.

The U.S. Equal Employment Opportunity Commission has ruled that when a disability is known and the accommodation can be easily provided, failure to process the accommodation request quickly could constitute undue delay in violation of the Rehabilitation Act. Thus, VA offices and facilities are expected to provide the accommodation in a shorter time frame, when possible. A few examples of accommodations that can and should be provided quickly are:

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- A small mirror for an employee with post-traumatic stress disorder to mount on his wall so that he can see people approaching his work area.
- Sign language interpreters or captioning for an employee who is deaf.
- Telework for an office employee who has multiple sclerosis and is fatigued by the commute.
- A fan or heater for an employee who has a disability that causes them to feel too hot or too cold.
- Allowing an administrative employee with cognitive issues to use his or her own tape recorder as a memory device.
- Changing the time of a mandatory meeting to allow an employee to attend physical therapy sessions.
- An accessible parking space for an employee with a mobility impairment at a facility that has free parking spaces.

a. The time frame begins as soon as the applicant or employee requests a change because of a disability. Do not wait for a written request.

b. Extenuating circumstances, described in section 2 (e) above, do not include the absence of the DMO or other responsible official or the time taken by the LRAC to review medical documentation. Per the ADAAA guidance, the review of medical documentation should not require extensive deliberation.

c. The time from when medical documentation is requested to when it is provided is not included in the timeframe for processing requests for accommodation. Thus, there is no reason to give the employee a short “due date” for providing medical documentation. Some employees may need at least ninety (90) calendar days, as it can be difficult to secure an appointment with a medical specialist.

d. If the accommodation cannot be provided immediately, an interim accommodation should be provided when feasible. Note that an interim accommodation is not guaranteed; it depends on the employee’s job duties and functional limitations. If an interim accommodation would not have an adverse impact on the operation of the unit and is deemed to be appropriate but it has not been determined that the employee has a disability, the employee should be informed that this is not a reasonable accommodation; it is just a courtesy.

e. If the disability is obvious and a situation arises that will prevent a timely decision and/or provision of the requested accommodation, and an interim accommodation is not feasible, please contact the LRAC at the next higher level, the Administration EEO office, or the NRAC for guidance.

For further information on time frames please see Appendix C.

7. REQUESTING REASONABLE ACCOMMODATION.

a. A request for reasonable accommodation is an oral or written request made by an applicant or employee or an applicant or employee’s representative (e.g., a family member,

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health care professional, or an agent acting on behalf of the employee or prospective employee) to the employee's supervisor, any manager in the employee's chain of command, the LRAC, or entered in the automated RACS available on-line. If the request is received by a manager or supervisor who is not the DMO, he or she will forward the written request or inform the LRAC, ALRAC, and the DMO of an oral request within five (5) calendar days.

b. A requestor does not have to use words such as "reasonable accommodation," "disability," or "Rehabilitation Act" in the request. Additionally, an employee may request a reasonable accommodation whenever he or she chooses, even if he or she has not previously disclosed the existence of a disability. The requestor should not be required to make repetitive requests for the same accommodation. In such cases, the supervisor or manager and the requestor should work together to anticipate any situations that may require recurring accommodation (e.g., sign language interpreters or large print documents).

c. Job applicants or their representatives (e.g., a family member, health care professional, or an agent acting on behalf of an employee) may submit a written or verbal request for an accommodation for any part of the application process, including the interview phase, to the HRMO listed as the point of contact in the job vacancy announcement, to the LRAC, or via the automated RACS.

d. Employees and applicants are encouraged to make their request via RACS at <<https://va-ra.entellitrak.com>> or document their request using VA Form 0857a, Written Confirmation of Request for Accommodation (Appendix B), and give it to their immediate supervisor or the LRAC, so that VA has a record of the request. This form is optional, but helpful.

e. A reasonable accommodation request shall not be the basis for a lower performance appraisal or other adverse action. Facilities are advised to refrain from ordering a fitness for duty examination upon receiving an accommodation request, unless the employee exhibits behavior that appears clearly dangerous to the employee or others.

8. DOCUMENTING THE REQUEST.

a. The DMO who receives the request for accommodation should acknowledge receipt in writing by completing and giving VA Form 0857b, Acknowledgement of Receipt of Request (Appendix B), to the requestor and forward a copy of the acknowledgement to the LRAC. This acknowledgement is required even if the employee did not document the request in an email, via VA Form 0857a or via RACS.

b. For job applicants, HRMO will complete VA Form 0857a, Written Confirmation of Request for Accommodation, and forward the form to the LRAC. Diligent effort should be made to process requests from applicants as soon as feasible, in order for them to be able to participate in the application process. A decision on the accommodation should be made within ten (10) calendar days of receiving the request.

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c. All requests for and provisions of reasonable accommodation must be confidential and documented via RACS.

9. INTERACTIVE PROCESS.

a. When the individual makes an oral or written request for reasonable accommodation, managers should ordinarily begin to engage in the interactive process with the individual after receiving notice of the request. The interactive process is the communication between the DMO and the employee, in consultation with the LRAC, to determine how best to respond to the employee's request. During this process, an individualized assessment will be conducted to review essential and marginal job functions, the employee's limitations, and possible accommodations. The interactive process may require more than one discussion. The DMO or LRAC will also explain the reasonable accommodation process to the employee at this time.

b. Ongoing communication and cooperation are important, especially when a specific limitation, problem, or barrier is unclear or when the disability or an effective accommodation is not obvious. Thus, interactive discussions should be documented, with at least the date, time, participants, and key points noted.

c. In the case of an applicant for employment, the local HRMO (or his or her designee) will engage in the interactive process with the applicant.

d. Once a job offer has been made, if an accommodation is requested, the interactive process with the new employee with a known disability (post offer but pre-on boarding) should be conducted by the supervisor and the LRAC, in consultation with the GC, RC or NRAC, if necessary, to discuss and identify possible accommodations, and ensure that the requested accommodation is in place when the new employee starts.

e. Failing to engage in the interactive process is a violation of the Rehabilitation Act of 1973, as amended, and may create liability for VA.

10. INTERIM WORKPLACE ADJUSTMENTS.

Where feasible, interim workplace adjustments or accommodations will be provided for an employee with an obvious or documented disability until a final decision has been made on the request for accommodation (and, if approved, implemented). The interim workplace adjustment should enable the individual to perform the essential functions of the job or enjoy the benefits and privileges of employment without posing a direct threat to anyone's health and safety. Interim workplace adjustments are not required or guaranteed, but are highly recommended when they can be offered without adverse impact on the operation of the unit.

The office or facility should strive to provide an interim accommodation if there will be a delay in acquiring the approved accommodation. This is sometimes the case when the accommodation is ordered from the Department of Defense's CAP. VA Form 0857c, Approval of Interim Accommodation, can be used to document the agreement to make a workplace adjustment until the requested accommodation can be arranged.

11. DETERMINING WHETHER A REQUESTOR IS COVERED BY THE REHABILITATION ACT OF 1973, AS AMENDED.

The determination of disability has been simplified by the ADAAA. To process the reasonable accommodation request, the LRAC will follow all relevant steps.

a. ***Does the individual have a covered disability?*** VA must determine if an employee has a disability covered by the Rehabilitation Act, which may entitle him or her to a reasonable accommodation. Under the ADAAA, this determination shall not demand extensive analysis. Note that the LRAC, and not the DMO, makes this determination. As part of the analysis, the LRAC, will consider the following:

(1) The nature and severity of the individual's impairment. The minimum six month duration requirement is no longer in effect. Only an impairment that is ***both*** minor and transitory, as defined in section 2 (p) of this Handbook, will not be covered for accommodation purposes.

(2) The major life activity or activities that the impairment limits.

(3) The extent to which the impairment limits the individual's ability to perform the activity or activities.

(4) The individual's record of impairment, if any.

(5) Medical documentation may be required to make this determination. For those situations, please see section 12 (WHEN MEDICAL INFORMATION IS NEEDED FOR DISABILITY DETERMINATION).

b. If the medical documentation (VA Form 0857e) clearly states that the individual has a medical condition, the LRAC should determine whether the medical condition is a disability, within the meaning of the Rehabilitation Act. If so, the LRAC should then let the DMO know that the employee has a covered disability without naming the disability, and explain the functional limitations caused by the disability. If there is a question, the LRAC can contact the LRAC at the next higher level, the RC, or the NRAC.

c. If the individual does not have a visible disability and refuses to provide medical documentation, the LRAC will tell the DMO that the employee has not provided documentation to show that he or she has a disability that is covered by the Rehabilitation Act.

d. If the medical documentation does not support the functional limitations claimed by the employee, or if there is a question about the medical documentation, the LRAC may consult with Occupational Health after redacting the employee's name, the DMO's name, and other identifying information.

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e. DMOs, even those who are medical professionals, shall accept the disability determination made by the LRAC, based on the information from the employee's health care provider.

f. If it is determined that the individual is not covered by the Rehabilitation Act, the request for accommodation may be denied after consultation with the OGC, RC or the NRAC.

g. Caution should be taken when making this decision because one purpose of the ADAAA is to make it easier for an individual to establish that he or she has a disability covered by the ADA and the Rehabilitation Act. For more information on denials, please see section 21, "DENIAL."

12. WHEN MEDICAL INFORMATION IS NEEDED FOR DISABILITY DETERMINATION.

Medical documentation should not be requested to support every accommodation request. Medical documentation goes only to the LRAC and is not shared with the DMO or the Reasonable Accommodation Committee (RAC), which is present in some VHA facilities.

a. When a disability or need for reasonable accommodation is not obvious or otherwise not already known to the VA, the LRAC may request that the employee submit appropriate medical documentation about the disability and his or her functional limitations through VA Form 0857e. The LRAC will give the VA Form 0857e to the employee to have his or her medical provider complete it. There is no specific time restriction on the employee to produce this information, but ninety (90) calendar days is generally sufficient. The longer time frame is needed because it can be difficult to get an appointment with certain medical specialists. The time between requesting this information from the employee and receipt of the information is not counted as part of the time limit to make a decision concerning the request for accommodation. Information on the disability and functional limitations may be obtained by the employee or from an appropriate health care professional, such as a physician, social worker, or rehabilitation counselor. However, it is important that the medical documentation come from an appropriate professional. EEOC has held, for example, that a chiropractor is not competent to diagnose fibromyalgia.

b. Requests for medical documentation are limited to the questions on VA Form 0857e.

c. If the information provided by the requestor's health care professional is insufficient to enable an informed determination, additional information may be requested, but only after obtaining agreement from the LRAC at the next higher organizational level (e.g. VISN level). In this instance, the LRAC should explain to the requestor why the submitted documentation is insufficient, identify the information that is needed, and allow the requestor an opportunity to provide the information.

d. When the employee's health care provider has completed the form but it is unclear regarding the functional limitations, the LRAC may consult with Occupational Health under the conditions described in Section 11 (d).

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e. When there is a need to directly contact the health care professional to clarify an employee's functional limitations, the LRAC must first obtain agreement from the OGC, RC or NRAC. After obtaining agreement, the LRAC will give the employee VA Form 0857k, Authorization for Limited Release of Medical Information. The contact with the health care professional must be in writing via U.S. Postal Service mail; it cannot be via phone, email, or other non-official method, per the Health Insurance Portability and Accountability Act. If the requestor refuses to provide the necessary release of medical information and fails to respond to requests for information, after further consultation with OGC, the RC, or the NRAC, the request may be denied. Note that the Form 0857k is not needed when giving the completed (top half) Form 0857e to the employee.

f. In rare cases, if the employee has been cooperative but the completed Form VA 0857e and responses to subsequent inquiries are insufficient to determine whether the employee has a disability within the meaning of applicable law, the LRAC may consult with the OGC, RC, or NRAC to obtain permission to request that the employee be examined by a health care professional of VA's choice, at no cost to the employee. If the employee or applicant refuses to be evaluated, the reasonable accommodation request may be denied, but only after consultation with the OGC, RC, or the NRAC. Extreme caution should be used in determining to take this step as improper use of this procedure may violate the Rehabilitation Act and create liability for VA.

g. If a fitness-for-duty exam reveals a functional limitation that will adversely impact the employee's ability to perform the essential duties of the job, the employee should not be asked to obtain additional medical documentation. The exam results should be shared with the employee; and the accommodation process begins at that point.

h. Processing timelines freeze from the time that medical documentation is requested to when it is received. Even if medical documentation is received from an employee long after it was requested, the DMO must continue or resume processing the request.

Note: The medical documentation may identify a particular accommodation, but is not required to do so. Duration of the disability and need for accommodation also should not be held to a demanding level of specificity, given the inherent uncertainty of some disabilities and impairments.

EEOC has held that requiring additional medical documentation unnecessarily is a violation of the Rehabilitation Act, so this guidance is essential to the appropriate processing of accommodation requests. If you have any questions, please contact your EEO Manager, RC or NRAC.

13. CONFIDENTIALITY REQUIREMENTS

Under the Rehabilitation Act, the request, the disability, and any medical information obtained in the accommodation process or via other channels, must be kept confidential. Confidentiality rules regarding disability status apply to all employees and applicants, whether or not they are individuals with disabilities. Violation of the Rehabilitation Act's medical confidentiality

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requirements exposes the agency to liability, even if no other action is taken against the individual whose medical information is disclosed.

a. After making a determination that an employee is covered by the Rehabilitation Act, the LRAC should inform the DMO of the relevant functional limitations caused by the disability. The LRAC may not share the name or the particulars of the disability, or any medical information.

b. Each LRAC shall maintain medical and other records pertaining to requests for reasonable accommodations in a locked dedicated file cabinet, in accordance with the Privacy Act of 1974, 29 CFR 1611, EEOC Order 150.003, and VA information security and privacy policies, including VA Handbook 6500 (Information Security Program). Other records such as personnel, timekeeping, etc. shall not be kept in this file. The LRAC should raise any information security or privacy concerns, including lost, missing or stolen personally identifiable information, with the operating unit's Information Security Officer (ISO) or Privacy Officer.

c. If the employee transfers to a different VA facility, the medical information and other documentation should be sent via United Parcel Service (UPS) to the LRAC at the new facility and kept in a locked cabinet.

d. Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose the information except as follows:

(1) Supervisors and managers (aside from the DMO) who need to know may be told only the necessary restrictions on the work or duties of the employee and the necessary accommodation(s);

(2) In the event of medical emergency, first aid and safety personnel may be informed if an employee's disability might require emergency treatment;

(3) VA and other government officials may be given information necessary to investigate VA's compliance with the Rehabilitation Act;

(4) The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers, and Department EEO officials may be given the information to maintain records and evaluate and report VA's performance in processing reasonable accommodation requests;

(5) Where medical information regarding a requested reasonable accommodation is disclosed, the DMO must inform the recipient about the confidentiality requirements that attach to the information;

e. The medical information or accommodation may not be shared with the employee's co-workers or other employees. Supervisors can respond to inquiries by explaining that many workplace issues confronted by employees are personal, and that in these circumstances, it is the VA's policy to respect employee privacy.

f. LRACs, DMOs, and other officials are reminded that when an employee is also a Veteran, the records concerning the accommodation request and documentation process (if needed) must be separate from the records concerning the Veteran's medical care from VA staff. Under no circumstances should the LRAC or DMO access the Veteran's medical or benefits file. To do so may be grounds for disciplinary action, up to and including removal.

g. Discussion and email traffic concerning accommodation decisions should be limited to the LRAC, Alternate LRAC, DMO, and the employee. When there is a bona fide need to know, the RC, OGC, or NRAC will be included. Emails that include any additional employees or offices are not permitted to include the name of the employee or the disability information.

14. IDENTIFYING AND GRANTING ACCOMMODATIONS FOR APPLICANTS.

a. The HRMO and the LRAC will review the functional limitations claimed by an applicant requesting accommodation and will identify possible accommodations that will enable the individual to complete the applicant process, including the interview. Some specific examples of reasonable accommodation for applicants are:

- (1) Allowing a hard copy application instead of requiring the on-line process.
- (2) Moving the interview location to a facility that is physically accessible.
- (3) Providing an oral or sign language interpreter for a deaf applicant at the interview.
- (4) Providing application materials and responses in an accessible format, such as digital, large print, or email.
- (5) Escorting a blind applicant to and from the interview room.

The above examples are not all-inclusive. An applicant may request a different accommodation.

b. Time is of the essence for any accommodation, but is especially important when it is for an applicant.

15. IDENTIFYING AND GRANTING ACCOMMODATIONS FOR EMPLOYEES.

a. The DMO, the HRMO (as needed), and the LRAC will review the functional limitations and in discussions with the employee, identify possible reasonable accommodations that will enable the employee to perform the essential functions of the position or enjoy the benefits and privileges of employment. For additional assistance, please see section 26, ADDITIONAL RESOURCES. The requestor may propose an accommodation; however, the DMO will make the final decision on whether to grant a reasonable accommodation. Some specific examples of reasonable accommodation are (but are not limited to) the following:

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- (1) Modifying a cubicle to allow room for a wheelchair or scooter.
- (2) Restructuring of marginal (non-essential) job functions which cannot be performed because of functional limitations.
- (3) Allowing a modified work schedule or telecommuting for an individual who has a disability that makes commuting difficult.
- (4) Obtaining screen-reader software for an individual who is blind.
- (5) Printing examinations and training materials in large font.
- (6) Providing interpreters or captioning services for an employee who is deaf.
- (7) Ensuring that training is offered only at fully accessible facilities.
- (8) Providing an assigned accessible parking space close to the building entrance and the employee's office is a routine accommodation that should be granted for an individual with a mobility impairment.
- (9) Allowing an employee to use a service animal in the workplace.
- (10) Reassignment to another position. This is the accommodation of last resort and will be considered only if there are no other accommodations available that will enable the employee to perform the essential functions of his or her current job. Reassignment should be initiated by the DMO, in collaboration with the HRMO. The interactive process is especially critical when reassignment is being considered.

b. When the disability is known or documented, supervisors should grant accommodation requests, if feasible. Decisions should be made at the lowest level to ensure timeliness and efficiency. Facility Directors should not serve as the DMO except for employees who report directly to them. This allows the appeal process for most employees to stay within the facility.

c. Once an accommodation request is approved for a permanent disability/functional limitation, the employee should be allowed to keep the accommodation after the DMO no longer supervises the employee. In rare instances, the accommodation may need to be changed, but the DMO and LRAC should first check with RC, OGC, or NRAC before making any changes that are not requested by the employee. The accommodation, including necessary equipment and software, also "goes with" the employee when transferring to a new VA location. If an employee's job duties change, the LRAC may check to verify that the current accommodation is still needed and effective.

16. REASSIGNMENT AS A REASONABLE ACCOMMODATION FOR EMPLOYEES.

This is the accommodation of last resort and will be considered only if there is no other accommodation available that will enable the employee to perform the essential functions of

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his or her current job, and the employee has a permanent or long-term disability. (If the employee has a temporary disability, a detail may be an appropriate accommodation.) Reassignment should be initiated by the LRAC, in collaboration with the HRMO. The interactive process is especially critical when reassignment is being considered.

a. Reassignments are non-competitive and ideally are made to a position that has not been announced.

b. Before the organization conducts a search, it may require the requestor to indicate, in writing on VA Form 0857h, Employee Limitations on Reassignment Options, whether he or she is willing to accept reassignment to:

- (1) a job series that is different from the series of his or her current position and if so, which job series;
- (2) locations outside the facility or the commuting area, and if so, which locations
- (3) a lower grade position, if there are no vacant equivalent position; and/or
- (4) a part-time position;

c. Reassignment should be to a funded, vacant position, or to a funded position that will be vacant within sixty (60) calendar days from the date the organization commences a search for an appropriate position. The reassignment is non-competitive. Most reassignment processes should be completed within ninety (90) calendar days.

d. The employee's HR Office will:

- (1) Obtain the employee's resume and search for suitable job openings, including positions that will be open within the next 60 days, at their facility. The essential elements of the job will be compared to the individual's resume. The physical requirements of the job as described in the job announcement or position description should not exceed the employee's physical limitations, when appropriate accommodations are considered. HR will email the Service Chiefs, Directors, or other hiring officials at the facility to request information on any vacancies expected to open in the next sixty (60) calendar days, and ask if there are any pending retirements for the job series and pay level identified by the employee. HR can also review VA vacancies on USAJOBS.
- (2) Once a position is identified, HR will consult with the hiring official to confirm the skills sets, duties, etc. that are required, in order to make a qualifications determination. HR should ask whether there are any qualifications or requirements that were not mentioned in the announcement. At this point, HR should not mention the reassignment attempt.
- (3) Once HR has ascertained all of the requirements for the position, it will compare them to the employee's skills, experience and knowledge. If the employee qualifies for the position

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and can perform the essential functions of the position, with or without accommodation, HR will inform the hiring official that the position must be held for the employee.

(4) If the employee meets the minimum qualifications for the position identified, the placement should be non-competitive. Thus, there is no interview or ranking process.

(5) If no position is found at the current location, HR will share the employee's resume and job/pay choice with the other facility or facilities identified by the employee. The HR staff at that location or those locations will follow the guidance in (1) to (4) above.

(6) HR will cooperate with any other HR office in VA that asks for a search of suitable positions for an employee who must be reassigned as a disability accommodation. For the purposes of reassignment, all components of VA are considered to be one agency; the employee may request reassignment to any component/facility.

(7) This process will continue until a position is found or 90 (ninety) calendar days expire.

e. Reassignment in the same location will be sought first but if the employee agrees to a broader search, reassignment can be made to positions in VA facilities and Administrations beyond the organization or facility where the requestor was originally employed. Relocation costs will be provided only if indicated in the vacancy announcement or if relocation expenses are normally paid with respect to the position identified.

f. The HR staff should explain to the supervisor for the identified vacancy: "Your vacancy was identified as a suitable position for an employee who needs a reassignment as an accommodation. VA is required to follow U.S. Equal Employment Opportunity Commission (EEOC) guidance in this matter; the EEOC interprets agency obligations under the Rehabilitation Act of 1973, as amended. Therefore, this reassignment is non-competitive. The Staffing Specialist reviewed the job description and compared it to the employee's resume, and he was found to be qualified. If you wish to meet the employee before he comes on board, you may do so, but we need to stress that this is not an interview. It has already been decided that this employee will be reassigned to this position. Please note that an individual's disability status is private information and may not be shared with anyone not having a bona fide, business related need to know. I want to thank you for your support of VA's efforts to comply with legal requirements."

g. Once the OHR of the facility to which the employee will be reassigned has identified an appropriate reassignment, he or she will notify the employee or applicant, in writing. The OHR should also notify the employee's OHR of the job offer.

h. Reassignment must be considered as an accommodation prior to terminating an employee with a disability who cannot be accommodated in his or her current position. In this situation, reassignment should be considered even if not specifically requested.

i. Once the job offer is made, the employee's OHR or LRAC will give the employee a completed VA Form 0857j, Offer of Reassignment.

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j. The employee will have fourteen (14) calendar days from his or her receipt of the offer to consider whether to accept the offered reassignment. The identified vacancy must be held open during this time.

k. If the employee is moving to a new location and has VA or CAP issued equipment, that equipment follows the employee to the new location.

l. If other VA employees applied for the slot that will be filled by the reassigned employee, the manager/supervisor at the new location may only tell the unsuccessful candidates that the individual "...was selected in compliance with applicable laws." Under no circumstances should they tell anyone that the individual was placed as a reasonable accommodation, and no mention should be made of the disability.

m. If the requestor has identified a vacant, funded position, the essential functions of which he or she claims he or she can perform, HR must make a sufficient inquiry to determine whether the reassignment proposed by the requestor would effectively accommodate his or her disability, and whether the position is otherwise suitable. If so, the requestor should be offered and placed in the position non-competitively.

n. If HR is unable to identify a suitable position to which the employee can be reassigned, the request will be denied and the employee will be advised as to avenues for redress (Section 19 of this Handbook), using VA Form 0857f.

17. PARKING

a. When there are a limited number of employee parking spaces, employees with mobility impairments or a disability that precludes them from using public transportation have priority over all other groups, per Title 41 CFR § 102-74.305. Additional handicapped (HC) spaces will have to be created if a facility does not have enough HC parking spaces for the number of employees with mobility impairments who requested parking as a reasonable accommodation. Facilities may NOT require employees to arrive early in order to get a space. Assigning each HC space to a specific employee is highly recommended.

b. When an employee requests a space near the building as a reasonable accommodation (and goes through the accommodation process), that employee must be provided an assigned space with the shortest route to their workspace. The Americans with Disabilities Act Accessibility Guidelines specify the size of the space and the access area.

c. Every facility that provides any parking spaces to employees MUST have a standardized method for ensuring that employees with mobility impairments receive the parking spaces that are closest to the building if requested, or spaces large enough for egress. This applies to all VA facilities, including leased facilities.

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18. TELEWORK

a. Telework can be an appropriate reasonable accommodation for an employee with a disability. Further, an employee with a disability may also be permitted to telework when other staff members are not. As Federal law, the Rehabilitation Act is superior to any office, facility, or agency policy on telework.

b. When telework is provided as an accommodation, there is more flexibility in the number of days and the frequency of telework. For example, an employee with a disability that does not hinder productivity but does make it difficult to come to the office on a daily basis may be allowed to telework up to five days a week. Alternatively, an employee may have a disability that is aggravated by extreme temperatures or poor air quality and will need a telework agreement permitting telework on days when these situations occur.

c. If an employee is approved for telework and needs the same equipment to work from home, the equipment/assistive technology should be provided. Examples are ergonomic desks, JAWS software, etc. If the employee has the necessary equipment in the office, but will be teleworking full time, the equipment should be moved to the employee's home. When the need for telework ends or the employee leaves VA, the equipment must be returned to the facility.

19. The VA-DoD PARTNERSHIP REGARDING THE COMPUTER/ELECTRONIC ACCOMMODATIONS PROGRAM (CAP).

a. VA facilities and offices should fully utilize VA's partnership agreement with DoD's CAP, which provides assistive technology free of charge to individuals with disabilities who are Federal employees or participating in the Workforce Recruitment Program. Accommodation requests for assistive technology should be made directly to CAP online by the LRAC or ALRAC after an employee's request is approved. Only the LRAC and ALRAC are authorized to submit requests to CAP.

b. CAP provides assistive technology for Federal employees and Workforce Recruitment Program interns who are blind, have low vision, are deaf, hard of hearing, or have dexterity, communication, cognitive, or learning disabilities, post-traumatic stress disorder (PTSD) and other disabilities.

c. CAP, when necessary, can conduct a needs assessment to identify the most appropriate solutions for an individual requesting a reasonable accommodation when it is unclear what would be most effective. When feasible, CAP will provide the accommodation. CAP covers the cost of installation, integration, and training on assistive technology. Before requesting a needs assessment from CAP, the employee's functional limitations and duties should be discussed with staff at the Job Accommodation Network (JAN) <www.askjan.org>. JAN can often suggest a suitable accommodation.

d. In some cases, CAP staff will have questions, and may even request medical documentation. These inquiries should be addressed as soon as possible. A lack of response

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can lead to a denial by CAP. Note that if the LRAC or ALRAC did not submit the request, he or she will not be aware of any follow up questions from CAP.

e. CAP does not provide office furniture, lighting, sign language interpreters, captioning, readers, or other non-IT related accommodations.

f. VA officials should remain aware that the responsibility to accommodate the Department's employees and applicants ultimately rests with VA, not with the CAP Program; the CAP Program is a tool that may be used to fill some accommodation requests. Approved accommodation requests that fall beyond CAP's purview, or are unfulfilled due to lack of CAP funds, must be provided by VA.

g. CAP does not provide assistive technology for interns (except Workforce Recruitment Program interns), volunteers, or contractors.

h. CAP does not provide assistive technology needed to train or instruct Veterans or their family members who are not VA employees or applicants, except for wounded service members. Requests for those types of training tools should be made through the normal procurement process and do not constitute a reasonable accommodation.

20. VA REASONABLE ACCOMMODATIONS CENTRALIZED FUND.

a. Managers, supervisors, LRACs and ALRACs should be aware that VA's ODI will reimburse the cost of accommodations not provided by CAP. Examples are readers for blind applicants and employees, and sign language interpreters, oral interpreters, or Computer-Assisted Real Time (CART) Captioning for applicants and employees with hearing loss. Please bear in mind that EEOC has ruled that agencies need to provide interpreters or other accommodations for deaf or hard of hearing employees to attend staff meetings, training, safety talks, discussions on work procedures or assignments, and disciplinary actions, even when the employee does not make a request.

b. ODI does not reimburse the cost of facility modifications, which should be requested from the Engineering Service at the specific VA location. In some cases, providing an accommodation can require making facility modifications that go beyond current building code.

c. Reimbursement is provided on a first-come, first-served basis, so submit requests to ODI as soon as possible. It is not advisable to wait until the end of the fiscal year because the funds may not be available at that point.

d. If an accommodation (other than services) will cost over \$500 and is going to be submitted for reimbursement, consult with the NRAC before purchase. If the NRAC approves the purchase, the confirming email should be submitted with the request for reimbursement.

e. Facilities shall endeavor to obtain sign language interpreters and other services from local sources. ODI will not reimburse travel costs for interpreters and other service providers. Freelance interpreters are recommended if the employee is satisfied with their services.

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f. To request reimbursement from the Centralized Fund, follow the instructions on the website: <<http://www.diversity.va.gov/programs/pwd.aspx#fund>>

21. DENIAL OF REASONABLE ACCOMMODATION REQUESTS.

a. After consultation with the NRAC or Regional OGC, the DMO may deny the request for accommodation for the following reasons:

(1) **Undue Hardship.** A determination of undue hardship means that VA finds that a specific accommodation would be significantly difficult to provide, or would fundamentally alter the nature of the operations of the affected VA organization, as defined earlier. Before reaching this determination, the DMO, in consultation with the LRAC, must explore whether other effective accommodations are available and can be provided.

(Note: In determining whether an accommodation poses an undue hardship, the financial resources of the organization or the Department as a whole should be considered, not just the resources of the individual facility or staff office. Thus, only the Secretary, VA, can deny a request based on cost, and facilities can invoke undue hardship only for impact on operations.)

(2) **Insufficient Medical Documentation.** The employee or applicant, when requested, did not provide sufficient medical documentation to establish a covered disability or a need for reasonable accommodation. Medical documentation should not be requested when the disability is obvious or the employee has already submitted documentation to VA in the past for the same functional limitation.

If medical documentation is received from an appropriate health care provider individual or entity, states the disability and nature of the impairment (the expected/likely duration, its severity, and one or more activities it limits including the extent/degree to which they are limited) and either the reason the individual requires accommodation or how the accommodation will assist the individual, it is VA's policy to not request additional medical documentation. Instead, the facility or office must move to the decision process. Additional documentation can be requested only if the medical provider did not answer the questions on VA Form 0857e, and/or the employee is unwilling to ask the medical provider to answer the questions.

(3) **Removes Essential Function(s).** The requested accommodation would require the removal of an essential function from the position occupied by the employee or from the position for which the applicant applied. See section 2 (d) for the definition of essential functions.

(4) **Lowers Standards.** The requested accommodation would require lowering a performance or production standard that is required of all employees in similar positions (job series/grade level). To invoke this as the reason for denial, the performance or production standard must exist prior to the time of the request.

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(5) **Direct Threat.** The individual poses a “direct threat” to the health and safety of himself or herself or others. To meet this factor, there must be a high probability of substantial harm that cannot be eliminated or reduced by providing an accommodation. In those instances, the DMO must consider the limitations of the individual, specifically, the risk posed by the impairment or functional limitation, the duration of the risk, the nature and severity of the potential harm, the likelihood that the harm will actually occur, and imminence of the potential harm. Per EEOC guidance, direct threat determinations, as with all decisions related to reasonable accommodation, are made on a case by case basis; the decision may not be based on generalizations or assumptions. A health care professional, facility safety officer, or RC may be consulted for assistance.

b. The DMO may NOT deny the request for accommodation for the following reasons:

(1) A bias against the employee or the accommodation process.

(2) The facility cannot fund the cost of the accommodation. The funding is the responsibility of VA as a whole. Thus only the Secretary, VA may deny an accommodation based upon cost.

(3) The requested accommodation is/requires a change or exception to an office or facility policy. There will be situations when an accommodation will mean a departure from routine practices or procedures. For example, if work duties can be performed off site, but the office has a practice of not allowing telework, an employee who finds the commute to be too challenging may be allowed to telework. In the same vein, a parking space near the building should be granted when requested by an employee who has a mobility impairment. The Rehabilitation Act of 1973 supersedes a facility's parking, telework and other policies if the policy, in its application, denies an individual with a disability reasonable access to the workplace.

(4) Based upon the fact that non-disabled employees are not granted the same privilege. People who do not have a disability are not a protected class, and there is no reason to compare the two groups.

c. **Denial of a request from an employee.** If the DMO cannot grant a requested accommodation, he or she must complete VA Form 0857f, Accommodation Request Determination, explaining in detail why the request was denied. The DMO must then share the VA 0857f with the NRAC in ODI, the RC in the facility's geographic area or, if the requestor is employed by OIG, the DMO may consult with the Counselor to the Inspector General. The aforementioned offices will only serve as consultants and concurrence is not required. Once a final determination is made, the DMO must notify the employee of the denial in writing, using the VA 0857f, which provides details on the specific reason for the denial and informs the employee of possible avenues of redress.

d. **Denial of a request from an applicant.** If the HRMO cannot grant a request for accommodation, the HRMO must consult with the NRAC or the Office of General/Regional Counsel in the facility's geographic area. If the requestor is an applicant for a position in OIG,

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the DMO may consult with the Counselor to the Inspector General. All denials will be communicated via a completed VA Form 0857f, Accommodation Request Determination (Appendix B). The aforementioned offices will only serve as consultants and concurrence is not required. Denial of a request from an applicant should be very rare. The HRMO should notify the applicant in writing of the denial within ten (10) calendar days of the initial request and inform the applicant of possible avenues of redress.

22. AVENUES FOR REDRESS OF DENIALS.

a. If an employee or applicant believes that he or she has been denied a reasonable accommodation, he or she has the following options:

(1) **Reconsideration.** Upon receipt of the decision from the DMO, the employee or applicant has seven (7) calendar days to request reconsideration. After receiving a request for reconsideration, a senior official above the DMO has fourteen (14) calendar days to render a decision and notify the requestor, in writing. A final interactive process with the LRAC or ALRAC, the employee, and the senior official is recommended, to ensure that any concerns are heard before a final decision is made. The Form VA 0857f can be used to document the decision; a copy should be given to the employee.

(2) **EEO Complaint.** To file an EEO complaint, applicants for employment or employees must contact an EEO counselor within forty-five (45) calendar days of receiving the decision, pursuant to 29 C.F.R. Part 1614. Contact your local Office of Resolution Management for further information.

(3) **Union Grievance.** Bargaining unit employees may file a grievance in accordance with applicable Collective Bargaining Agreements. The union's negotiated grievance procedure will apply. Contact your local union representative for further information.

(4) **Administrative Grievance.** This is a procedure used by non-bargaining unit employees who may file an Administrative Grievance to challenge the decision within fifteen (15) calendar days of receiving the decision by contacting anyone in their chain of command. The employee should also inform Human Resources that they are filing an Administrative Grievance. Contact your local Human Resources Office for further information.

(5) **Alternative Dispute Resolution (ADR).** Employees and applicants are encouraged to participate in informal resolution processes available to address the reasonable accommodation outcome. The ADR process is outlined in VA Directive 5978: Alternative Dispute Resolution. Individuals may participate in ADR as part of the above avenues of redress or independently. If participation is independent of the above avenues of redress, it does not meet the requirements for filing claims under the aforementioned processes. If the employee believes she or he may also want to pursue other avenues of redress, the employee should check with the appropriate EEO/Union/HR office to ensure that time requirements are met. Find your local ADR Coordinator at: http://www1.va.gov/adr/docs/ADR_Coordinators_List.pdf and contact them for further information.

23. ADMINISTRATIVE CLOSURE.

Under certain circumstances, a request may be administratively closed, using line 10 on VA Form 0857d. When the employee does not respond to emails and phone calls for thirty (30) calendar days, creating the impression that s/he has abandoned the process, the request can be closed. At any later date, when the employee expresses an interest in resuming the process, the request can be re-opened and the time frame begins again.

24. INFORMATION TRACKING AND REPORTING.

a. LRACs shall be responsible for retaining records related to a particular individual who has requested a reasonable accommodation for the duration of that individual's employment in the Department. These records include any documentation of the individual's disability or need for reasonable accommodation, as well as information about the disposition of that individual's accommodation request. These records must be kept separate from the individual's personnel file. If an individual transfers to another organization in VA, the records should go to the LRAC in the new organization. Three years after the individual separates from VA, the medical documentation and other information regarding the individual accommodation request should be destroyed, as instructed by the General Records Schedule.

b. LRACs shall be responsible for tracking all reasonable accommodation requests via RACS and utilizing applicable forms contained in this Handbook.

c. Cumulative information will be retained for at least three years in order to track VA performance and assess whether accommodation requests are being processed adequately.

25. REFERENCES

- a. Rehabilitation Act of 1973, as amended.
- b. Title 1 of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008 (ADAAA).
- c. EEOC guidance on the ADAAA.
- d. Executive Order 13548
- e. OPM's Model Strategies for Recruitment and Hiring of People with Disabilities as Required Under Executive Order 13548.
- f. Collective bargaining agreements, as appropriate.
- g. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act

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- h. EEOC Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended (29 CFR 1630 Appendix)
- i. Executive Order 13164, Requiring Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation
- j. EEOC Policy Guidance on Executive Order 13164
- k. Human Resources Information Letter 05-12-02, Employment of Persons with Disabilities.
- l. The Memorandum for Under Secretaries, Assistant Secretaries, Other Key Officials and Facility Directors on the Americans with Disabilities Amendments Act of 2008, February, 23, 2009.
- m. Privacy Act of 1974 (Public Law 93-597).
- n. Title 29 Code of Federal Regulations (CFR), Sections 1611, 1614, and 1630.
- o. Title 29 United States Code (U.S.C.), Sections 791, 792, and 793.
- p. VA Directive 5978: Alternative Dispute Resolution

26. ADDITIONAL RESOURCES.

- a. **U.S. Equal Employment Opportunity Commission** at <http://www.eeoc.gov/federal/directives/index.cfm> provides resource information and policy guidance for processing reasonable accommodation requests and frequently asked questions.
- b. **Job Accommodation Network (JAN)** at <http://askjan.org> is funded by the U.S. Department of Labor's Office of Disability Employment (ODEP) Policy and provides information on the Americans with Disabilities Act (ADA) and a wide range of reasonable accommodations options for many different types of disabilities.
- c. **VA's Section 508 Program Office** at <http://vaww.section508.va.gov/> is responsible for ensuring that VA's Electronic Data Systems and websites are accessible to individuals with disabilities under the authority of Section 508 of the Rehabilitation Act of 1973.
- d. **VHA, Office of Health Information, Health Data and Informatics.** Section 508 Office (19F) also provides section 508 consulting services for VHA organizations that need assistance. Web site: <http://vaww.vista.med.va.gov/508workgroup/>
- e. **VA's ODI web site** for the People with Disabilities Program provides additional information regarding VA's reasonable accommodation procedures. Web site: <http://www.diversity.va.gov/programs/pwd.aspx>

November 27, 2013

**VA HANDBOOK 5975.1
APPENDIX A**

Major Life Activities:

Activities such as caring for one's self, performing activities of daily living, performing manual tasks, walking, seeing, standing, sitting, reaching, lifting, bending, speaking, hearing, breathing, learning, concentrating, thinking, interacting with others, and working. Also included are the operations of major bodily functions, including, but not limited to: functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

November 27, 2013

**VA HANDBOOK 5975.1
APPENDIX B**

FORMS:

VA Form 0857a, Written Confirmation of Request for Accommodation

<http://www.diversity.va.gov/programs/files/pwd/VA0857a.pdf>

VA Form 0857b, Acknowledgement of Receipt of Request

<http://www.diversity.va.gov/programs/files/pwd/VA0857b.pdf>

VA Form 0857c, Approval of Interim Accommodation

<http://www.diversity.va.gov/programs/files/pwd/VA0857c.pdf>

VA Form 0857d, Administrative Closure of Accommodation Request

<http://www.diversity.va.gov/programs/files/pwd/VA0857d.pdf>

VA Form 0857e, Request for Medical Documentation

<http://www.diversity.va.gov/programs/files/pwd/VA0857e.pdf>

VA Form 0857f, Accommodation Request Determination

<http://www.diversity.va.gov/programs/files/pwd/VA0857f.pdf>

VA Form 0857g, Denial of Accommodation Request

<http://www.diversity.va.gov/programs/files/pwd/VA0857g.pdf>

VA Form 0857h, Employee Limitations on Reassignment Options

<http://www.diversity.va.gov/programs/files/pwd/VA0857h.pdf>

VA Form 0857i, Centralized Accommodation Fund Application

<http://www.diversity.va.gov/programs/files/pwd/VA0857i.pdf>

VA Form 0857j, Offer of Reassignment

<http://www.diversity.va.gov/programs/files/pwd/VA0857j.pdf>

VA Form 0857k, Authorization for Limited Release of Medical Information

<http://www.diversity.va.gov/programs/files/pwd/VA0857k.pdf>

November 27, 2013

VA HANDBOOK 5975.1
APPENDIX C

Timeframes for Processing Reasonable Accommodation Request(s) The entire reasonable accommodation process must be completed as soon as possible, but within 30 calendar days. The timeframes below are suggested guidelines.	
Day 0 Initial Request	An employee, an applicant for employment, or an individual acting on behalf of the employee or applicant, requests an accommodation, either orally or in writing
Within 5 calendar days of receiving initial request	The individual who received the request sends the employee VA Form 0857A "Confirmation of Reasonable Accommodation" and explains that completion is voluntary but would be appreciated. The DMO responds to the employee or applicant in writing using VA Form 0857b, "Acknowledgement of Receipt of Request" and provides a copy of that response to the LRAC. The DMO or supervisor begins the interactive process with the employee or applicant.
Within 10 calendar days of receiving initial request	<p>If the employee's disability is not obvious, or VA has no documentation, the DMO decides if medical information is needed; if so, the LRAC will request and facilitate collection of medical information. Note: Timeframes freeze from the time that medical documentation is requested to the time that it is received.</p> <p>For Applicants: The HRMO should make every effort to process requests from applicants as soon as possible in order for them to be able to participate in the application process. The HRMO should notify the applicant in writing of the denial within <u>ten</u> calendar days of the initial request and inform the applicant of possible avenues of redress (see Form VA 0857f). If the disability is not obvious or VA has no documentation, and the applicant does not provide a certification letter, HRMO will request medical documentation. If the applicant fails to produce required medical documentation, VA is not required to provide accommodation.</p>
Within 13 calendar days of receiving initial request	<p>When medical documentation is not requested (i.e., the disability is obvious or VA has documentation), the DMO determines whether the individual is a Qualified Individual with a Disability, in consultation with the LRAC.</p> <p>Where sufficient medical documentation is received, a determination will be made on whether the individual is a Qualified Individual with a Disability. If the documentation is not sufficient, the DMO or the LRAC may request additional medical documentation from the requestor. Again, timeframes freeze until the additional medical documentation is provided. If an interim workplace adjustment is possible, it should be made.</p>
Within 27 calendar days of receiving initial request	The DMO decides whether accommodation will be granted. When approving a request, use Form VA 0857f "Accommodation Request Determination." If the decision is to deny the request, the DMO will consult with General/Regional Counsel or ODI, prior to issuing denial of the request. If accommodation is denied, inform requestor, in writing, of denial and his or her right to request reconsideration, using VA Form 0857f. Provide a copy to the LRAC.
Within 30 calendar days of receiving initial request	Provide accommodation or, in extenuating circumstance, an interim workplace adjustment.

Exhibit 9

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID BOURKE,)
Plaintiff,)
vs.) No. 22-CV-3164
DENIS McDONOUGH, SECRETARY)
U.S. DEPARTMENT OF)
VETERANS AFFAIRS, UNITED)
STATES OF AMERICA,)
Defendant.)

The deposition of SHAWN SCHEIRER, called
for examination pursuant to the Rules of Civil
Procedure for the United States District Courts
pertaining to the taking of depositions, taken
remotely before Johnetta Stafford Taylor, a
Registered Professional Reporter within and for
the State of Illinois, on May 16, 2023 at the
hour of 12:00 p.m., via Zoom videoconferencing.

Johnetta Stafford Taylor
License No. 084-001583



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19
20 *****



I N D E X

WITNESS

EXAMINATION

SHAWN SCHEIRER

By Mr. Flaxman

4

By Ms. Flores

44

E X H I B I T S

NUMBER

MARKED FOR ID

Exhibit No. 9

10

Exhibit No. 10

15

Exhibit No. 13

23

Exhibit No. 11

26

Exhibit No. 12

27

Exhibit No. 14

29

(Exhibits previously marked by counsel.)



1 THE COURT REPORTER: On the record.

2 This deposition is being taken by means
3 of Zoom audio/videoconference, and the oath will
4 be administered remotely by the court reporter
5 pursuant to Executive Order 2020-14 and by
6 agreement of counsel.

7 will all counsel present please state
8 your name and agreement with this procedure.

9 MR. FLAXMAN: I am Kenneth Flaxman
10 representing the Plaintiff. We agree.

11 MS. FLORES: And Nicole Flores representing
12 the Defendant, and we also agree.

13 (Whereupon, the witness was
14 duly sworn.)

15 MR. FLAXMAN: Good afternoon, sir. Thank you
16 for agreeing to come earlier.

17 SHAWN SCHEIRER,
18 called as a witness herein, was examined and
19 testified as follows:

20 EXAMINATION

21 BY MR. FLAXMAN:

22 Q. Could you state your name and spell
23 your last name for us, please?

24 A. My name is Shawn Scheirer. My last



1 name is spelled S-C-H-E-I-R-E-R.

2 Q. And what's your business or occupation?

3 A. Human resource specialist.

4 Q. What was your occupation in 2020?

5 A. In 2020, my occupation was still human
6 resource specialist specializing in reasonable
7 accommodation.

8 Q. And do you still specialize in
9 reasonable accommodation?

10 A. I now specialize in employee and labor
11 relations and human resource development.

12 Q. Is that a promotion or it's just a
13 lateral change?

14 A. It's a lateral change to a different
15 section of HR.

16 Q. And are you employed by the Department
17 of Veteran Affairs?

18 A. Yes, I am.

19 Q. And where are you assigned right now?

20 A. I work for VISN 15. I no longer work
21 for Hines Hospital.

22 Q. And when did you stop working at Hines
23 Hospital?

24 A. March of this year.



1 Q. So back in 2020, were you assigned --
2 were you working at Hines Hospital?

3 A. Yes, I was.

4 Q. Did you have occasion to meet a man
5 named David Bourke?

6 A. Yes. I did meet Mr. David Bourke.

7 Q. Do you recall when -- I'm sorry if I
8 interrupted you. I don't mean to do that.

9 Is there something that you wanted to
10 say that I --

11 A. No. I'm just trying to make sure that
12 I say Mr. Bourke's last name correctly.

13 Q. I pronounce it Bourke. I think he does
14 also.

15 A. Okay.

16 Q. When did you first meet Mr. Bourke?

17 A. My last recollection would have been
18 May of 2020.

19 Q. How did you have occasion to meet him?

20 A. Mr. Bourke was notified that his
21 current -- or his previous, now current again,
22 parking spot would have to be relocated due to
23 COVID-19 door closures.

24 Q. Did you make that notification?



1 A. I think he was originally notified by
2 the police.

3 Q. By the police? Do you mean the Hines
4 V.A. Police --

5 A. Correct. The Hines Police Department.

6 Q. Are you familiar with the phrase as
7 applies to reasonable accommodation of
8 interactive process?

9 A. Absolutely.

10 Q. Are you aware of any interactive
11 process that preceded Mr. Bourke being notified
12 about the change in his parking space?

13 A. Can you please rephrase your question?

14 Q. Okay.

15 A. I'm not sure what you're trying to get
16 at with that question.

17 Q. I'll rephrase it.

18 Back in 2020, did Mr. Bourke have a
19 parking space that was assigned as a reasonable
20 accommodation for a disability?

21 A. Yes.

22 Q. And in 2020, was that parking space
23 moved?

24 A. Yes.



1 Q. And was there an interactive process
2 before Mr. Bourke's parking space was first
3 moved in 2020?

4 A. Mr. Bourke was part of the conversation
5 prior to his spot being moved.

6 Q. And do you recall the date when his
7 spot was moved?

8 A. If I go back to the documents that I
9 have here, I'm pretty sure I can find the exact
10 date where he was notified of the -- and again,
11 when we say moved, you're using that term
12 loosely. Mr. Bourke was not moved. He retained
13 both parking spots. He retained his original RA
14 parking spot, and he was also reassigned to a
15 new parking spot in the C lobby while that door
16 was closed due to COVID-19 closure procedures.

17 Q. And which door was closed?

18 A. That would be the pharmacy door, his
19 original RA spot which he does still retain.

20 Q. Was there an interactive process before
21 the pharmacy door was closed back in 2020?

22 A. No. There was no conversation with
23 Mr. Bourke prior to the police contacting him
24 letting him know that that door was closed and



1 he could no longer use it.

2 Q. And when to your knowledge was
3 Mr. Bourke assigned to a different parking spot?

4 A. Mr. Bourke -- and again, he was
5 assigned a secondary parking spot during the
6 door closure.

7 Q. And who made that assignment?

8 A. That was done through the police,
9 myself. Mr. Bourke was part of the
10 conversations letting him know that there was a
11 issue with his current spot and there would be
12 no way for him to access the door he was
13 currently at.

14 Q. And who was it who decided which doors
15 would be closed during COVID back in --

16 A. That is done by the director of the
17 hospital.

18 Q. Did you have any conversation with the
19 director of the hospital before the decisions
20 were made about which doors to close?

21 A. No, I did not.

22 Q. Who was the director of the hospital
23 back then?

24 A. James Doelling.



1 Q. Is he still there?

2 A. He is, in fact, still the director of
3 that hospital. Correct.

4 Q. Do you know if he considered the
5 reasonable accommodation issues of Mr. Bourke's
6 parking spot when he decided which doors to
7 close?

8 A. I'm not sure and I can't speak to the
9 director's decision-making processes.

10 Q. Now, you said you were looking through
11 some notes before or some documents before. Are
12 those different than the documents that I
13 emailed earlier today?

14 A. No, sir.

15 Q. Okay.

16 MR. FLAXMAN: Let's look at what's previously
17 been marked as Exhibit 9. Would you turn to
18 that? That should be the first page --

19 (Exhibit No. 9 was previously
20 marked.)

21 THE WITNESS: I was scrolling through to make
22 sure I knew exactly what we were looking at.
23 Give me a second. Page 9 -- or Exhibit 9 is
24 what you're saying is the first page?



1 MR. FLAXMAN: Page 9 of Exhibit -- yes.

2 BY MR. FLAXMAN:

3 Q. Does that begin with the email that you
4 sent on May 14 of 2020?

5 A. Yes.

6 Q. Did the door closures occur in March
7 of 2020?

8 A. They must have -- I do not know the
9 exact dates of the closures, sir.

10 Q. Okay. Is there any document that sets
11 out the date of the closures?

12 A. There may, in fact, be. I'm not sure
13 what Hines post master archives, but they may
14 have them.

15 Q. Do you recall that March of 2020 is
16 when COVID lockdown started?

17 A. I want to believe it was probably
18 around the time frame of the lockdowns or when
19 things were getting tighter.

20 Q. Well, back when you wrote this email
21 back on May 14 of 2020, you were sending -- who
22 did you send it to?

23 A. Well, it's from me to Mr. Bourke and
24 Deputy Chief Ousley.



1 Q. And why did you send this email?

2 A. Because it was made -- I was made aware
3 that Mr. Bourke was still entering the pharmacy
4 door and that door was part of the lockdowns.

5 Q. How did you become aware that
6 Mr. Bourke was still entering the pharmacy door?

7 A. I want to believe or I want to
8 remember -- and again, you're asking me to
9 remember March of 2020. I want to say it was
10 due to a conversation when the police contacted
11 me letting me know there was an employee
12 complaint about somebody entering a door that
13 was secured or that was supposed to be secured.

14 Q. Did you do any investigation to
15 determine whether or not Mr. Bourke was, in
16 fact, entering through the pharmacy door?

17 A. It is not my duty or responsibility to
18 investigate employees' behaviors at that time.

19 Q. Whose --

20 A. I notified the police.

21 Q. Do you know if the police investigated?

22 A. I cannot tell you if the police
23 investigated or not.

24 Q. Okay. And Mr. Ousley I understand is



1 no longer alive?

2 A. Correct. He is deceased.

3 Q. And in that email, you wrote: Please
4 have a unit ID a new location for Mr. Bourke
5 within his requested area. Thank you.

6 what did you mean by those three
7 [verbatim] sentences?

8 A. So in order to identify a parking spot
9 for an employee, there are three parties
10 involved; reasonable accommodation, police
11 services, and engineering.

12 The police identify spots that are not
13 utilized such as already identified handicapped
14 spots, not already identified secured for other
15 patients or other employees with reserved
16 parking as well. They take photographs. They
17 would send them back. The spot is identified as
18 the spot the employee either requests or the
19 best possible available for the employee and
20 then the engineering department creates a sign
21 that identifies that employee as having a
22 special parking spot, and the police create a
23 placard for that employee's window.

24 Q. Does engineering create a sign for that



1 parking spot?

2 A. Yes. Correct.

3 Q. At the time you wrote this email on
4 May 14, 2020, had there been a new parking spot
5 selected for Mr. Bourke?

6 A. Not at that time.

7 Q. And whose job was it to identify the
8 new reasonable accomodation parking spot?

9 A. Police services would then go around,
10 like I stated. And I know I submitted pictures
11 of various -- the police will go around
12 identifying various spots that could be
13 available for handicapped parking -- or sorry.
14 Correction. For employee RA parking spots.

15 Q. Now, if you look at the bottom email on
16 Page 1 of Exhibit 9, that appears to be an email
17 sent from David Bourke to you and Mr. Ousley?

18 A. Yes.

19 Q. Am I correct that the email at the top
20 of Page 1 of Exhibit 9 is your response to that
21 email?

22 A. The time stamps on it would tell me if
23 it's a response to it.

24 Yes, that looks like it would be a



1 response to it.

2 Q. okay.

3 MR. FLAXMAN: And then let's look at
4 Exhibit 10.

5 (Exhibit No. 10 was previously
6 marked.)

7 BY MR. FLAXMAN:

8 Q. Does that begin with an email that was
9 written by Angela Graham to you and Christopher
10 W-I-R-T --

11 A. Wirtjes.

12 Q. Okay. Could you spell that for the
13 court reporter, please?

14 A. Wirtjes is spelled W-I-R-T-J-E-S.

15 Q. And now, that email is dated May 15,
16 2020 at 10:43 a.m.; is that correct?

17 A. That is correct.

18 Q. And it refers to a conversation you
19 had -- or that Angela Graham is describing that
20 she had with you?

21 A. Correct.

22 Q. Do you recall that conversation?

23 A. I recall -- reading this email, I can
24 recall vague parts of this conversation, but I'm



1 not going to remember the entire conversation in
2 full detail.

3 Q. Okay. Do you recall why -- did Angela
4 Graham explain to you why she thought that
5 moving Mr. Bourke's RA parking spot to C Section
6 would be better?

7 A. I do, in fact, remember that
8 conversation to that ability. And I also
9 remember again -- I'm not comfortable with the
10 fact that you keep referring to it as
11 permanently moving the employee's parking spot.

12 It was always meant to be temporary
13 until the COVID-19 restrictions were lifted.
14 Mr. Bourke was not losing his spot he originally
15 had.

16 Q. Now, do you recall what it was that
17 Miss Graham told you that explained why she
18 thought moving David's parking spot to C Section
19 would be better?

20 A. There was open spots directly next to
21 the entrance. It was employee access only,
22 which means there was a screening point right
23 there. And there was already an area where
24 scooters could be parked overnight for charging



1 or for I guess storage, if you will. And it
2 involved very few steps from the point of the
3 employee parking to the point of the employee
4 getting screened and to having access to his
5 mobility devices. In this case, his scooter.

6 Q. Now, when you read this email -- or
7 when you spoke with Miss Graham, did you
8 understand what it was that moving David's
9 parking spot to C Section would be better than?
10 what was the alternative?

11 A. Well, Mr. Bourke originally wanted us
12 to park him in a spot we could not give him
13 because it was already designated handicapped.
14 we cannot take handicapped spots away from
15 veterans, because that would be violating
16 another ADA problem.

17 Two, the other issue with Mr. Bourke's
18 original request is he wanted to leave his
19 scooter in a common area in the main entrance of
20 the hospital where it could not be secured or
21 even out of public view. He wanted -- I guess,
22 I do not know the details of Mr. Bourke's
23 thought process; but originally, he wanted to
24 leave it in the main lobby for him to come



1 through the door temporarily. However, that is
2 a 24-hour door that is not patrolled by police
3 every minute of every day and, therefore, if a
4 veteran was to drive off with his scooter or if
5 anything was to happen to that piece of
6 property, there would be no way for us or anyone
7 else to know what happened.

8 Q. And --

9 A. And finally, again, if we're talking
10 about mobility issues, it was a further move
11 from where Mr. Bourke was requesting to the main
12 lobby through screening to get to his mobility
13 device versus the C entrance which was fewer
14 steps, fewer distance traveled.

15 Q. What's your recollection as to where
16 Mr. Bourke would safely secure his scooter if he
17 was using a parking spot in C Section?

18 A. So his scooter would have been stored
19 in -- I think back then it was the patient
20 advocacy area, which is not far from the police
21 station. And again, it's outside the public
22 view and outside of common areas or after-hour
23 traffic.

24 Q. And how if at all would Mr. Bourke



1 **secure his scooter in the patient advocacy area?**

2 A. Like I said, I guess it would've been
3 the same way he secured it in the common area.

4 (Court reporter clarification.)

5 THE WITNESS: My apologies, ma'am. If I'm
6 speaking too fast, let me know and I'll slow
7 down. Ma'am, I do apologize for that.

8 MR. FLAXMAN: Let me just interrupt. You are
9 speaking too fast, and let me ask you to try to
10 speak slower.

11 THE WITNESS: Great. Awesome. I appreciate
12 that.

13 So in regards to your question, please
14 say it again so I can give a clear answer.

15 BY MR. FLAXMAN:

16 Q. Could you tell us what your
17 understanding was of how Mr. Bourke would secure
18 his scooter in the patient advocacy area?

19 A. Again, the only assumption I can make,
20 because there was no questions asked, is that
21 Mr. Bourke would most likely take his key.
22 However, when you look at other factors such as
23 the fact of the main entrance to the hospital
24 where he was going to park it is a 24-hour door



1 with 24-hour patient traffic, not to mention
2 emergency access versus the C lobby which is an
3 after-hour area, that the police -- the police
4 station is on the same hall corridor of that
5 area. There is very little if any after-hour
6 traffic that would be putting his scooter at
7 risk.

8 Q. Was there a locked room in the patient
9 advocacy area for Mr. Bourke to store his
10 scooter?

11 A. For either location, there was no
12 locked areas for the scooter.

13 Q. Do you know if Mr. Bourke was storing
14 his scooter in a locked area when he was using
15 his RA parking spot before COVID restrictions?

16 A. I was informed that he was parking his
17 scooter in some type of storage area. However,
18 that would not be authorized and I do not have
19 fact to back that up, so I'm not sure how
20 Mr. Bourke would have in fact been securing his
21 scooter prior to because no scooter should be
22 locked or hidden or put in a place that is
23 secured outside of the ability for emergency
24 management teams to get to.



1 Q. Is there a particular regulation that
2 you're referring to to support that contention?

3 A. I'm pretty sure I can bring up the -- I
4 mean I'm sure I can find the regulation that
5 would state that no flammable device that's not
6 the V.A.s or that the V.A. can't access should
7 be locked in the closet. But off the top of my
8 head, I do not know the regulation.

9 Q. Do you know where Mr. Bourke stores his
10 scooter now?

11 A. I do not know where he stores it now.
12 I'm not the area coordinator for the hospital.

13 Q. Have you ever seen Mr. Bourke's
14 scooter?

15 A. I have seen it once when he drove it
16 into HR for a meeting.

17 Q. When you stopped working in -- when you
18 stopped working -- no.

19 when your job duties stopped being
20 involved with reasonable accommodations, did you
21 know where Mr. Bourke was parking his scooter?

22 A. I'm trying to make sure I understand
23 your question.

24 Q. Well, at some point, you stopped



1 working -- your job responsibilities stopped
2 being involved with reasonable accommodations;
3 is that right?

4 A. Correct.

5 Q. And that was in 2002 [sic] I think you
6 said?

7 A. No. I no longer worked in RA. Is it
8 two thousand -- no. Let's say it was mid
9 twenty -- I'm not sure when -- I'm not sure
10 when -- I'm trying to remember exactly when I
11 left RA to join ERLR. I think it was 2021. Off
12 the top of my head, I'm not -- again, I would
13 have to go back and actually see my EOPF to
14 double-check when I exactly left. But it was
15 2021-2022. No, it had to be 2021. Because in
16 2022, I was still in ERLR. So it had to be
17 2021, sir.

18 Q. Well, when you stopped in 2021, do you
19 know where Mr. Bourke was parking his scooter?

20 A. No, sir.

21 Q. Did Mr. Bourke ever express to you his
22 fear that his scooter could not be safely
23 secured in the parking spot adjacent to
24 C Section?



1 A. I know I'm looking at the email -- is
2 it still the same exhibit? Or maybe I moved it
3 down. Which exhibit is this where I'm actually
4 looking at -- Exhibit 13. Where he does bring
5 up -- 'Per our conversation today, I will
6 continue to park by 228 handicapped spot and
7 enter into my work station ASU basement in
8 Building 200, in order to leave my scooter in a
9 locked-secure area at my work station.'

10 So he does bring up the concern of his
11 scooter being locked and secured.

12 (Exhibit No. 13 was previously
13 marked.)

14 BY MR. FLAXMAN:

15 Q. Now, he goes on in that email, which is
16 in Exhibit 13, to refer to the 16 or so
17 handicapped parking areas behind Building 200.

18 Do you see that?

19 A. Yep.

20 Q. Do you have any idea what he's
21 referring to?

22 A. He's referring to the generalized
23 handicapped locations that are all handicapped
24 parking. So it's not employee parking. It is



1 not generalized parking. It is parking for
2 handicapped individuals, to include our veteran
3 patient population.

4 Q. And is there a regulation that
5 prohibited assigning one of those handicapped
6 parking spaces to Mr. Bourke during the COVID
7 lockdown?

8 A. I would have to go back and look at the
9 exact regulations. But from my understanding,
10 Illinois and state law does require a certain
11 number of parking spots be designated
12 handicapped accessible.

13 So in theory, in assigning a
14 handicapped to spot Miss [sic] Bourke, we would
15 then have to move or assign a new handicapped
16 spot. I don't have the authority to designate
17 parking for general parking. And it has always
18 been common practice that handicapped parking is
19 not to be designated for one individual person.
20 Therefore, we take spots that are general or all
21 access spots and we turn those into employee
22 patient -- or employee parking.

23 Q. Do you know if any consideration was
24 ever paid to changing -- to relaxing that policy



1 during the COVID lockdown for Mr. Bourke?

2 A. Not that I'm aware of.

3 Q. Did you request that --

4 A. I did not.

5 Q. Okay. Do you know -- whose decision is
6 it or was it not to consider taking one of the
7 handicapped parking spots and assigning it to
8 Mr. Bourke during the COVID lockdown?

9 A. I don't know if I understand your
10 question, but there would be nothing stopping
11 Mr. Bourke from utilizing a handicapped parking
12 spot if he has a handicapped placard. He would
13 be able to park there without any restriction if
14 the spot is available.

15 Q. Now, you see the assigned RA parking
16 spot that Mr. Bourke has, is that designated
17 just for him?

18 A. It is. However, I will say the only
19 thing that stops people from parking there is
20 employees. The police will not -- I've never
21 heard of the police actually taking action
22 against a veteran patient parking in even an
23 employee reserved parking spot. The police will
24 make attempts to contact the patient. The



1 police will make attempts to get the patient to
2 move their car, but oftentimes the only people
3 that are actually going to be -- that are
4 restricted to the V.A.'s policy are the
5 employees.

6 Q. Let's go back to the exhibit we were
7 talking about before -- or the next one
8 actually. Let's look at Exhibit 10, which
9 starts on the third page of the packet you have.

10 A. Page 3. Okay.

11 Q. Now it starts with an email I think --
12 did we talk about this?

13 A. We did, sir.

14 Q. All right. Thank you.

15 MR. FLAXMAN: Let's look at Page 5, which is
16 labeled Exhibit 11, Page 1.

17 (Exhibit No. 11 was previously
18 marked.)

19 BY MR. FLAXMAN:

20 Q. Is there -- that begins with an email
21 from Mr. Bourke in response to an email from
22 you, May 18, 2020 at 10:00 a.m.; is that right?

23 A. At 10:00 a.m.? Correct.

24 Q. Okay. And why did you write that



1 email?

2 A. The one that says: Great news, thank
3 you so much for your hard work in this matter?

4 Q. Yes.

5 A. I will contact the police to identify a
6 spot.

7 That was in reference to -- I want to
8 say it was in reference to the conversation
9 involving C lobby, sir.

10 Q. okay.

11 A. That's why I say I will contact the
12 police to identify a new spot.

13 MR. FLAXMAN: Let's look at Exhibit 12, which
14 is the 9th page of the packet.

15 (Exhibit No. 12 was previously
16 marked.)

17 BY MR. FLAXMAN:

18 Q. That's an email to you from Angela
19 Graham dated May 18, 2020 at 1:48 p.m.

20 Do you see that?

21 A. Yes.

22 Q. Do you remember receiving this?

23 A. I would say most likely, sir.

24 Q. As you sit here today, do you know what



1 Miss Graham meant when she wrote he will need to
2 have assistance with getting to his car when
3 this is completed?

4 A. I don't, actually. I don't understand
5 why this wouldn't have been brought to my
6 attention further, and I don't understand what
7 this is referring to.

8 Q. Do you recall any work that was done to
9 consider what kind of assistance Mr. Bourke
10 would need to get to his car when this was
11 completed?

12 A. I am not. Because once again, the
13 entry and exit into C lobby did not involve any
14 leg lifting. There was no obstructions into the
15 building. And there was more obstructions to
16 his original spot than there are to the C lobby
17 parking that was temporarily assigned to him.
18 So I'm not sure what assistance she's referring
19 to in this off the top of my head and I'm not so
20 sure I'm aware of any obstructions at that time.

21 Q. What obstructions were there to the
22 original parking spot?

23 A. So you're referring to the original
24 spot that Mr. Bourke had. He parked outside the



1 back side of Building 200, the pharmacy entry.
2 In the middle of that area is a massive
3 round-about area which would cause someone to
4 have to walk all the way around to get into the
5 building. Versus the C lobby entrance, which is
6 a straight walk using a wheelchair access ramp
7 over the curb, so there's no lifting of the
8 legs, into two electronic doors that open once
9 you approach them. Once you go around through
10 there, you have the screening. Approximately 15
11 to 20 feet later would have been the patient
12 advocacy office and where his scooter was
13 parked.

14 And that's a rough recollection of me
15 actually walking these parking spots to confirm
16 what obstructions were in his way. I walked
17 every single one of them, sir.

18 MR. FLAXMAN: Let's look at Exhibit 14.

19 (Exhibit No. 14 was previously
20 marked.)

21 BY MR. FLAXMAN:

22 Q. Is that a sworn declaration that you --
23 or a written affidavit that you prepared in
24 connection with Mr. Bourke's EEO complaint?



1 A. which page is that, sir -- I've got it.

2 I think it starts at Page 11?

3 Q. That's correct.

4 A. Yes. I now see it. Yes. This looks
5 like an EEOC affidavit.

6 Q. Did you prepare this yourself? The
7 answers to it yourself?

8 A. Yes, sir.

9 Q. Do you know where the highlighting came
10 from?

11 A. No, I don't.

12 Q. Okay. When you wrote this affidavit,
13 was your recollection better then than it is
14 now --

15 A. Can you hear me?

16 Q. Excuse me?

17 A. Hello.

18 Q. I didn't hear your answer. Let me
19 start over.

20 When you wrote this affidavit, was your
21 recollection better about the March and April
22 and May --

23 A. Hello?

24 MR. FLAXMAN: Are you hearing me or...



1 Is it my problem or his problem?

2 THE COURT REPORTER: I can hear you.

3 MS. FLORES: I can hear you.

4 MR. FLAXMAN: Let me start over.

5 BY MR. FLAXMAN:

6 Q. When you wrote this affidavit, was your
7 recollection better about the events of March,
8 April, and May 2020 than it is today?

9 (Short pause.)

10 MR. FLAXMAN: Are you getting audio, sir?

11 THE WITNESS: Can anyone hear me?

12 MR. FLAXMAN: Yes. Can you hear us?

13 THE WITNESS: Why can I not hear anyone else?

14 MS. FLORES: He can't hear.

15 THE WITNESS: Now I can hear. Somebody just
16 said something.

17 MR. FLAXMAN: Okay.

18 BY MR. FLAXMAN:

19 Q. When you wrote this affidavit, was your
20 recollection better about the events of March,
21 April, and May of 2020 than it is today?

22 A. I would hope.

23 Q. Okay. What is V.A. Handbook 5975?

24 A. It's the handbook that governs the



1 proper procedure for requests of disability.

2 I.E., it covers RA.

3 Q. No. 13 in the affidavit, you wrote:
4 This issue was brought to my attention on or
5 around 5/14/2020.

6 Do you see that?

7 A. Yes.

8 Q. Was there someone else who worked in
9 human resources who could have been involved in
10 Mr. Bourke's RA parking spot?

11 A. There was somebody involved before and
12 after me.

13 Q. Was there somebody else who could have
14 been involved in March of 2020?

15 A. No.

16 Q. Okay. Was there somebody else who
17 could have been involved in April of 2020?

18 A. No.

19 Q. So is it correct that human resources
20 was not involved in deciding which doors would
21 be closed to the hospital?

22 A. Yes. As far as I'm aware, human
23 resources was not involved in the door closures
24 before the pandemic. The only other person that



1 would have better recollection of that than
2 myself would be the human resources officer at
3 the time, Jodi Yenerall.

4 Q. Could you spell her last name?

5 A. Y-E -- give me a second. I can bring
6 it up.

7 It's spelled Y-E-N-E-R-A-L-L.

8 Q. Is she still employed at the V.A.?

9 A. She is. She no longer works for Hines,
10 but she is employed by the Department of
11 Veterans Affairs.

12 Q. Do you know where she works?

13 A. I think she works for the Pittsburgh
14 V.A.

15 Q. Do you know why she left Hines?

16 A. She probably left for a promotion.

17 Q. Do you know what her position is now?

18 A. She now runs a CCOE team directly.

19 Q. And what is that?

20 A. I want to say it's part of the pay
21 setting process.

22 Q. Okay. In Paragraph 25, you identify
23 Miss Yenerall as somebody with whom you
24 consulted; is that right?



1 A. Correct. Because not only was she HRO,
2 but she was also in the event of my nonexistence
3 or in my absence, she would have been the LRAC
4 for Hines as the chief of HR of our team at the
5 time.

6 Q. Could you tell us what LRAC stands for?

7 A. Local reasonable accommodation
8 coordinator.

9 Q. Was there a particular door that the
10 director would use to enter the campus during
11 the COVID lockdown?

12 A. I think, if I'm not mistaken, the
13 director used the main entrance on a regular
14 occasion. But if he had a special door, I
15 didn't know about it.

16 Q. Okay. And in Paragraph 45, Exhibit 14,
17 Page 7, you wrote that Mr. Bourke was offered
18 many options for a temporary accommodation.

19 Aside from the one we talked about,
20 moving his parking spot to the C Section, what
21 other options was he offered for a temporary
22 accommodation?

23 A. You said Page 5?

24 Q. Page 7 I meant.



1 A. Oh, Page 7. Okay.

2 Q. It's Page 17 of the packet.

3 A. Paragraph? Which one?

4 Q. 45. Mr. Bourke --

5 A. 45.

6 Q. Mr. Bourke was offered many options for
7 a temporary accomodation.

8 Do you see that?

9 A. Yes. I do now see that. Yes.

10 Q. Other than the option that we
11 discussed, moving to the C Section, what other
12 options was he offered?

13 A. Let me see if I can start over.

14 So again, the C lobby was one of them.
15 So there were three -- so when I said this, I
16 should have said it more clear. But to my
17 recollection, there were multiple spots reviewed
18 to include the one that Mr. Bourke requested.
19 Mr. Bourke was also given the option to retain
20 both parking spots, which he did retain, versus
21 a permanent move to his RA parking spot. So
22 those are three different options right there.

23 Q. Well, could you explain to us what you
24 mean by the lobby option?



1 A. So again, originally we reviewed his
2 main entry lobby request like he requested. It
3 was deemed not to be feasible for, again, the
4 fact that we were not going to designate a
5 handicapped spot -- we were not going to
6 redesignate a handicapped spot to an individual
7 person. It was a -- there was more trip hazards
8 in the way or fall hazards between the main
9 entrance and the spot that he had requested.
10 Mr. Bourke brought concerns over his scooter
11 security, and yet there was no way to secure his
12 scooter in that main lobby at all. It's a
13 common use door, 24-hour access. There's
14 constant patient presence 24 hours a day in that
15 area.

16 After that, we spoke with Miss Graham.
17 She brought up the C area and how her scooter is
18 parked over there, there's room for another
19 scooter over there. Once again, looked at it.
20 I again walked that -- all those spots myself,
21 determined that there was little to no trip
22 hazards. There were ways to get into the
23 building without having to -- with reduced risk
24 of falling. I won't say there's no risk.



1 There's no such thing as no risk, but reduced
2 risk of falling or trip hazards. It was a
3 shorter distance to travel. Patient advocacy
4 did agree or did acknowledge that he could park
5 his scooter there.

6 And then upon towards the end of the
7 conversation with Mr. Bourke, I offered that we
8 could either permanently move his parking spot
9 to C lobby. He made it very clear to me that he
10 wanted to return to his parking near the
11 pharmacy entrance when the door was reopened.

12 So Mr. Bourke to this day still retains
13 two parking spots assigned to Mr. Bourke.

14 Q. You said patient advocacy agreed to --

15 A. No. They acknowledged. They said yes,
16 the employee could park here. There would be no
17 issue with the employee putting their mobility
18 device in that area, in this case the scooter,
19 after hours.

20 Q. Do you recall the person who told you
21 that?

22 A. I do not. I would say you would have
23 to go back and ask Miss Graham. Miss Graham
24 being the supervisor was a lot more involved in



1 communicating with them than I was.

2 Q. So is that something that Miss Graham
3 told you about what patient advocacy --

4 A. Yes. Miss Graham identified that area.

5 Q. Let me finish my question,
6 Mr. Scheirer. It makes a terrible record.

7 Is that something Miss Graham told you
8 someone from patient advocacy told her?

9 A. No. Miss Graham also utilizes that
10 area. And as his supervisor, it would be her
11 responsibility to also assist in locating and
12 identifying potential alternatives.

13 Q. But my question was: Did Miss Graham
14 tell you that someone from patient advocacy had
15 told her that David could park his scooter in
16 the patient advocacy area?

17 A. I'm not understanding your question,
18 because I thought I just answered that question.

19 Q. Well --

20 A. Miss Graham, being the supervisor,
21 spoke with patient advocacy. They granted her
22 permission. They also stated that there was --
23 there would be no issues with another scooter
24 being parked there.



1 I had a conversation after the fact
2 where they confirmed that conversation to be
3 true.

4 Q. Yes. With whom did you have that
5 conversation?

6 A. I don't remember his name. I don't
7 interact with patient advocacy on a regular
8 basis. I can describe the patient advocacy
9 employee, but I don't know his name.

10 Q. Was anybody else present during this
11 conversation?

12 A. No.

13 Q. Can you describe the person from
14 patient advocacy --

15 A. Sure.

16 Q. Let me finish my question.

17 -- with whom you had this conversation?

18 A. Sure.

19 Roughly 6-foot tall. Beard, midchest
20 length. I know him to be patient advocacy. I
21 don't interact with him on a regular basis, so I
22 do not remember his name. Gray, blackish in
23 beard and hair color -- or I'm sorry. He's
24 bald. So just facial hair. No hair on the top



1 of his head. I don't know the color of his
2 eyes. Medium weight.

3 Q. When is the last time you saw that
4 person?

5 A. The last time I was at the hospital
6 getting care for myself. So about three weeks
7 ago.

8 Q. And was he still in patient advocacy?

9 A. To my knowledge.

10 Q. Okay. So where did David park during
11 the COVID lockdown?

12 A. I do not know where he actually parked.
13 I'll say it again. Mr. Bourke retained
14 two spots.

15 Q. Well, the first spot was the one that
16 he had previously parked on before the COVID
17 lockdown; is that right?

18 A. Correct. His originally assigned
19 COVID -- or his originally assigned RA parking
20 spot.

21 Q. And where was the second assigned
22 parking spot?

23 A. The C lobby entrance.

24 Q. Was there a sign put up that this was



1 his parking spot?

2 A. There was.

3 Q. Did he ever complain to you about that
4 c lobby parking spot?

5 A. The only complaint I have that I can
6 remember was that Mr. Bourke made it very clear
7 he wanted to be able to park in his original
8 spot when that door was unlocked, when the
9 pharmacy door was allowed to be reentered again.
10 And to my knowledge, that door is once again
11 open.

12 Q. How many conversations did you have
13 with Mr. Bourke, if any, about this parking
14 spot?

15 A. I'd have to count the emails, but
16 probably less than a dozen.

17 Q. Were these face-to-face conversations?

18 A. Face to face with Mr. Bourke, I want to
19 say I had one or two conversations with
20 Mr. Bourke.

21 Q. Can you tell us about when the first
22 one was?

23 A. On or around May 14.

24 Q. And where did the conversation take



1 place?

2 A. It occurred in the reasonable
3 accommodation coordinator's office in HR
4 Building 17.

5 Q. Is that when Mr. Bourke came with his
6 scooter?

7 A. Correct.

8 Q. Was there anybody else present besides
9 you and Mr. Bourke?

10 A. No.

11 Q. When is the second time that you can
12 recall meeting face to face --

13 A. I'm --

14 Q. Let me finish my question. I'm sorry
15 if I paused too long.

16 When was the second time that you
17 recall meeting with Mr. Bourke in a face-to-face
18 conversation?

19 A. I don't know if we ever had a second
20 face-to-face conversation.

21 Q. Now, we know that you received
22 information from Angela Graham about Mr. Bourke
23 and his reasonable accommodation parking spot
24 issue back in May of 2020.



1 **Did you receive information from anyone**
2 **else about Mr. Bourke and his RA parking spot**
3 **issue?**

4 A. It would have been just the initial
5 conversations with the police regarding the
6 issue with the door being secured.

7 **Q. And who was the --**

8 A. And the only other people that would be
9 part of this conversation would be the first and
10 secondary supervisors, which in this case as you
11 already spoke with Mr. Wirtjes, Mr. Wirtjes
12 would be the only other person.

13 **Q. Do you remember who it was that you**
14 **spoke with from the police?**

15 A. Deputy Chief Ousley.

16 MR. FLAXMAN: All right. I have nothing
17 further.

18 THE WITNESS: Thank you, sir.

19 MS. FLORES: Give me just one minute, please.

20 THE WITNESS: Yes, ma'am.

21 (Short pause.)

22 MS. FLORES: I just have a couple of
23 questions when you're ready.

24 THE WITNESS: I'm ready, ma'am.



EXAMINATION

BY MS. FLORES:

Q. Generally speaking, does a reasonable accommodation extend to an employee's personal property?

A. No, ma'am.

Q. Would that extend to personally owned assistive equipment like scooters or walkers, personal vehicles?

A. No, ma'am. Those are outside the purview of the RA process.

Q. So if an employee, like Mr. Bourke, is using a personally owned assistive device, does the RA -- would the reasonable accommodation cover maintenance of that device?

A. No, ma'am. If he had his own personal scooter, he would have had to request a scooter through the RA process that would have been retained on V.A. property.

Q. Okay.

A. Because the difference between personal property and V.A. property is the employee has every right to leave the facility with his property such as the scooter.



1 The V.A. still owns and is responsible
2 for the operation of an RA assigned scooter.
3 Therefore, it would be retained on property and
4 maintained by RA and engineering.

5 Q. And do you know if Mr. Bourke's scooter
6 was an RA scooter?

7 A. To my knowledge, I do not know if his
8 scooter -- it was not assigned to me during my
9 time, and I did not see any record that he was
10 assigned an RA scooter prior to my time.

11 Q. And if it was not an RA scooter, would
12 it have been your role to find storage for a
13 personal scooter?

14 A. No, ma'am. A patient's personal
15 property would not have been allowed to be
16 maintained on property.

17 Q. Nevertheless, did you try to
18 accommodate Mr. Bourke by taking into
19 consideration that he needed to ambulate the
20 shortest distance possible between his vehicle
21 and where he independently worked out a storage
22 situation for his scooter?

23 A. Correct, ma'am.

24 MS. FLORES: Thank you.



1 I don't have any other questions.

2 MR. FLAXMAN: I have nothing on that.

3 Signature?

4 MS. FLORES: We will reserve signature.

5 MR. FLAXMAN: Okay. Thank you very much,
6 sir.

7 I want the original, E-Tran.

8 THE COURT REPORTER: Copy, Nicole?

9 MS. FLORES: Same. Yes, please.

10 FURTHER DEPONENT SAITH NOT.

11 (Deposition concluded at 12:57 p.m.)
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID BOURKE,)
Plaintiff,)
vs.) No. 22-CV-3164
DENIS McDONOUGH,)
Defendant.)

This is to certify that I have read the transcript of my deposition taken in the above-entitled cause by Johnetta Stafford Taylor, Certified Shorthand Reporter, on May 16, 2023 and that the foregoing transcript accurately states the questions asked and the answers given by me as they now appear with any attached errata sheet(s).

SHAWN SCHEIRER

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____ 2023.

Notary Public



1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, JOHNETTA STAFFORD TAYLOR, a
5 Certified Shorthand Reporter within and for the
6 County of Cook County and State of Illinois, do
7 hereby certify that heretofore, to-wit, on
8 May 16, 2023 remotely appeared before me via
9 Zoom videoconferencing, SHAWN SCHEIRER in a
10 cause now pending and undetermined in the U.S.
11 District Court Northern District of Illinois,
12 Eastern Division, wherein DAVID BOURKE is the
13 Plaintiff, and DENIS McDONOUGH, SECRETARY U.S.
14 DEPARTMENT OF VETERANS AFFAIRS, UNITED STATES OF
15 AMERICA is the Defendant.

16 I further certify that the said witness was
17 first duly sworn to testify the truth, the whole
18 truth and nothing but the truth in the cause
19 aforesaid; that the testimony then given by said
20 witness was reported stenographically by me in
21 the presence of the said witness, and afterwards
22 reduced to typewriting by Computer-Aided
23 Transcription, and the foregoing is a true and
24 correct transcript of the testimony so given by



1 said witness as aforesaid.

2 I further certify that the signature to the
3 foregoing deposition was reserved by counsel for
4 the respective parties.

5 I further certify that the taking of this
6 deposition was pursuant to Notice, and that
7 there were present at the deposition the
8 attorneys hereinbefore mentioned.

9 I further certify that I am not counsel for
10 nor in any way related to the parties to this
11 suit, nor am I in any way interested in the
12 outcome thereof.

13 IN TESTIMONY WHEREOF: I have hereunto set my
14 verified digital signature this 19th day of May
15 2023.

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NOTARY PUBLIC, COOK COUNTY, ILLINOIS



MC CORKLE LITIGATION SERVICES, INC.
200 North LaSalle Street
Suite 770
Chicago, Illinois 60601

May 19, 2023

Ms. Nicole Flores

United States Attorney's Office

219 South Dearborn Street, 9th Floor
Chicago, Illinois 60604

IN RE: Bourke vs. McDonough
Dear Ms. Flores:

Attached is your copy of the deposition
of Shawn Scheirer taken on May 16, 2023 in the
above-entitled action.

Please submit the transcript to the
deponent for review and signature. The errata
sheets have been provided for any changes or
corrections the deponent wishes to make. All
changes or corrections must be made on the
errata sheets, not on the transcript itself.
Then have the deponent sign the signature page
and have the signature notarized. All errata
sheets should also be signed.

After the deponent has completed the
above, please email the signature page and
errata sheet(s) to me at the email address
below, and I will provide copies to the
respective parties.

If you have any questions regarding the
above procedure, please feel free to contact me
at (312) 263-0052.

Sincerely,
Cynthia Alicea, calicea2@mcdeps.com
McCorkle Litigation Services, Inc.

cc: All Attorneys Ordering Transcript



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Exhibit 10



Department of Veterans Affairs

ACCOMMODATION REQUEST DETERMINATION

1. NAME OF EMPLOYEE MAKING THE REQUEST

David Bourke

The purpose of this form is to inform you of our decision regarding your request for accommodation and to provide information to you. If our information is incorrect, please inform me as soon as possible.

2. I AM THE DESIGNATED MANAGEMENT OFFICIAL (DMO) FOR THIS REQUEST. MY CONTACT INFORMATION IS BELOW..

3. MY NAME IS

Angela Graham

4. MY PHONE NO. IS

20784

5. MY EMAIL IS

angela.graham@va.gov

6. YOUR REQUEST WAS MADE TO ENABLE YOU TO

- ☐ APPLY/INTERVIEW FOR A JOB,
- ☒ PERFORM THE ESSENTIAL FUNCTIONS OF YOUR POSITION, OR
- ☐ ACCESS A BENEFIT OR PRIVILEGE OF EMPLOYMENT.

7. YOU REQUESTED THE FOLLOWING ACCOMMODATION *(Describe briefly)*

To be exempt from rotation and a reserved parking spot.

8. YOUR REQUEST IS APPROVED, AND WILL BEGIN ON *(Date)* 08/30/20199. ALTHOUGH WE ARE NOT PROVIDING THE ACCOMMODATION REQUESTED, WE ARE OFFERING AN ACCOMMODATION WHICH WE BELIEVE WOULD BE EFFECTIVE *(Describe the alternative accommodation)*10. WE BELIEVE THIS ACCOMMODATION WOULD BE EFFECTIVE BECAUSE *(Describe why you believe it will be effective)*

It will allow you to perform your essential job functions while working within your limitations.

11. YOUR ORIGINAL REQUEST WAS DENIED BECAUSE:

- ☐ YOU DO NOT HAVE A DISABILITY COVERED BY THE REHABILITATION ACT
- ☐ THE ACCOMMODATION REQUESTED WOULD NOT BE EFFECTIVE
- ☐ THE ACCOMMODATION WOULD REQUIRE REMOVAL OF AN ESSENTIAL FUNCTION OF THE JOB
- ☐ THE MEDICAL DOCUMENTATION PROVIDED DID NOT SUPPORT THE REQUEST
- ☐ THE ACCOMMODATION WOULD REQUIRE LOWERING OF A PERFORMANCE STANDARD OR PRODUCTION STANDARD
- ☐ THE ACCOMMODATION WOULD CAUSE AN UNDUE HARDSHIP TO THE OPERATION OF THE UNIT
- ☐ ALLOWING YOU TO WORK WOULD CREATE A DIRECT THREAT FOR YOU AND/OR OTHERS

VA FORM
MAY 2013

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12. DETAILED REASONS FOR THE DENIAL OF THE ORIGINAL REQUEST: *(Be specific, e.g. why the accommodation would not be effective)*

13. YOUR REQUEST WAS ADMINISTRATIVELY CLOSED BECAUSE OF NO RESPONSE FROM YOU TO INQUIRIES MADE ON THE FOLLOWING DATES: _____

WHEN YOU WISH TO PURSUE THIS REQUEST, PLEASE CONTACT ME AND I WILL RE-OPEN IT

14. YOU WILL HAVE A WEEK FROM THE DATE OF THIS NOTICE TO DECIDE WHETHER TO ACCEPT THE ALTERNATIVE ACCOMMODATION OFFERED. IF YOU DECIDE NOT TO ACCEPT, YOUR OPTIONS ARE LISTED BELOW.


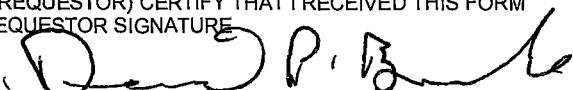
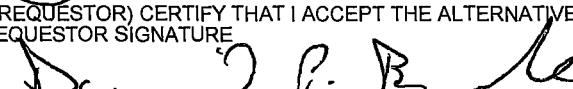
15. IF YOU WISH TO REQUEST RECONSIDERATION OF THIS DECISION, YOU MUST:

Within seven (7) calendar days of receipt of this denial, request reconsideration by the second level Designated Management Official (DMO). After receiving a request for reconsideration, the DMO has 14 calendar days to render a decision and notify the requester, in writing.

16. IF YOU WISH TO FILE AN EEO COMPLAINT, PURSUE A MERIT SYSTEMS PROTECTION BOARD COMPLAINT OR A UNION GRIEVANCE, GUIDANCE IS PROVIDED BELOW:

- To file an EEO complaint, applicants for employment or employees must contact an EEO counselor within forty-five (45) days of notice of the denial, pursuant to 29 C.F.R. Part 1614. Contact your local Office of Resolution Management for further information.
- Non-Bargaining Unit Employees may file an Administrative Grievance within 15 calendar days of receiving the denial. Contact your local Human Resources Office for further information.
- Bargaining Unit Employees may file a grievance in accordance with applicable Collective Bargaining Agreements. Contact your local union representative for further information.
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
- Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. §1201.3.
- Employees and applicants are encouraged to participate in information resolution processes available to address the reasonable accommodation outcome. The ADR process is outlined in VA Directive 5978: Alternative Dispute Resolution. Individuals may participate in ADR as part of the above avenues of redress or independently. If participation in independent of the above avenues of redress, it does not meet the requirements for filing claims under the aforementioned processes. If the employee believe she or he may also want to pursue other avenues of redress, the employee should check with the appropriate EEO/Union/HR office to ensure that time requirements are met. Contact your local ADR Coordinator at http://www1.va.gov/adr/docs/ADR_Coordinators_List.pdf for further information.

Reconsideration, review, and the use of alternative resources does not affect the time limits for initiating statutory and collective-bargaining claims. Your participating in VA's information alternative dispute resolution process will neither satisfy nor delay time restrictions of the formal processes indicated above.

17. DMO SIGNATURE 	18. DATE 9/18/19
19. I (REQUESTOR) CERTIFY THAT I RECEIVED THIS FORM REQUESTOR SIGNATURE 	20. DATE 9/18/19
21. I (REQUESTOR) CERTIFY THAT I ACCEPT THE ALTERNATIVE ACCOMMODATION OFFERED (IF ONE IS OFFERED) REQUESTOR SIGNATURE 	22. DATE 9/18/19

This form should be retained separately from the employee's Official Personnel Folder.