

Exhibit 21

Scheirer, Shawn D (HIN)

From: Graham, Angela
Sent: Wednesday, June 3, 2020 12:58 PM
To: Scheirer, Shawn D (HIN)
Cc: Alexander, Tiffany M. (HIN)
Subject: FW: Parking-entry into Hines Hospital and secure storage of electric scooter.

David has declined to accept the parking spot in the C section of bldg. 1 . See email below

From: Bourke, David <David.Bourke@va.gov>
Sent: Wednesday, June 3, 2020 12:39 PM
To: Graham, Angela <Angela.Graham@va.gov>
Subject: Parking-entry into Hines Hospital and secure storage of electric scooter.

Per our conversation today, I will continue to park by Bldg. 228 handicap spot and enter into my work station ASU basement of Bldg. 200, in order to leave my scooter in a locked-secure area at my work station. The added distance and ambulation and subsequent pain, will be endured for safety concerns for the secure storage of my equipment. I will await the opening of the back of Bldg. 200 (outpatient pharmacy) to park in my RA assigned parking area #1011. Why the 16 or so handicap parking areas behind Bldg. 200, which are close to entry and convenient, are still denied access for Veterans to utilizes, makes no sense what-so-ever?

David Bourke
Ambulatory surgery unit Bldg. 200
Basement room B 019 ext. 28019 or 20262.

Exhibit 22

Ifabiyi, Candace A.

From: Doelling, James (HIN)
Sent: Monday, July 6, 2020 12:05 PM
To: Ifabiyi, Candace A.
Subject: FW: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

Just want to confirm that the highlighted part is accurate.....

From: Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>
Sent: Monday, July 6, 2020 11:59 AM
To: Doelling, James (HIN) <James.Doelling@va.gov>
Cc: Hines DOS <HinesDOS@va.gov>; Tepper, Samantha <Samantha.Tepper@va.gov>
Subject: FW: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

James – for final review

From: Tepper, Samantha <Samantha.Tepper@va.gov>
Sent: Monday, July 6, 2020 11:55 AM
To: McField, Deshaun <Deshaun.McField@va.gov>; Yenerall, Jodi J.(HIN) <Jodi.Yenerall2@va.gov>; Berry, Katrinia G.(HIN) <Katrinia.Berry@va.gov>; Hines Police Action <HinesPoliceAction@va.gov>; Hines HRMS Action <HinesHRMSAction@va.gov>
Cc: Hines DOS <HinesDOS@va.gov>; Ifabiyi, Candace (HIN) <Candace.Ifabiyi@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>
Subject: RE: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

Update with Hines Police input and approval from Candace.

1. **Issue Title:** WHVA SF 03047464 Required Medical Equipment
2. **Date of Report:** July 6, 2020
3. **Brief Statement of Issue and Status:** Mr. Bourke contacted the White House Hotline with a request for an electric lift for his car. The Veteran employee was previously evaluated for a lift in November of 2018 however at that time, there were no compatible internal electric lifts available with the car that he planned to purchase. The Veteran's Primary Care Provider (PCP) placed a consult for Driver Rehab Evaluation on July 1, 2020. On the same day the Driver Rehab Specialist contacted Mr. Bourke and evaluated him for a car lift for the his scooter. This lift was ordered the same day and the Veteran will be contacted by the vendor for the electric scooter lift.

Mr. Bourke also contacted the White House Hotline with a complaint regarding his Reasonable Accommodation handicapped parking spot. Hines Police confirmed that handicapped parking spots were never closed. The entrance to the facility that Mr. Bourke typically utilized which was near his handicap parking was closed due to Covid-19 precautions. Mr. Bourke contacted Hines Police on May 18, 2020 to assist in finding a new parking spot closer to another

entrance that was open. Hines Police found Mr. Bourke a new parking spot on the same day. As of June 29, 2020 the original door where Mr. Bourke previously parked has since reopened.

4. Actions, Progress, and Resolution:

- Veteran was contacted by Driver's Rehab after his PCP placed a new consult for evaluation of an electric car lift.
- Veteran was evaluated by Driver's Rehab and car lift was ordered on July 2, 2020.
- The vendor will contact the Veteran for the electric scooter lift.
- Veteran continues to have access to dedicated RA parking spot

5. For Further Information Contact: Monica Steiner, M.D., Chief Rehabilitation Service, 708-202-4982

From: McField, Deshaun <Deshaun.McField@va.gov>

Sent: Monday, July 6, 2020 11:21 AM

To: Yenerall, Jodi J.(HIN) <Jodi.Yenerall2@va.gov>; Berry, Katrinia G.(HIN) <Katrinia.Berry@va.gov>; Hines Police Action <HinesPoliceAction@va.gov>; Hines HRMS Action <HinesHRMSAction@va.gov>

Cc: Hines DOS <HinesDOS@va.gov>; Tepper, Samantha <Samantha.Tepper@va.gov>; Ifabiyi, Candace (HIN) <Candace.Ifabiyi@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Subject: RE: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

On May 18, 2020, Shawn Scheirer reached out to police requesting if we can identify an additional parking spot in the C section parking lot, due to COVID, a parking spot was located and an email was sent with a picture of the parking spot. Police have not moved anyone parking spot.

On June 29, 2020 a screener was placed at the doors from 0500-1000 hours, Monday-Friday allowing entrance into the doors.

From: Yenerall, Jodi J.(HIN) <Jodi.Yenerall2@va.gov>

Sent: Monday, July 6, 2020 10:51 AM

To: McField, Deshaun <Deshaun.McField@va.gov>; Berry, Katrinia G.(HIN) <Katrinia.Berry@va.gov>; Hines Police Action <HinesPoliceAction@va.gov>; Hines HRMS Action <HinesHRMSAction@va.gov>

Cc: Hines DOS <HinesDOS@va.gov>; Tepper, Samantha <Samantha.Tepper@va.gov>; Ifabiyi, Candace (HIN) <Candace.Ifabiyi@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Subject: RE: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

Police moved the spot, my POC will be back tomorrow. Not sure if Police/FMS can answer

From: McField, Deshaun <Deshaun.McField@va.gov>

Sent: Monday, July 6, 2020 10:51 AM

To: Yenerall, Jodi J.(HIN) <Jodi.Yenerall2@va.gov>; Berry, Katrinia G.(HIN) <Katrinia.Berry@va.gov>; Hines Police Action <HinesPoliceAction@va.gov>; Hines HRMS Action <HinesHRMSAction@va.gov>

Cc: Hines DOS <HinesDOS@va.gov>; Tepper, Samantha <Samantha.Tepper@va.gov>; Ifabiyi, Candace (HIN) <Candace.Ifabiyi@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Subject: RE: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

This veteran parking slot was originally located at the rear entrance of building 200, the entrance is now open from 0500-1000 hours with a screener. Is this veteran requesting another parking slot?

From: Yenerall, Jodi J.(HIN) <Jodi.Yenerall2@va.gov>

Sent: Monday, July 6, 2020 10:20 AM

To: Berry, Katrinia G.(HIN) <Katrinia.Berry@va.gov>; Hines Police Action <HinesPoliceAction@va.gov>; Hines HRMS Action <HinesHRMSAction@va.gov>

Cc: Hines DOS <HinesDOS@va.gov>; Tepper, Samantha <Samantha.Tepper@va.gov>; Ifabiyi, Candace (HIN) <Candace.Ifabiyi@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Subject: RE: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

His lift request is not part of his RA request, only a parking spot.

From: Berry, Katrinia G.(HIN) <Katrinia.Berry@va.gov>

Sent: Monday, July 6, 2020 10:19 AM

To: Hines Police Action <HinesPoliceAction@va.gov>; Hines HRMS Action <HinesHRMSAction@va.gov>

Cc: Hines DOS <HinesDOS@va.gov>; Tepper, Samantha <Samantha.Tepper@va.gov>; Ifabiyi, Candace (HIN) <Candace.Ifabiyi@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Subject: FW: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

Action: PM&R/Human Resource

CC: Medicine/Police

Suspense Due: NLT 1400 July 6, 2020

Katrinia G Berry
Department of Veterans Affairs
Edward Hines Jr. VA Hospital
(708)202-2506 fax
katrinia.berry@va.gov



From: Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Sent: Monday, July 6, 2020 7:31 AM

To: Tepper, Samantha <Samantha.Tepper@va.gov>

Cc: Hines DOS <HinesDOS@va.gov>

Subject: RE: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

Sam, here are the contributions from PM&R, ready for additions from your services once received:

1. **Issue Title:** WHVA SF 03047464 Required Medical Equipment
2. **Date of Report:** July 6, 2020
3. **Brief Statement of Issue and Status:** Mr. Bourke contacted the White House Hotline with a request for an electric lift for his car. The Veteran was previously evaluated for a lift in November of 2018 however at that time, there were no compatible internal electric lifts available with the car that he planned to purchase. The Veteran's Primary Care Provider (PCP) placed a consult for Driver Rehab Evaluation on July 1, 2020. On the same day the Driver Rehab Specialist contacted the Veteran and evaluated him for a car lift for the his scooter. This

lift was ordered the same day and the Veteran will be contacted by the vendor for the electric scooter lift.

4. Actions, Progress, and Resolution:

- Veteran was contacted by Driver's Rehab after his PCP placed a new consult for evaluation of an electric car lift.
- Veteran was evaluated by Driver's Rehab and car lift was ordered on July 2, 2020.
- The vendor will contact the Veteran for the electric scooter lift.

5. For Further Information Contact: Monica Steiner, M.D., Chief Rehabilitation Service, 708-202-4982

From: Steiner, Monica <Monica.Steiner@va.gov>

Sent: Thursday, July 2, 2020 2:37 PM

To: Hines DOS <HinesDOS@va.gov>; Ruskuls, Kristina M <Kristina.Ruskuls@va.gov>

Cc: Neczek, Joseph <Joseph.Neczek@va.gov>; Meadows, Denise <Denise.Meadows@va.gov>; Muthukrishnan, Sri Ranjini <SriRanjini.Muthukrishnan@va.gov>; Wasielewski, Jennifer <Jennifer.Wasielewski@va.gov>; Steiner, Monica <Monica.Steiner@va.gov>; Bhat, Abhijit D <Abhijit.Bhat@va.gov>

Subject: FW: 22662 Due: NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment

Please see the suspense response below from Rehab Service.

Thank you.

Action: PM&R

CC: Medicine

Suspense Due: NLT 1400 July 6, 2020

Please make contact with the Veteran to address his concerns (highlighted below) and notify our office by responding to this email as follows:

1. **Issue Title:** 2262 Due NLT 1400 7/6/20: WHVA SF 03047464 Required Medical Equipment
2. **Date of Report:** July 2, 2020
Pat
3. **Brief Statement of Issue and Status:** Mr. Bourke contacted the White House Hot Line with a request for an electric lift for his car. The patient was previously evaluated for a lift in November of 2018 however at that time, there were no compatible internal electric lifts available with the car that he planned to purchase. The patient's primary care provider, Dr. Michael Egan, placed a consult for Driver Rehab Evaluation on July 1, 2020. On the same day, Joseph Neczek, Driver Rehab Specialist, contacted the veteran and evaluated him for a car lift for the veteran's scooter. This lift was ordered the same day and the patient will be contacted by the Vendor for the electric scooter lift.

- 4. Actions, Progress, and Resolution:** Please make sure to include the dates associated with any contacts and events related to the actions taken or planned. List additional areas of concern, if applicable.

Next Steps

- Veteran evaluated and scooter ordered on July 2, 2020.
- The vendor will contact the patient for the electric scooter lift.

- 5. For Further Information Contact:** Monica Steiner, M.D., Chief Rehabilitation Service, 708-202-4982

Please submit your response to Hines DOS 07/06/20 NLT 1400. Thank you.

Respectfully,

Komesha D. Jones

Executive Assistant to the Hospital Director



708.202.2506



Komesha.Jones@va.gov

From: VHA Client Services Response Team <VHAClientServicesResponseTeam@va.gov>

Sent: Monday, June 29, 2020 12:54 PM

To: VHA VISN 12 Action Group <VHAVISN12ActionGroup@va.gov>

Subject: WHVA SF 03047464 Required Medical Equipment

Good Day VISN 12,

SUBJECT: WHVA Hotline Complaint

Veteran: DAVID PIERCE BOURKE SSN: [REDACTED] PH: 6303921377 PH2: 708 2022803 E-Mail: dbourke74@gmail.com Facility: Edward Hines Junior Hospital contacted the WHH on 6/26/2020

Call information was transposed directly from the WH/VA Hotline intake...Unedited

ISSUE (Call): Veterans PII verified. Veteran states he is a Veteran and works for the VA @ Hines. Veteran states the was authorized by the Chief doctor at the VA ordered the Veteran a special internal electric lift for his health care needs. Veteran suffers from Lung disease, bone disease, disk disease, and eye disease. Veteran states he had filed a complaint with the VA regarding another issue as a employee with closing up handicap spots during the COVID 19 and he was told by the Associate Director, Kandace Ifabiyi that if he dropped his EEO complaint about his electronic lift for his vehicle she would give him back his RA parking spot to be close to an entrance. Veteran states this should not even come into play with his physical need and authorized equipment that he has already been awarded the electronic lift for his vehicle. Veteran has a EEO case because of the VA

Directors closing down the Handicap parking spaces for the Veteran and employees. Veteran states he needs the lift in order to survive in his daily needs as a handicapped Veteran. Veteran states the Chief doctor for the Hines VA Outpatient Pain clinic, Dr. Uppal will stand by the Veteran for the required need for the electronic lift for his vehicle. Veteran request WHH to assist in investigating his medical health needs

Please make contact with the Veteran to address his/her concern(s) and notify our office by responding to this email as follows:

- * **Issue Title:**
- * **Date Veteran Contacted:**
- * **Actions/Progress/Resolution (Provide a *brief* explanation):**
- * **Who Contacted Veteran/Point of Contact:**
- * **Next steps (as warranted):**

Please submit your response to VHAClientservicesresponseteam@va.gov and Kim.Richardson6@va.gov by 7/8/2020.

Regards,

Kim Richardson

Client Relations Specialist
Office of Patient Advocacy (10H)
Office of the Under Secretary for Health
Department of Veterans Affairs
810 Vermont Ave, Washington, D.C.
Phone: [REDACTED]

Exhibit 23

Subject: Director's Daily Message to Staff July 10, 2020



Good Afternoon Team Hines,

- **KUDOS to Hines Social Work Team!** The food pantry served 100 households yesterday. Our volunteer shout outs this week go to Brittany Trabaris and Joe Ader for their assistance.
- Please take time to reflect and invest in yourself. We cannot be the best for our nations heroes if we don't take time to invest in ourselves. To help promote staff psychological safety, we are continuing with our daily noon Mindfulness Sessions. (Click here to sign in) or join by phone via any of these three numbers and conference ID:

844-358-7954, Conference ID: 224724428#

844-210-0201, Conference ID: 224724428#

844-894-0415, Conference ID: 224724428#

- **Next Week's Schedule will be released this weekend. Upcoming events include:**

Monday, July 13	TBD
Tuesday, July 14	TBD
Wednesday, July 15	Hines Hears You, #HinesIsHere
	BOURKE 1081

Thursday, July 16	TBD
Friday, July 17	Employee Town Hall

- Thank you again to our Mental Health Team that created an email group, MHSLDiversityGroup@va.gov to provide consultation to any teams, groups, or clinics at Hines (or CBOCs) that may benefit by having guidance regarding how to address racial trauma, health inequities, and other diversity-related issues. They have many talented team members, each very willing to assist you and your team. **Please reach out and have them help!**
- We are excited to share that Hines VA Hospital has received a Fold Out Rigid Temporary Shelter (FORTS) unit. The FORTS unit will allow Hines VA Hospital to have a more permanent structure for our staff to effectively do COVID-19 testing, flu shots, etc. especially during inclement weather. We will be setting up the FORTS in the Indiana Parking Lot (just north of the current drive-through testing location) beginning tomorrow. **The Indiana Parking Lot is now completely closed while the FORTS unit is there, please plan accordingly.**



Daily COVID Updates:

- Effective today, July 10th, there have been updates made to screening coverage at the entrances. The updates are in red.

New Entrance Hours:

Door	Days	Times
Main Lobby	Mon-Fri	0500-1800
	Sat-Sun	0700-1600
Emergency Room	Mon-Fri	24 HRS
	Sat-Sun	24 HRS
G-Lobby	Mon-Fri	0500-1000
		1000-1630 Re-Entry Only
	Sat-Sun	CLOSED
C-Lobby	Mon-Fri	0500-1600
	Sat-Sun	CLOSED
228	Mon-Fri	0500-1600
	Sat	0730-1300
	Sun	CLOSED
Atrium	Mon-Fri	0500-1000
	Sat-Sun	0500-1000
Pharmacy	Mon-Fri	0500-1000
		1000-1630-Exit Only
	Sat-Sun	CLOSED
Human Resources	Mon-Fri	0630-1630
	Sat-Sun	CLOSED

- **COVID Positive Tests:** Our current report continues to show a total of **2** employees and **6** Veterans.

Although there was only a one day notice, I did see many people representing their favorite sports teams today....this is my first summer in Chicago in a while, but it seems like the Cubs have it over the White Sox in Hines staff support! I hope you have a great weekend. GO TEAM HINES!

Respectfully,

James Doelling

Hospital Director

Edward Hines Jr. VA Hospital



Exhibit 24

Good morning Tina, I hope someone told Ms. Lavender that she had no business inserting herself into the meeting to begin with, and that her opinion of the RA should not have been granted to begin with is out of line? Her interpretation of the RA and its application was off-base. I do not want nor feel a desire to meet Friday, since you have intervene and have set the record straight on leaving me and the RA alone and in place. Did you get to inquire of the orange parking cones, that were originally given along with the awarded assigned RA parking spot? The cones came with the disabled parking spot, and should be used to be placed in the designated RA parking spot when I'm not using it. Carmen Smith is who you should ask about these VA police provided orange parking cones. I will contact Chrystal this morning about no meeting Friday. The EEO complaint of ADA violations is in the federal courts along with the Hines VA provider backing of damage done to my body when the RA awarded parking spot was illegally revoked.

Thank you, David Bourke

PS. Again, thanks for getting involved and getting some of the things straightened out. I have a bad feeling, I will be requesting your involvement again over RA's?

From: Dean, Christina <Christina.Dean@va.gov>
Sent: Tuesday, October 19, 2021 2:43 PM
To: Bourke, David <David.Bourke@va.gov>
Cc: Adenle, Chrystal I. (HIN) <Chrystal.Adenle@va.gov>
Subject: RA phone call

David

This is a follow up to our phone call the other day. I confirmed based on what you sent me to review and the RA files that the RA's that you have been granted have not been revoked and there is no plan to revoke them.

1. You continue to have parking designated—you made me aware of the prior concern about parking that you have an active complaint file in court. However you acknowledged that you are currently parking in the designated spot and that is working for you.
2. There is no plan to require you to rotate out of the surgery clinic.

There is no need for a meeting on Friday unless you want to discuss some other needed accommodation, as you indicated during our call that you did not want to meet on Friday. Chrystal will be your point of contact for RA. Let me know if there is anything I did not address in this message.

Tina Dean, JD

Supervisory HR Specialist, VISN 12 WLB/RA

BOURKE 1180

Exhibit 25

COMPLAINT CASE NUMBER:

OMB NO.: 2900-0716
EXPIRATION DATE: DEC 31, 2019
RESPONDENT BURDEN: 10 MIN.

Department of Veterans Affairs		COMPLAINT OF EMPLOYMENT DISCRIMINATION	
Read the instructions on the reverse side of this form carefully before completing the front of this form.			
1. NAME (Last, first, middle initials) (Please print)		2. EMAIL ADDRESS	
BOURKE, DAVID P.			
3. ARE YOU:		6a. JOB TITLE, SERIES AND GRADE	
<input checked="" type="checkbox"/> A VA EMPLOYEE		ADVANCE MSA	
<input type="checkbox"/> AN APPLICANT FOR EMPLOYMENT		GS-6 STEP 6	
<input type="checkbox"/> A FORMER VA EMPLOYEE		7. NAME AND ADDRESS OF VA FACILITY WHERE DISCRIMINATION OCCURRED	
		EDWARD KILPATRICK JR. VA HOSPITAL	
NOTE: For each employment related matter that you believe was discriminatory you must list the basis (list one or more of the following): Race (Specify), Color (Specify), Religion (Specify), Sex (Male or Female), National Origin (Specify), Age (Provide date of birth), Disability (Specify), Genetic Information (including family medical history), and/or Retaliation for participating in the EEO process or opposing unlawful discrimination.			
8. BASIS	9. CLAIM(S) (What employment related claim(s) - personnel action(s), incident(s), or event(s) caused you to file this complaint? Briefly state the specific claim, personnel action and/or event that caused you to file this complaint. Use an additional sheet of paper if necessary. You should not include information that violates the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act (HIPAA). Same examples are patient medical records, personnel records of other VA employees, etc.)	10. DATE OF OCCURRENCE (Include the most recent date(s))	
1) DISABILITY (PHYSICAL)	REASONABLE ACCOMMODATION (VIOLATED)	5-14-2020	
2) DISABILITY (PHYSICAL)	OTHER (ADA VIOLATION) DENIED VA DOCTOR ORDERED AUTO LIFT ELECTRIC SCOOTER, TRYING TO OVERTURN DENIAL THRU OTHER MEANS WITHOUT FORMAL COMPLAINT, STRUGGLED FOR MANY MONTHS AND ORIGINAL EMPLOYEE LEFT POSITION	12-4-2018	
11. REMEDIES SOUGHT (Use an additional sheet of paper if necessary)			
1) ALLOW USE OF RA PARKING FOR DISABLED VETERAN 2) FORCE VA TO COMPLY W/VA DOCTOR ORDER! INSTALL AUTO SCOOTER LIFT.			
12a. DO YOU HAVE A REPRESENTATIVE?	12c. PROVIDE THE NAME AND ADDRESS OF YOUR REPRESENTATIVE	12b. TELEPHONE NUMBER (Include Area Code)	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N/A	N/A	
12d. IF "YES," IS HE OR SHE AN ATTORNEY?		12e. EMAIL ADDRESS	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		N/A	
13a. HAVE YOU CONTACTED AN EEO COUNSELOR?	13b. NAME OF EEO COUNSELOR	13c. DATE OF INITIAL CONTACT WITH ORG	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	ROBERT (MIKE) HOOGERHYDE MPA	5-19-2020	
14. If you contacted an EEO Counselor more than 45 calendar days after the Date(s) of Occurrence, listed in item 10, or if this complaint is filed more than 15 calendar days after receipt of a Notice of Right to File a Discrimination Complaint, you must explain why you were untimely in seeking EEO counseling or untimely in filing a complaint. (Use an additional sheet of paper, if necessary.)			
15a. HAVE YOU FILED A UNION GRIEVANCE ON ANY CLAIM(S) LISTED ABOVE?	15b. IF "YES," LIST THE CLAIM(S) AND DATE GRIEVANCE FILED	15c. HAVE YOU FILED AN APPEAL WITH THE MERIT SYSTEM PROTECTION BOARD (MSPB) ON ANY OF THE CLAIMS LISTED ABOVE?	15d. IF "YES," LIST THE ISSUE(S) AND DATE MSPB APPEAL FILED.
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
17a. HAVE YOU FILED THIS COMPLAINT WITH ANYONE ELSE?	17b. IF "YES," PROVIDE THE NAME AND ADDRESS		
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	WHITE HOUSE VETERANS COMPLAINT HOTLINE CASE# 03047464		
18. SIGNATURE OF COMPLAINANT (Print name)			19. DATE
David P. Burke			6-28-2020

VA FORM 4939
MAR 2017SUPERSEDES VA FORM 4939, MAR 2013,
WHICH SHOULD NOT BE USED.

CONFIDENTIAL DOCUMENT - GENERATED IN THE ORM COMPLAINT AUTOMATED TRACKING SYSTEM (CATS) - 4/22/2020

000003

USA000050

Exhibit 26



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF RESOLUTION MANAGEMENT
2255 Enterprise Drive, Suite 5506
Westchester, IL 60154

In reply refer to: 080

July 2, 2020

VIA Email: David.bourke@va.gov

David Bourke
[REDACTED]

SUBJECT: Notice of Acceptance of Your EEO Complaint No. 200J-0578-2020104191, Filed June 29, 2020, against Officials of the Edward Hines Jr. VA Hospital, Hines, IL

1. On May 19, 2020, you initiated contact with an EEO counselor. Counseling concluded on June 25, 2020, when you were emailed the *Notice of Right to File a Discrimination Complaint*, which you received on June 25, 2020. On June 29, 2020, you filed a formal complaint of discrimination, VA Form 4939.

2. Your complaint of discrimination raises the following claim:

Whether complainant was discriminated against based on Disability, when since December 4, 2018, and continuing¹, his requests for Reasonable Accommodations have been denied.

3. We have determined that the claim stated above, meets procedural requirements and is therefore **ACCEPTED** for investigation and further processing.

4. If you believe that the accepted claim is improperly formulated, incomplete, or incorrect, you must notify this office within **7 calendar days** of receipt of this letter, in writing, by mail or fax, stating your disagreement. We will include your statement in the complaint file. If you do not contact this office within **7 calendar days**, we will assume that the claim is correctly stated.

5. We will assign the accepted claim to an impartial investigator under the supervision of the Office of Resolution Management (ORM). The investigator will contact you directly in order to obtain information or evidence you may wish to offer. The investigator is only authorized to investigate the claims specified.

6. You have additional rights that are fully explained in the enclosure to this letter.

¹ The Equal Employment Opportunity Commission (EEOC) has held that a claim of denied reasonable accommodation constitutes a recurring violation, that is, a violation that recurs a new each day that an employer fails to provide an accommodation. See *M. H. v. Dep't of Commerce*, EEOC Appeal No. 01934120 (March 4, 1994).

Page 2
Notice of Acceptance
David Bourke
200J-0578-2020104191

7. Failure to keep this office advised of any change of address could lead to dismissal of your complaint. You must also immediately advise this office, in writing, of the name, address, and telephone number of any person you may choose to represent you. If you advise us of representation, we will mail all subsequent complaint-related correspondence to your representative, with copies to you, unless you advise us, in writing, that you are no longer represented by that individual.

8. If you have any questions, please contact Charles Kolliker, ORMDI Case Manager at phone: (224) 229-1024, by fax at (708) 236-2898, or via email to: Charles.Kolliker@va.gov. **You are strongly encouraged to use email to submit your correspondence and/or documents to ORM.**

Sincerely,



Glenn Sebesta
District Manager
Midwest District

Enclosure: Complainant's Rights

cc: James Doelling, Director, via email: James.Doelling@va.gov
Jon Bisard, EEO Program Manager, via email: Jon.Bisard@va.gov
Tammy Brewington, EEO Assistant, via email: Tammy.Brewington@va.gov

Exhibit 27

**DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF EMPLOYMENT DISCRIMINATION COMPLAINT ADJUDICATION
WASHINGTON, D.C. 20420**

David P. Bourke,)	
)	
<i>Complainant,</i>)	
)	
v.	)	VA Case No. 200J-0578-2020104191
)	
Secretary,	)	EEOC Case No. 440-2021-00151X
Department of Veterans Affairs,)	
)	
<i>Agency.</i>)	

FINAL ORDER

It is the final action of this Department in the above-referenced matter to accept and fully implement the attached decision of the EEOC administrative judge.

If dissatisfied with this final action, the Complainant may appeal or file a civil action as set forth below.

RIGHT OF APPEAL

Complainant may appeal this final decision or order within 30 calendar days of receipt to: **Equal Employment Opportunity Commission, Office of Federal Operations (EEOC-OFO)**. The appeal may be filed via the EEOC's Public Portal, U.S. Mail, or Hand-Delivery.

1. **EEOC-OFO recommends that all submissions and communications from complainants be electronic.**
 - a. **Appeals submitted electronically should be completed via the EEOC Public Portal at <https://publicportal.eeoc.gov/Portal/Login.aspx>.** See warning below and detailed instructions attached.

WARNING!

Attorneys and non-legal representatives MUST NOT use the EEOC Public Portal to file appeals on behalf of their clients as the portal will incorrectly list the representative as the complainant. Therefore, COMPLAINANTS MUST file electronic appeals themselves through the EEOC Public Portal regardless of whether they are represented.

- b. Appeals submitted by mail should be completed by using EEOC Form 573.**
A copy of EEOC Form 573 is attached. Appeals submitted by mail should be sent to:

Director
U.S. Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013

- c. As an alternative to mailing the appeal, the appeal may be hand-delivered to:**

Equal Employment Opportunity Commission
Office of Federal Operations
131 M Street N.E., Suite 5SW12G
Washington, D.C. 20507-0004

- 2. If mailing or hand-delivering the appeal to the EEOC-OFO, a copy of the appeal must also be sent to the VA Office of General Counsel at the following address:**

Department of Veterans Affairs
Office of the General Counsel (024)
810 Vermont Ave., N.W.
Washington, DC 20420

3. Statements or briefs in support of the appeal must be submitted to the EEOC-OFO within 30 calendar days of the filing of the appeal. The EEOC-OFO will accept statements or briefs in support of an appeal by facsimile transmittal at (202) 663-7022. If statements or briefs are submitted by mail or hand delivery, a copy of any such statement or brief, including any statements made on EEOC's "Appellant Docketing Statement," must also be sent to the VA's Office of General Counsel at the above address.

4. If an appeal is filed with the EEOC-OFO by mail or hand delivery, the appeal, and any subsequently filed statement or brief, must contain a statement certifying the date and method by which copies of these documents were served on the VA's Office of General Counsel.

5. If Complainant files an appeal with the EEOC-OFO beyond the above-noted time limit, Complainant should provide the EEOC-OFO with an explanation as to why the appeal should be accepted despite its untimeliness. If Complainant cannot explain why timeliness should be excused, the EEOC-OFO may dismiss the appeal as untimely.

RIGHT TO FILE A CIVIL ACTION

Complainant also has the right to file a civil action in an appropriate United States District Court. Complainant may file a civil action as follows:

(1) within 90 days of receipt of this final decision if no appeal to the EEOC-OFO has been filed; OR

(2) within 90 days after receipt of the EEOC-OFO's final decision on appeal; OR

(3) after 180 days from the date of filing an appeal with the EEOC-OFO if there has been no final decision by the Commission.

Complainant must name the official head of the Department of Veterans Affairs, **Denis McDonough**, as the Defendant. Complainant may not name just the Department. Complainant must also state the official title of the Department head, which is the **Secretary of Veterans Affairs**. Failure to provide the name or official title of the head of the Department may result in dismissal of the case. **Please consult your District Court's website for procedures to file a civil action and any COVID-19-related changes in procedures.**

If Complainant decides to file a civil action under Title VII (discrimination due to race, color, religion, sex, national origin, or reprisal) or under the Rehabilitation Act of 1973, as amended, (discrimination due to disability), and if Complainant does not have or cannot afford the services of an attorney, Complainant may request that the Court appoint an attorney to represent Complainant and that the Court permit Complainant to file the action without payment of fees, costs, or other security. **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend the time in which to file a civil action. Both the request and the civil action **MUST BE FILED WITHIN NINETY (90) CALENDAR DAYS** of the date Complainant receives the final decision from the Department or the Commission.

Mary L.
Popiden
747966

Digitally signed by Mary
L. Popiden 747966
Date: 2022.03.21
10:31:24 -04'00'

3/21/2022

MARY LYNNE POPIDEN
Acting Director, Office of
Employment Discrimination
Complaint Adjudication

Date

Enclosures: EEOC Public Portal Instructions
EEOC Form 573

**DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF EMPLOYMENT DISCRIMINATION COMPLAINT ADJUDICATION
WASHINGTON, D.C. 20420**

CERTIFICATION OF SERVICE

Complainant's Name: David P. Bourke
Agency Case No.: 200J-0578-2020104191
EEOC No: 440-2021-00151X

I certify that on this date, the foregoing Final Order was sent via email to the individuals and parties shown below. For timeliness purposes, it shall be presumed that the parties received the Final Order within five (5) calendar days after it was emailed.

Complainant:

David P. Bourke
dbourke74@gmail.com

Complainant's Representative:

Kenneth N. Flaxman
knf@kenlaw.com

VA Representative:

Shelia Fitzpatrick
shelia.fitzpatrick@va.gov

EEO Program Manager:

Jon Bisard
Jon.bisard@va.gov

ORMDI Field Office:

ORMMDFrontOffice@va.gov

Marcella E
Callender 942514

Digitally signed by Marcella
E Callender 942514
Date: 2022.03.21 10:21:30
-04'00'

Signature of Dispatcher

3/21/2022

Dispatch Date

**DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF EMPLOYMENT DISCRIMINATION COMPLAINT ADJUDICATION
WASHINGTON, D.C. 20420**

TRANSMITTAL OF FINAL ORDER

TO: The Parties
Representative of the Parties
ORMDI Field Office

SUBJ: Final Order

Complainant's Name: David P. Bourke
Agency Case No.: 200J-0578-2020104191
EEOC No.: 440-2021-00151X

Enclosed is the Department's Final Order concerning the above-referenced complaint of employment discrimination.

The Final Order includes a statement explaining Complainant's right of appeal and right to file a civil action.

The transmittal to Complainant and, if applicable, Complainant's representative, includes EEOC Form 573 (MSPB Form 185, if the subject complaint is a "mixed case") for use should Complainant wish to appeal the enclosed Final Order.

If Complainant requested a hearing before an EEOC administrative judge, the transmittal to the ORMDI field office also encloses the hearing record, including the EEOC administrative judge's decision, and/or other miscellaneous correspondence/documents provided to this office by the judge.

**Mary L.
Popiden
747966**
Mary Lynne Popiden
Acting Director

Digitally signed by
Mary L. Popiden
747966
Date: 2022.03.21
10:31:59 -04'00'

Enclosure(s)

USA000005

UNITED STATES
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
MINNEAPOLIS AREA OFFICE

_____)	
DAVID P. BOURKE,	)	EEOC No. 440-2021-00151X
Complainant,	)	Agency No. 200J-0578-2020104191
)	
v.)	
)	
DENIS MCDONOUGH, Secretary,	)	ADMINISTRATIVE JUDGE
Department of Veterans Affairs,	)	STEPHEN A. BRAUNLICH
Agency.)	
	)	Date: March 16, 2022
_____)	

ORDER ENTERING JUDGMENT

This Order finalizes the Bench Decision issued in this case which the undersigned Administrative Judge read into the record at the conclusion of the hearing on March 1, 2022. The Agency is hereby ORDERED to produce an electronic copy of the transcript/decision to Complainant if none has already been done and to ensure the same is uploaded into the FEDSEP system. A Notice to the Parties explaining their appeal rights and/or responsibilities is attached to the Order. The hearing record is enclosed for the Agency and uploaded to the FEDSEP system

IT IS SO ORDERED, on March 16, 2022.

FOR THE COMMISSION:

STEPHEN BRAUNLICH

Digitally signed by STEPHEN
BRAUNLICH
Date: 2022.03.16 06:59:08 -05'00'

Stephen A. Braunlich
Administrative Judge

Copies to:
David Bourke
Complainant
dbourke74@gmail.com

Complainant's Representative
Kenneth Flaxman
knf@kenlaw.com

Shelia Fitzpatrick
Agency Legal Representative
shelia.fitzpatrick@va.gov

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
MINNEAPOLIS DISTRICT OFFICE

DAVID P. BOURKE, :
 :
 :
 Complainant, : EEOC No.
 : 440-2021-00151X
 v. :
 :
 DENIS McDONOUGH, : Agency No.
 Secretary, DEPARTMENT : 200J-0578-2020104191
 OF VETERANS AFFAIRS, :
 :
 :
 Agency. :
 :
 :
 _____ :

Video-Teleconference

Tuesday, March 1, 2022

The bench decision commenced at 1:31
p.m. CST

BEFORE:

STEPHEN A. BRAUNLICH

Administrative Judge

APPEARANCES:

On behalf of the Complainant:

**KENNETH N. FLAXMAN, ESQ.
Kenneth N. Flaxman, P.C.
200 South Michigan Avenue
Suite 201
Chicago, IL 60604

312-427-3200**

On behalf of the Agency:

**SHELIA M. FITZPATRICK, ESQ.

Office of General Counsel

Department of Veterans Affairs

P.O. Box 1427

Hines, IL 60141**

1 P-R-O-C-E-E-D-I-N-G-S

2 1:31 p.m.

3 JUDGE BRAUNLICH: All right. Very
4 good. The time is 1:31. We are back on the
5 record. I have a bench decision for this case.

6 The sole issue presented in this case
7 is whether Complainant was discriminated against
8 based on disability when since December 4th, 2018
9 and continuing his request for reasonable
10 accommodations have been denied. Specifically,
11 as Complainant's counsel has stated, the focus
12 here is whether an existing accommodation was
13 violated when the Agency closed certain entrances
14 due to COVID-19, and second, whether the Agency
15 violated the rehabilitation act when it did not
16 install a lift on complainant's car to carry his
17 electric scooter.

18 Applicable law, under 29 C.F.R.
19 Section 1630.9(a), it is unlawful for an agency
20 not to make reasonable accommodation to the known
21 physical or mental limitations of an otherwise
22 qualified employee with a disability, unless the
23 agency can demonstrate that the accommodation
24 would impose an undue hardship on its operations.

1 In order to establish that a complainant was
2 denied a reasonable accommodation, a complainant
3 must show that: one, he is an, individual with a
4 disability, as defined by 29 C.F.R. Section
5 1630.2(g); two, he is a, qualified, individual
6 with a disability pursuant to 29 C.F.R. Section
7 1630.2(m); and three, the Agency failed to
8 provide a reasonable accommodation. See EEOC
9 Enforcement Guidance: Reasonable Accommodation
10 and Undue Hardship under the Americans with
11 Disabilities Act, EEOC No. 915.002, October 17th,
12 2002.

13 An individual with a disability is one
14 who: one, has a physical or mental impairment
15 that substantially limits one more or more major
16 life activities; two, has a record of such
17 impairment; or three, is regarded as having such
18 an impairment. 29 C.F.R. Section 1630.2(g).
19 Major life activities include such functions as
20 caring for one's self, performing manual tasks,
21 walking, seeing, hearing, speaking, breathing,
22 learning, and working. 29 C.F.R. Section
23 1630.2(i). An impairment is a disability if it
24 substantially limits the ability of an individual

1 to perform a major life activity as compared to
2 the ability of most people in the general
3 population. 29 C.F.R. Section 1630.2(j)(ii).

4 Regardless of the form of a request,
5 upon receipt an agency must begin -- upon receipt
6 of a request for a reasonable accommodation, an
7 agency must begin an interactive process to
8 respond to the request. Black v. U.S. Postal
9 Service. EEOC Appeal No. 01A42589, June 9, 2006.
10 Failure to participate in an informal dialogue
11 with the individual after receiving a request for
12 reasonable accommodation may result in liability
13 for failure to provided a reasonable
14 accommodation. Id; Burns v. United States Postal
15 Service, EEOC Appeal Nos. 01994467 and 01A04755,
16 November 21st, 2001.

17 An agency is not required to provide
18 the specific accommodation requested, but may
19 choose from among reasonable accommodations so
20 long as the chosen one is effective. 29 C.F.R.
21 Section 1630.9(d). Liability for failure to
22 participate in the interactive process will occur
23 when, quote, had the agency engaged in the
24 interactive process, it could have identified and

1 provided to complainant an effective
2 accommodation absent undue hardship, end quote.
3 Barnard v. United States Postal Service, EEOC
4 Appeal No. 07A10002, August 2nd, 2002.

5 Facts, complainant has presented
6 evidence that he suffers from, inter alia, PTSD,
7 lower back condition with a history of
8 fracturing, chronic obstructive pulmonary
9 disease, COPD, and osteoporosis. ROI at 250 to
10 51. These conditions effect complainants' ability
11 to perform a major life activity, to wit:
12 difficulty in high stress environments, an
13 inability to walk more than 15 feet without a
14 cane or walker, shortness of breath with exertion
15 when ambulating with a walker or can for more
16 than 40 to 50 feet, and significant pain related
17 to spinal fractures. ROI at 250. The Agency
18 concedes that Complainant can perform the
19 essential functions of his position. ROI at 57.
20 Complainant testified that he utilizes an
21 electric scooter while at work and that the
22 scooter is owned by Complainant and stored at his
23 work station and that it is a model which can be
24 broken down.

1 Complainant's frontline supervisor at
2 the relevant time was Angela Graham. ROI at 45.
3 Graham uses a scooter, but hers was not of a
4 similar design to Complainant's, which could be
5 broken down by hand. Complainant's testimony.
6 Complainant's place of duty was in the basement
7 of Building 200 of the Hines VA Hospital Complex.
8 ROI at 45. Building 200 is the main building of
9 the complex, and is attached to Building 228 and
10 Building 1; most buildings are interconnected
11 with Building 200. Complainant's testimony, see
12 Exhibits AJ-1 and 2.

13 The accepted issue states that
14 Complainant's reasonable accommodation was denied
15 beginning in December 4, 2018. However,
16 Complainant stated in his affidavit he did not
17 submit a request for reasonable accommodation
18 until May 2019 when he sought, among other
19 things, a disabled parking reserved spot near his
20 work station. ROI at 48. The documentary evidence
21 points to this request actually being submitted
22 on June 17th, 2019. ROI at 239, 276. The
23 request was ultimately granted and began on
24 August 30th, 2019. ROI at 248.

1 Complainant contends, however, that in
2 January 2019, he additionally sought to have an
3 electric scooter lift be installed in his car.
4 ROI at 48. Complainant testified that this was
5 not requested through a reasonable accommodation
6 process, but as part of a process in which
7 Complainant obtained veterans benefits. Although
8 Complainant had made a subsequent reasonable
9 accommodation request after January 2019,
10 Complainant did not request an electric scooter
11 lift be installed in his car as part of that
12 request. ROI at 239.

13 On March 12th, 2020, in order to
14 prevent the spread of COVID-19, the Agency
15 required employees to enter through one of five
16 entry points. Exhibit A-12. The building in which
17 Complainant worked, Building 200, could be
18 entered through the main entrance lobby or the
19 emergency entrance. Id cf AJ-1 and AJ-2.
20 Building 228, which is attached to Building 200,
21 and other buildings could be accessed as well.
22 Id.

23 On March 13th, 2020, Complainant
24 contacted Deputy Chief Eric Ousley about

1 continuing to utilize the outpatient pharmacy
2 entrance due to his disabled parking space. ROI
3 at 125. The outpatient pharmacy entrance was
4 located in Building 200. Complainant testified
5 that he continued to use the outpatient entrance
6 after that point for a period of at least one to
7 two weeks, at which point he testified that the
8 doors were locked when the police received a
9 complaint about employees entering unscreened.

10 Complainant testified that he then
11 used different spaces, including the entrance to
12 Building 228 by way of Parking Lot E.
13 Conversely, the EEO Counselor report states the
14 Complainant told the EEO Counselor that from
15 March 2020 to May 14, 2020, he continued to use
16 other access points, and that it was not until
17 May 14, 2020 that he was informed he could not
18 longer use an unauthorized entrance to Building
19 200. ROI at 13. Although I do not find that
20 Complainant was deliberately misleading, I credit
21 the time frame provided in the EEO Counselor
22 report over Complainant's testimony at hearing.

23 It is notable that there is no email
24 traffic preceding May 14, 2020 in which

1 Complainant states he is being denied access to
2 Building 200 other than the email sent to Deputy
3 Chief Ousley on March 13th. ROI at 125. Instead
4 all email traffic points to May 14, 2020 being
5 the first date on which he could not access
6 Building 200 through the door using that informal
7 agreement which he had made with an unidentified
8 police officer. Indeed, there is email traffic,
9 from Complainant, on May 14 and May 15, 2020 in
10 which he states for the first time that the
11 agreement was recently rescinded. ROI at 211 to
12 213.

13 Complainant testified that he could
14 recall no member of management to whom he made a
15 complaint regarding the sufficiency of the
16 parking when the back entrance to Building 200
17 was closed. He testified he talked to a Dr.
18 Uppal, his health care provider, but not that he
19 raised it to anyone else. Complainant further
20 testified that he has no evidence that Graham was
21 aware of his dissatisfaction with the other
22 available options prior to May 2020, at which
23 point she began looking for alternatives.

24 Shawn Scheirer, Reasonable

1 Accommodation Coordinator, became aware that in
2 May 2020 the complainant was informed by Agency
3 police services that he could not enter and exit
4 through the door he was using. ROI at 75.
5 Scheirer discussed with other management
6 officials where to relocate Complainant's
7 reserved parking spot. ROI at 77. On May 14th,
8 2020, he informed Deputy Chief Ousley that it was
9 necessary to find a new location for Complainant.
10 Exhibit A-21 at 1.

11 On May 15th, 2020, Graham informed
12 Scheirer that she parks her own scooter in the C
13 section overnight, and that obtaining a parking
14 spot for Complainant in C section would allow him
15 to park his own scooter there. ROI at 181.
16 However, Graham also stated that Complainant
17 expressed a preference for walking through the
18 emergency room, and declined a parking space near
19 the doors that were open for screening. ROI at
20 60, 80, 181.

21 On May 18th, 2020, the -- sorry. By
22 May 18th, 2020, the agency had identified a
23 parking space for Complainant that was located
24 close to the C section of Building 1. ROI 185 to

1 87. Complainant reviewed a picture of it during
2 the hearing and testified that the parking space
3 in question was close to the entrance of Building
4 1. Complainant testified that the C section of
5 Building 1 houses only a couple doctor's office,
6 has a mail room, a print shop, and a day care.
7 On upper levels there is a research and
8 development lab.

9 Complainant declined to accept the
10 offered accommodation, however. He testified
11 that he declined the space because he was afraid
12 of his scooter being dismantled and stolen. On
13 June 3rd, 2020, Complainant informed Graham that
14 he was choosing to continue to park by Building
15 228, and that the, quote, added distance and
16 ambulation and subsequent pain, will be endured
17 for safety concerns for the secure storage of my
18 equipment, end quote. ROI at 184.

19 Complainant testified that he declined
20 every single alternative that they offered, and
21 aside from offering to accept a single spot by
22 the Emergency Room, he did not propose any other
23 alternative accommodation. With respect to that
24 space by the Emergency Room, Complainant

1 testified that the police told him they could not
2 keep that space clear because veterans may choose
3 to park there. Furthermore, the record evidence
4 shows that the entry by the Emergency Room would
5 not have provided any storage space for
6 Complainant's scooter. See ROI at 181.
7 Complainant testified that he ultimately
8 continued to park in other spaces until
9 approximately July 2020, when a door in the rear
10 of Building 200 re-opened. While there was some
11 possibility that the entrance would be closed
12 during construction thereafter, Complainant was
13 authorized to continue using it from July 2020
14 onward. See e.g. Exhibit A-29 at 2.

15 Analysis, to begin, Complainant has
16 produced preponderant evidence that he is an
17 otherwise qualified individual under the
18 Rehabilitation Act. Complainant suffers from
19 multiple physical and mental impairments, which
20 substantially limit his ability to perform a
21 major life activity, and is otherwise qualified
22 to perform the essential functions of his
23 position. The Agency concedes that Complainant
24 can perform the essential functions of his

1 position.

2 To the extent that Complainant's claim
3 focuses upon the request for a lift to be
4 purchased and installed on his automobile, I find
5 that the Agency did not violate the
6 Rehabilitation Act when the lift was not
7 purchased and installed. Complainant pursued
8 that benefit through his status as a disabled
9 veteran, not as an employee of the Agency. To
10 the extent that his is challenging the decision
11 making process of the Agency with regard to those
12 veteran benefits, that litigation strategy would
13 constitute a collateral attack and therefore be
14 outside the scope of the Commission's
15 jurisdiction.

16 Furthermore, had Complainant pursued
17 that benefit as an employee of the Agency it is
18 not at all clear he would have received the
19 benefit of the lift, as the Agency could have met
20 Complainant's commuting needs through public
21 transit or other alternatives. Finally, it would
22 not be apparent to Complainant's supervisors that
23 this was a necessary accommodation which would
24 trigger the interactive process because

1 Complainant did not raise it within his
2 reasonable accommodation request and had been
3 commuting to work without the lift for some time.

4 This leaves Complainant's claim that
5 the Agency violated an existing reasonable
6 accommodation with respect to his parking
7 location. Clearly, the policy implemented in
8 March 2020 to minimize the number of entrances
9 did not target Complainant specifically. It was
10 a neutral, generally applicable policy.

11 However, notwithstanding that
12 neutrality, the Agency was still liable for
13 ensuring that Complainant's disability was
14 accommodated. There is no pandemic exception to
15 the Rehabilitation Act. See e.g., quote, What
16 You Should Know About COVID-19 and the ADA, the
17 Rehabilitation Act, and Other EEO Laws, end
18 quote, question G.7 available at eeoc.gov.

19 Here, the Agency met its obligation to
20 ensure that Complainant was accommodated. First,
21 Complainant was only required to move from this
22 reasonable accommodation as of May 14, 2020.
23 While Complainant contends that it occurred
24 earlier than this, there is no evidence to

1 support his testimony that the informal
2 accommodation ended after two weeks. Conversely,
3 there is objective evidence that Complainant was
4 permitted to carry forth the accommodation until
5 May 2020.

6 There has been no reason given to
7 doubt the EEO counselor's contemporaneous notes
8 provide in the Counselor's report that this was
9 the date complainant gave to the counselor at the
10 time of beginning the pre-complaint process. The
11 absence of email traffic prior to that date is
12 also highly indicative that there was no problem
13 for Complainant until that date, at least after
14 the March email to Chief Ousley. Finally, while
15 Complainant testified that he discussed with his
16 medical provider that he was having issues from
17 walking farther, there was no corroborating
18 medical evidence provided by Complainant.

19 Accordingly, preponderant evidence weighs in
20 favor of finding that the informal accommodation
21 which permitted Complainant to park in his usual
22 spot behind Building 200 held until May 14, 2020.

23 I note, however, that even had I
24 concluded that the informal accommodation ceased

1 to exist one to two weeks after the Agency
2 instituted COVID-19 protocols, there is no
3 evidence that Complainant notified anyone that
4 his reserved parking space ceased to be an
5 effective accommodation until May 2020. The only
6 individual Complainant identified as someone he
7 told was his medical provider. But even with
8 respect to Dr. Uppal, there is no corroborating
9 testimony to support his conclusion. Once Graham
10 did find out -- and Complainant did not explain
11 how she found out -- she and other members of
12 management acted expeditiously to attempt to find
13 an effective accommodation. The fact that
14 Complainant could not explain how Graham found
15 out but that Graham began to take action in mid-
16 May is highly indicative that there was no issue
17 raised until May 2020 and in turn that the
18 informal accommodation carried forth again until
19 May 2020.

20 After Complainant informed management
21 there was an issue with the restricted entries on
22 or about May 14, 2020, and requested that he be
23 provided some accommodation, the Agency obliged.
24 In a short period of time the Agency identified

1 an alternative parking space located within a
2 short walk of a screening entrance in Building 1
3 and offered it to Complainant. Complainant
4 declined to accept the spot and instead opted to
5 continue parking by Building 228 and thereby have
6 to walk a further distance.

7 Complainant's belief that his scooter
8 would not be secure is highly speculative. He
9 points to no rash of thefts or other indicia that
10 the scooter would be displaced, stolen,
11 disassembled, or otherwise damaged by parking it
12 within Building 1 in Section C. Thus he has not
13 pointed to preponderant evidence that this would
14 not have been a successful accommodation.

15 Furthermore, I find that the Agency
16 did offer at least one other accommodation, which
17 Complainant denied. However, Complainant was
18 clear that he was refusing to accept any offered
19 accommodation other than that which he previously
20 had or a space, immediately in front of the
21 Emergency Room entrance, which Complainant
22 testified the police had stated they could not
23 keep clear and at which the record points to
24 there being no room for scooter storage. Scooter

1 storage was an essential part of Complainant's
2 needs with respect to a parking space.

3 The fact that Complainant was
4 unwilling to engage in or consider other parking
5 spaces is highly indicative to me that it was
6 actually Complainant rather than the Agency who
7 ceased to engage in the interactive process.
8 Complainant demanded an accommodation that was
9 either not feasible with the need for a scooter
10 storage and the police's ability to keep the
11 parking space clear or an accommodation that was
12 not feasible with the need to maintain COVID-19
13 safety procedures, at least with respect to the
14 point in time that COVID-19 was in existence in
15 the summer of 2020. In his refusal to consider
16 any other alternatives, it was Complainant,
17 rather than the Agency that walked away from the
18 continuing dialog which is the interactive
19 process.

20 In light of the fact that the Agency
21 provided Complainant with an appropriate parking
22 space once Complainant made it aware that there
23 was an issue, and that Complainant failed to
24 continue to engage in the interactive process

1 when he was offered an effective accommodation
2 that was not the accommodation of choice, I find
3 that he has not carried the burden of proving by
4 preponderant evidence he was denied a reasonable
5 accommodation. This will conclude this portion
6 of the hearing. A decision has now been issued
7 on the record.

8 To the court reporter, please provide
9 me with a copy of the transcript. I would like
10 it digitally in searchable PDF. The parties'
11 copies will go directly to each of the parties.
12 The Agency is responsible for paying for the
13 Complainant's copy of the transcript. To the
14 Complainant's counsel, how would you like to have
15 your copy of the transcript received?

16 MR. FLAXMAN: As a full size PDF.

17 JUDGE BRAUNLICH: Okay. Agency
18 counsel, how would you like your copy received?

19 MS. FITZPATRICK: The Agency would
20 like a PDF as well.

21 JUDGE BRAUNLICH: The hearing is
22 closed. The time is 1:51. We are off the record.

23 (Whereupon, the above-entitled matter
24 went off the record at 1:51 p.m.)

A			
A-12 8:16 A-21 11:10 A-29 13:14 ability 4:24 5:2 6:10 13:20 19:10 above-entitled 20:23 absence 16:11 absent 6:2 accept 12:9,21 18:4,18 accepted 7:13 access 9:16 10:1,5 accessed 8:21 accommodated 15:14 15:20 accommodation 3:12 3:20,23 4:2,8,9 5:6,12 5:14,18 6:2 7:14,17 8:5,9 11:1 12:10,23 14:23 15:2,6,22 16:2 16:4,20,24 17:5,13,18 17:23 18:14,16,19 19:8,11 20:1,2,5 accommodations 3:10 5:19 act 3:15 4:11 13:18 14:6 15:15,17 acted 17:12 action 17:15 activities 4:16,19 activity 5:1 6:11 13:21 ADA 15:16 added 12:15 additionally 8:2 Administrative 1:23 Affairs 1:8 2:13 affidavit 7:16 afraid 12:11 agency 1:7,10 2:9 3:13 3:14,19,23 4:7 5:5,7 5:17,23 6:17 8:14 11:2,22 13:23 14:5,9 14:11,17,19 15:5,12 15:19 17:1,23,24 18:15 19:6,17,20 20:12,17,19 agreement 10:7,11 AJ-1 7:12 8:19 AJ-2 8:19 alia 6:6 allow 11:14 alternative 12:20,23 18:1 alternatives 10:23 14:21 19:16 ambulating 6:15 ambulation 12:16 AMERICA 1:1	Americans 4:10 Analysis 13:15 Angela 7:2 apparent 14:22 Appeal 5:9,15 6:4 APPEARANCES 2:1 applicable 3:18 15:10 appropriate 19:21 approximately 13:9 aside 12:21 attached 7:9 8:20 attack 14:13 attempt 17:12 August 6:4 7:24 authorized 13:13 automobile 14:4 available 10:22 15:18 Avenue 2:4 aware 10:21 11:1 19:22 <hr/> B <hr/> back 3:4 6:7 10:16 Barnard 6:3 based 3:8 basement 7:6 began 7:23 10:23 17:15 beginning 7:15 16:10 behalf 2:2,9 belief 18:7 bench 1:17 3:5 benefit 14:8,17,19 benefits 8:7 14:12 Black 5:8 BOURKE 1:4 Box 2:14 BRAUNLICH 1:22 3:3 20:17,21 breath 6:14 breathing 4:21 broken 6:24 7:5 building 7:7,8,8,9,10,11 8:16,17,20,20 9:4,12 9:18 10:2,6,16 11:24 12:3,5,14 13:10 16:22 18:2,5,12 buildings 7:10 8:21 burden 20:3 Burns 5:14 <hr/> C <hr/> C 11:12,14,24 12:4 18:12 C.F.R 3:18 4:4,6,18,22 5:3,20 cane 6:14 car 3:16 8:3,11 care 10:18 12:6 caring 4:20	carried 17:18 20:3 carry 3:16 16:4 case 3:5,6 ceased 16:24 17:4 19:7 certain 3:13 cf 8:19 challenging 14:10 Chicago 2:5 Chief 8:24 10:3 11:8 16:14 choice 20:2 choose 5:19 13:2 choosing 12:14 chosen 5:20 chronic 6:8 claim 14:2 15:4 clear 13:2 14:18 18:18 18:23 19:11 Clearly 15:7 close 11:24 12:3 closed 3:13 10:17 13:11 20:22 collateral 14:13 commenced 1:17 COMMISSION 1:1 Commission's 14:14 commuting 14:20 15:3 compared 5:1 complainant 1:5 2:2 3:7 4:1,2 6:1,5,18,20,22 7:16 8:1,4,7,8,10,17 8:23 9:4,10,14,20 10:1,9,13,19 11:2,9 11:14,16,23 12:1,4,9 12:13,19,24 13:7,12 13:15,18,23 14:7,16 15:1,9,20,21,23 16:3 16:9,13,15,18,21 17:3 17:6,10,14,20 18:3,3 18:17,17,21 19:3,6,8 19:16,21,22,23 complainant's 3:11,16 7:1,4,5,6,11,14 9:22 11:6 13:6 14:2,20,22 15:4,13 18:7 19:1 20:13,14 complainants' 6:10 complaint 9:9 10:15 complex 7:7,9 concedes 6:18 13:23 concerns 12:17 conclude 20:5 concluded 16:24 conclusion 17:9 condition 6:7 conditions 6:10 consider 19:4,15 constitute 14:13	construction 13:12 contacted 8:24 contemporaneous 16:7 contends 8:1 15:23 continue 12:14 13:13 18:5 19:24 continued 9:5,15 13:8 continuing 3:9 9:1 19:18 Conversely 9:13 16:2 Coordinator 11:1 COPD 6:9 copies 20:11 copy 20:9,13,15,18 corroborating 16:17 17:8 counsel 2:12 3:11 20:14,18 counselor 9:13,14,21 16:9 counselor's 16:7,8 couple 12:5 court 20:8 COVID-19 3:14 8:14 15:16 17:2 19:12,14 credit 9:20 CST 1:18 <hr/> D <hr/> damaged 18:11 date 10:5 16:9,11,13 DAVID 1:4 day 12:6 December 3:8 7:15 decision 1:17 3:5 14:10 20:6 declined 11:18 12:9,11 12:19 18:4 defined 4:4 deliberately 9:20 demand 19:8 demonstrate 3:23 denied 3:10 4:2 7:14 10:1 18:17 20:4 DENIS 1:7 Department 1:7 2:13 Deputy 8:24 10:2 11:8 design 7:4 development 12:8 dialog 19:18 dialogue 5:10 different 9:11 difficulty 6:12 digitally 20:10 directly 20:11 Disabilities 4:11 disability 3:8,22 4:4,6 4:13,23 15:13

disabled 7:19 9:2 14:8
 disassembled 18:11
 discriminated 3:7
 discussed 11:5 16:15
 disease 6:9
 dismantled 12:12
 displaced 18:10
 dissatisfaction 10:21
 distance 12:15 18:6
 DISTRICT 1:2
 doctor's 12:5
 documentary 7:20
 door 10:6 11:4 13:9
 doors 9:8 11:19
 doubt 16:7
 Dr 10:17 17:8
 due 3:14 9:2
 duty 7:6

E

E 9:12
 e.g 13:14 15:15
 earlier 15:24
 EEO 9:13,14,21 15:17
 16:7
 EEOC 1:5 4:8,11 5:9,15
 6:3
 eeoc.gov 15:18
 effected 6:10
 effective 5:20 6:1 17:5
 17:13 20:1
 either 19:9
 electric 3:17 6:21 8:3
 8:10
 email 9:23 10:2,4,8
 16:11,14
 emergency 8:19 11:18
 12:22,24 13:4 18:21
 employee 3:22 14:9,17
 employees 8:15 9:9
 EMPLOYMENT 1:1
 ended 16:2
 endured 12:16
 Enforcement 4:9
 engage 19:4,7,24
 engaged 5:23
 ensure 15:20
 ensuring 15:13
 enter 8:15 11:3
 entered 8:18
 entering 9:9
 entrance 8:18,19 9:2,3
 9:5,11,18 10:16 12:3
 13:11 18:2,21
 entrances 3:13 15:8
 entries 17:21
 entry 8:16 13:4
 environments 6:12

EQUAL 1:1
 equipment 12:18
 Eric 8:24
 ESQ 2:3,11
 essential 6:19 13:22,24
 19:1
 establish 4:1
 evidence 6:6 7:20
 10:20 13:3,16 15:24
 16:3,18,19 17:3 18:13
 20:4
 exception 15:14
 exertion 6:14
 Exhibit 8:16 11:10
 13:14
 Exhibits 7:12
 exist 17:1
 existence 19:14
 existing 3:12 15:5
 exit 11:3
 expeditiously 17:12
 explain 17:10,14
 expressed 11:17
 extent 14:2,10

F

fact 17:13 19:3,20
 Facts 6:5
 failed 4:7 19:23
 failure 5:10,13,21
 farther 16:17
 favor 16:20
 feasible 19:9,12
 feet 6:13,16
 Finally 14:21 16:14
 find 9:19 11:9 14:4
 17:10,12 18:15 20:2
 finding 16:20
 first 10:5,10 15:20
 FITZPATRICK 2:11
 20:19
 five 8:15
 Flaxman 2:3,3 20:16
 focus 3:11
 focuses 14:3
 form 5:4
 forth 16:4 17:18
 found 17:11,14
 fractures 6:17
 fracturing 6:8
 frame 9:21
 front 18:20
 frontline 7:1
 full 20:16
 functions 4:19 6:19
 13:22,24
 further 10:19 18:6
 Furthermore 13:3

14:16 18:15

G

G.7 15:18
 general 2:12 5:2
 generally 15:10
 given 16:6
 Graham 7:2,3 10:20
 11:11,16 12:13 17:9
 17:14,15
 granted 7:23
 Guidance 4:9

H

hand 7:5
 hardship 3:24 4:10 6:2
 health 10:18
 hearing 4:21 9:22 12:2
 20:6,21
 held 16:22
 high 6:12
 highly 16:12 17:16 18:8
 19:5
 Hines 2:15 7:7
 history 6:7
 Hospital 7:7
 houses 12:5

I

Id 5:14 8:19,22
 identified 5:24 11:22
 17:6,24
 IL 2:5,15
 immediately 18:20
 impairment 4:14,17,18
 4:23
 impairments 13:19
 implemented 15:7
 impose 3:24
 inability 6:13
 include 4:19
 including 9:11
 indicative 16:12 17:16
 19:5
 indicia 18:9
 individual 4:3,5,13,24
 5:11 13:17 17:6
 informal 5:10 10:6 16:1
 16:20,24 17:18
 informed 9:17 11:2,8
 11:11 12:13 17:20
 install 3:16
 installed 8:3,11 14:4,7
 instituted 17:2
 inter 6:6
 interactive 5:7,22,24
 14:24 19:7,18,24
 interconnected 7:10

issue 3:6 7:13 17:16,21
 19:23
 issued 20:6
 issues 16:16

J

January 8:2,9
 Judge 1:23 3:3 20:17
 20:21
 July 13:9,13
 June 5:9 7:22 12:13
 jurisdiction 14:15

K

keep 13:2 18:23 19:10
 Kenneth 2:3,3
 known 3:20

L

lab 12:8
 law 3:18
 Laws 15:17
 learning 4:22
 leaves 15:4
 levels 12:7
 liability 5:12,21
 liable 15:12
 life 3:16 4:16,19 5:1
 6:11 13:21
 lift 8:3,11 14:3,6,19
 15:3
 light 19:20
 limit 13:20
 limitations 3:21
 limits 4:15,24
 litigation 14:12
 lobby 8:18
 located 9:4 11:23 18:1
 location 11:9 15:7
 locked 9:8
 long 5:20
 longer 9:18
 looking 10:23
 Lot 9:12
 lower 6:7

M

M 2:11
 mail 12:6
 main 7:8 8:18
 maintain 19:12
 major 4:15,19 5:1 6:11
 13:21
 making 14:11
 management 10:14
 11:5 17:12,20
 manual 4:20
 March 1:15 8:13,23

9:15 10:3 15:8 16:14
matter 20:23
McDONOUGH 1:7
medical 16:16,18 17:7
member 10:14
members 17:11
mental 3:21 4:14 13:19
met 14:19 15:19
Michigan 2:4
mid- 17:15
minimize 15:8
MINNEAPOLIS 1:2
misleading 9:20
model 6:23
move 15:21
multiple 13:19

N

N 2:3,3
near 7:19 11:18
necessary 11:9 14:23
need 19:9,12
needs 14:20 19:2
neutral 15:10
neutrality 15:12
new 11:9
Nos 5:15
notable 9:23
note 16:23
notes 16:7
notified 17:3
notwithstanding 15:11
November 5:16
number 15:8

O

objective 16:3
obligation 15:19
obliged 17:23
obstructive 6:8
obtained 8:7
obtaining 11:13
occur 5:22
occurred 15:23
October 4:11
offer 18:16
offered 12:10,20 18:3
 18:18 20:1
offering 12:21
office 1:2 2:12 12:5
officer 10:8
officials 11:6
once 17:9 19:22
one's 4:20
onward 13:14
open 11:19
operations 3:24
OPPORTUNITY 1:1

opted 18:4
options 10:22
order 4:1 8:13
osteoporosis 6:9
Ousley 8:24 10:3 11:8
 16:14
outpatient 9:1,3,5
outside 14:14
overnight 11:13
owned 6:22

P

P 1:4
P-R-O-C-E-E-D-I-N-G-S
 3:1
P.C 2:3
p.m 1:18 3:2 20:24
P.O 2:14
pain 6:16 12:16
pandemic 15:14
park 11:15 12:14 13:3,8
 16:21
parking 7:19 9:2,12
 10:16 11:7,13,18,23
 12:2 15:6 17:4 18:1,5
 18:11 19:2,4,11,21
parks 11:12
part 8:6,11 19:1
participate 5:10,22
parties 20:11
parties' 20:10
paying 20:12
PDF 20:10,16,20
people 5:2
perform 5:1 6:11,18
 13:20,22,24
performing 4:20
period 9:6 17:24
permitted 16:4,21
pharmacy 9:1,3
physical 3:21 4:14
 13:19
picture 12:1
place 7:6
please 20:8
point 9:6,7 10:23 19:14
pointed 18:13
points 7:21 8:16 9:16
 10:4 18:9,23
police 9:8 10:8 11:3
 13:1 18:22
police's 19:10
policy 15:7,10
population 5:3
portion 20:5
position 6:19 13:23
 14:1
possibility 13:11

Postal 5:8,14 6:3
pre-complaint 16:10
preceding 9:24
preference 11:17
preponderant 13:16
 16:19 18:13 20:4
presented 3:6 6:5
prevent 8:14
previously 18:19
print 12:6
prior 10:22 16:11
problem 16:12
procedures 19:13
process 5:7,22,24 8:6,6
 14:11,24 16:10 19:7
 19:19,24
produced 13:16
propose 12:22
protocols 17:2
provide 4:8 5:17 16:8
 20:8
provided 5:13 6:1 9:21
 13:5 16:18 17:23
 19:21
provider 10:18 16:16
 17:7
proving 20:3
PTSD 6:6
public 14:20
pulmonary 6:8
purchased 14:4,7
pursuant 4:6
pursued 14:7,16

Q

qualified 3:22 4:5 13:17
 13:21
question 12:3 15:18
quote 5:23 6:2 12:15,18
 15:15,18

R

raise 15:1
raised 10:19 17:17
rash 18:9
re-opened 13:10
rear 13:9
reason 16:6
reasonable 3:9,20 4:2,8
 4:9 5:6,12,13,19 7:14
 7:17 8:5,8 10:24 15:2
 15:5,22 20:4
recall 10:14
receipt 5:5,5
received 9:8 14:18
 20:15,18
receiving 5:11
record 3:5 4:16 13:3

18:23 20:7,22,24
refusal 19:15
refusing 18:18
regard 14:11
regarded 4:17
regarding 10:15
Regardless 5:4
rehabilitation 3:15
 13:18 14:6 15:15,17
related 6:16
relevant 7:2
relocate 11:6
report 9:13,22 16:8
reporter 20:8
request 3:9 5:4,6,8,11
 7:17,21,23 8:9,10,12
 14:3 15:2
requested 5:18 8:5
 17:22
required 5:17 8:15
 15:21
rescinded 10:11
research 12:7
reserved 7:19 11:7 17:4
respect 12:23 15:6 17:8
 19:2,13
respond 5:8
responsible 20:12
restricted 17:21
result 5:12
reviewed 12:1
ROI 6:9,17,19 7:2,8,20
 7:22,24 8:4,12 9:2,19
 10:3,11 11:4,7,15,19
 11:24 12:18 13:6
room 11:18 12:6,22,24
 13:4 18:21,24

S

safety 12:17 19:13
Scheirer 10:24 11:5,12
scooter 3:17 6:21,22
 7:3 8:3,10 11:12,15
 12:12 13:6 18:7,10,24
 18:24 19:9
scope 14:14
screening 11:19 18:2
searchable 20:10
second 3:14
Secretary 1:7
section 3:19 4:4,6,18
 4:22 5:3,21 11:13,14
 11:24 12:4 18:12
secure 12:17 18:8
seeing 4:21
self 4:20
sent 10:2
Service 5:9,15 6:3

services 11:3
Shawn 10:24
SHELIA 2:11
shop 12:6
short 17:24 18:2
shortness 6:14
show 4:3
shows 13:4
significant 6:16
similar 7:4
single 12:20,21
size 20:16
sole 3:6
sorry 11:21
sought 7:18 8:2
South 2:4
space 9:2 11:18,23 12:2
 12:11,24 13:2,5 17:4
 18:1,20 19:2,11,22
spaces 9:11 13:8 19:5
speaking 4:21
specific 5:18
specifically 3:10 15:9
speculative 18:8
spinal 6:17
spot 7:19 11:7,14 12:21
 16:22 18:4
spread 8:14
stated 3:11 7:16 11:16
 18:22
states 1:1 5:14 6:3 7:13
 9:13 10:1,10
station 6:23 7:20
status 14:8
STEPHEN 1:22
stolen 12:12 18:10
storage 12:17 13:5
 18:24 19:1,10
stored 6:22
strategy 14:12
stress 6:12
submit 7:17
submitted 7:21
subsequent 8:8 12:16
substantially 4:15,24
 13:20
successful 18:14
suffers 6:6 13:18
sufficiency 10:15
Suite 2:4
summer 19:15
supervisor 7:1
supervisors 14:22
support 16:1 17:9

T
talked 10:17
target 15:9

tasks 4:20
testified 6:20 8:4 9:4,7
 9:10 10:13,17,20 12:2
 12:4,10,19 13:1,7
 16:15 18:22
testimony 7:5,11 9:22
 16:1 17:9
thefts 18:9
things 7:19
three 4:7,17
told 9:14 13:1 17:7
traffic 9:24 10:4,8 16:11
transcript 20:9,13,15
transit 14:21
trigger 14:24
Tuesday 1:15
turn 17:17
two 4:5,16 9:7 16:2 17:1

U
U.S 5:8
ultimately 7:23 13:7
unauthorized 9:18
undue 3:24 4:10 6:2
unidentified 10:7
United 1:1 5:14 6:3
unlawful 3:19
unscreened 9:9
unwilling 19:4
Uppal 10:18 17:8
upper 12:7
use 9:5,15,18
uses 7:3
usual 16:21
utilize 9:1
utilizes 6:20

V
v 1:6 5:8,14 6:3
VA 7:7
veteran 14:9,12
veterans 1:8 2:13 8:7
 13:2
Video-Teleconference
 1:13
violate 14:5
violated 3:13,15 15:5

W
walk 6:13 18:2,6
walked 19:17
walker 6:14,15
walking 4:21 11:17
 16:17
way 9:12
weeks 9:7 16:2 17:1
weighs 16:19
went 20:24

wit 6:11
work 6:21,23 7:20 15:3
worked 8:17
working 4:22

X

Y

Z

0
01994467 5:15
01A04755 5:15
01A42589 5:9
07A10002 6:4

1
1:31 1:17 3:2,4
1:51 20:22,24
125 9:3 10:3
12th 8:13
13 9:19
13th 8:23 10:3
14 9:15,17,24 10:4,9
 15:22 16:22 17:22
1427 2:14
14th 11:7
15 6:13 10:9
15th 11:11
1630.2(g) 4:5,18
1630.2(i) 4:23
1630.2(j)(ii) 5:3
1630.2(m) 4:7
1630.9(a) 3:19
1630.9(d) 5:21
17th 4:11 7:22
181 11:15,20 13:6
184 12:18
185 11:24
18th 11:21,22

2
2 7:12 13:14
200 2:4 7:7,8,11 8:17,20
 9:4,19 10:2,6,16
 13:10 16:22
2001 5:16
2002 4:12 6:4
2006 5:9
200J-0578-2020104191
 1:7
201 2:4
2018 3:8 7:15
2019 7:18,22,24 8:2,9
2020 8:13,23 9:15,15,17
 9:24 10:4,9,22 11:2,8
 11:11,21,22 12:13

13:9,13 15:8,22 16:5
 16:22 17:5,17,19,22
 19:15
2022 1:15
211 10:11
213 10:12
21st 5:16
228 7:9 8:20 9:12 12:15
 18:5
239 7:22 8:12
248 7:24
250 6:9,17
276 7:22
29 3:18 4:4,6,18,22 5:3
 5:20
2nd 6:4

3
30th 7:24
312-427-3200 2:6
3red 12:13

4
4 7:15
40 6:16
440-2021-00151X 1:5
45 7:2,8
48 7:20 8:4
4th 3:8

5
50 6:16
51 6:10
57 6:19

6
60 11:20
60141 2:15
60604 2:5

7
75 11:4
77 11:7

8
80 11:20
87 12:1

9
9 5:9
915.002 4:11

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: David Bourke v USDVA

Before: EEOC

Date: 03-01-22

Place: teleconference

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

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Exhibit 28

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

David P. Bourke,)	
<i>Plaintiff,</i>)	
	)	No. 22-cv-03164
-vs-)	
	)	<i>(Judge Kennelly)</i>
Denis Richard McDonough, in his)	
official capacity as Secretary of)	
Veterans Affairs,)	
<i>Defendant.</i>)	

**PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant is requested to respond to the following documents, subject to the definitions and instructions set out in defendant's first set of interrogatories and requests for production of documents to plaintiff served on October 17, 2022:

1. Produce all documents used, referred to, referenced in, or relied upon in responding to the above interrogatories.
2. Produce all documents identified in your Rule 26 disclosures that are in your possession, custody, or control.
3. Produce all documents, including communications, relating to any claim or defense in this action, any fact alleged in the pleadings, or any other fact relevant to this action.
4. Produce all statements of any person having knowledge of the events giving rise to this litigation in whatever form the statements are in, including email and recordings such as voice mail, text messages, or social media messages or posts.
5. Produce all communications involving any of the witnesses identified in defendant's Rule 26(a)(1) disclosures.
6. Produce all documents that support, contradict, evidence, mention, or relate in any way to the occurrences complained of in this action.
7. Produce all documents that support your denial of paragraph 9 of the complaint.

8. Produce all documents that support your denial of paragraph 10 of the complaint.

9. Produce all documents that show, or tend to show, that the VA engaged in an interactive process with plaintiff before changing his access to the workplace in March of 2020.

10. Produce all documents that show, or tend to show, that plaintiff did not incur serious personal injury after the VA changed his access to the workplace in March of 2020.

11. Produce all documents that show, or tend to show, that the plaintiff did not incur pain and suffering after the VA changed his access to the workplace in March of 2020.

Dated: November 10, 2022

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Exhibit 29

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

David P. Bourke,)	
<i>Plaintiff,</i>)	
	)	No. 22-cv-03164
-vs-)	
	)	<i>(Judge Kennelly)</i>
Denis Richard McDonough, in his)	
official capacity as Secretary of)	
Veterans Affairs,)	
<i>Defendant.</i>)	

**PLAINTIFF'S SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant is requested to produce all records of treatment provided by the Hines VA Hospital to plaintiff from September 14, 2022 to April 30, 2023, including but not limited to the treatment provided to plaintiff by Dr. Offal.

Plaintiff seeks these documents for use in this case and in *Bourke v. United States*, 20-cv-4427.

April 12, 2023

/s/ Kenneth N. Flaxman
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Exhibit 30

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

David P. Bourke,)	
)	
<i>Plaintiff,</i>)	
	)	No. 22-cv-3164
<i>-vs-</i>)	
)	
Denis R. McDonough, Secretary,	)	<i>(Judge Kennelly)</i>
U.S. Department of Veteran)	
Affairs,)	
)	
<i>Defendants.</i>)	

PLAINTIFF'S RULE 26(a)(1) DISCLOSURES

1. Witnesses:

Plaintiff David P. Bourke, to be contacted through counsel. Mr. Bourke has information about the failure to accommodate his disability and the injuries he suffered as a result.

Dr. Uppal, treating physician at the Hines VA Hospital, has knowledge of the physical injuries plaintiff incurred because of the failure to accommodate his disability at issue in this case.

Plaintiff may offer testimony from witnesses identified by defendant as their knowledge of relevant facts is revealed in discovery.

2. Documents

Medical records, not yet secured, pertaining to treatment by Dr. Uppal

Documents identified by defendant in its initial disclosures.

3. Damages

Plaintiff seeks appropriate damages to compensate him for the physical injury, pain and suffering, depression, humiliation, anguish, and emotional distress caused by defendants' wrongful conduct. Plaintiff also seeks litigation costs and attorney fees. Plaintiff is unable to quantify his damages at this time but will supplement this disclosure.

4. Insurance

Not applicable.

Dated: September 19, 2022

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
an attorney for plaintiff