

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

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

PLAINTIFF'S LOCAL RULE 56.1(b)(2) STATEMENT

Plaintiff responds to defendant's Local Rule 56.1 statement as follows:

1. Plaintiff David Bourke was hired by the VA as a transportation clerk at the VA's Edward Hines, Jr. Hospital ("Hines") in October 2009. Ex. 1; Ex. 2 at 7-8.

RESPONSE: Admit.

2. Bourke is also veteran of the U.S. Navy, having been honorably discharged in 1978 as a Seaman Recruit. Ex. 3; Ex. 2 at 22.

RESPONSE: Admit.

3. At some point in 2018, Bourke obtained a personally owned, powered mobility device (scooter) through his VA healthcare provider. Ex. 2 at 21 (testifying that "the VA doctors put me in for a scooter"); *id.* at 24 (testifying that the scooter was his to use at work and at home).

RESPONSE: Admit.

4. By June of 2019, Bourke was employed as an advanced medical support assistant in Patient Administration Service (PAS) at Hines, where he worked in the ambulatory surgery unit (ASU). Ex. 4 at USA000322-23 (describing Bourke's role as an "AMSA" in the ASU).

RESPONSE: Admit.

5. During the relevant time period, Angela Graham was Bourke's first-line supervisor and Christopher Wirtjes was the chief of PAS. Ex. 5 at 5-6 (testifying that prior to leaving Hines in 2021, she had been Bourke's supervisor for about 2 years); Ex. 6 at 5.

RESPONSE: Admit.

6. In June 2019, Bourke requested a reasonable accommodation in the form of a parking space near the ASU, which was located in the basement of the main hospital building (Building 200). Ex. 4 at USA000323 (requesting, among other things, a “parking reserved slot in the back of Bldg. 200 by outpatient pharmacy area”); Ex. 2 at 35.

RESPONSE: Admit

7. Bourke requested the accommodation due to claimed limitations on walking. Ex. 4 at USA000323-24.; Ex. 7.

RESPONSE: Admit in part, deny in part. It is misleading to refer to “claimed limitations.” The medical documentation shows, *inter alia*, that plaintiff is “unable to walk [more than] 15 feet without cane/walker due to shortness of breath due to underlying lung condition, and “with cane or walker, still unable to walk [more than] 40 feet due to back pain and breathing.” (Request for Medical Documentation, ECF No. 31-2 at 197.)

8. The VA’s process for requesting a reasonable accommodation involves the employee informing their supervisor or the local reasonable accommodation coordinator (LRAC) of their need for an accommodation and participating collaboratively in the interactive process. Ex. 8 at USA000555.

RESPONSE: Admit

9. Once the employee makes a request for a reasonable accommodation, the designated management official (in this case, the employee’s first-line supervisor) will engage in an interactive process with the employee and make the final decision regarding the employee’s request in consultation with the LRAC as expeditiously as possible, considering alternative effective accommodations as necessary. *Id.* at USA000552-53; USA000559.

RESPONSE: Admit

10. The LRAC’s role is to consult with and assist the supervisor in processing requests, provide information to the requesting employee, provide consultation during the interactive process, and

coordinate with additional departments as necessary. *Id.* at USA000553-54, USA000559.

RESPONSE: Admit

11. When there is more than one accommodation that would be equally effective for the employee, the supervisor or other decision-maker “may choose the one that is easier or less expensive to provide,” and while a supervisor should consider the employee’s preferences, the supervisor has the “ultimate discretion to choose between effective accommodations.” *Id.* at USA000543.

RESPONSE: Admit

12. The process of being assigned a reasonable-accommodation parking space at Hines includes coordination between the employee, the employee’s supervisor, the LRAC, the VA Police Department (which is responsible for identifying available parking spaces that are not already designated as general handicapped spots or as reserved for other employees), and the Engineering Department (which creates the sign identifying the parking spot as reserved for a specific employee). Ex. 9 at 13.

RESPONSE: Admit

13. Bourke’s reasonable accommodation was approved as of August 30, 2019, and he was assigned a reserved parking space, with a sign posted reserving the spot for him, at the rear entrance to Building 200, near the outpatient pharmacy. Ex. 10; Ex. 11 at 8-9; Ex. 12.

RESPONSE: Admit.

14. Around the time Bourke received his reasonable-accommodation parking space, he also asked the VA to install a lift in his car because he could not physically lift the heaviest pieces of his scooter (some of which weighed about 40 pounds) and he wanted to be able to transport his scooter to and from Hines. Ex. 2 at 21, 24.

RESPONSE: Admit in part, deny in part. The reasonable accommodation parking space was approved on August 30, 2019. (See preceding contention.) Plaintiff “started asking about the lift” in October of 2018; he received the scooter after that date. (Bourke Dep. 25:12-21, ECF No. 31-2 at 28.)

15. This request was made as part of Bourke's veteran's benefits through the Hines Physical Medicine & Rehabilitation and the Prosthetics & Orthotics Lab Departments. *Id.* at 24; Ex. 13 (confirming order for lift following medical evaluation).

RESPONSE: Admit.

16. While he waited for the lift to be installed, and independent of the reasonable accommodation process, Bourke sought and obtained permission from Diane Cotton (clinical manager of the ASU) to leave his scooter in the ASU to store and charge overnight and when he was not working. Ex. 2 at 34-35.

RESPONSE: Admit in part, deny in part. Plaintiff used his scooter at work before he received the "reasonable accommodation" parking spot. (Bourke Dep. 35:16-25, ECF No. 31-2 at 38.) The request for a lift was made in October of 2018, after plaintiff received the scooter. (Bourke Dep. 25:12-21, ECF No. 31-2 at 28.) It is correct that Diane Cotton permitted plaintiff to park his "scooter at [his] workstation." (Bourke Dep. 34:22-35:4, ECF No. 31-2 at 35.)

17. Bourke did not seek storage of his scooter as part of his request for a reasonable accommodation. Ex. 4 at USA000323 (requesting only a parking space and an exemption for rotational assignment).

OBJECTION: This contention is not material: Plaintiff obtained secure storage for his scooter *before* he requested the reasonable accommodation parking spot. (Bourke Dep. 25:12-21, ECF No. 31-2 at 28.)

18. Prior to May 14, 2020, Bourke had been in the habit of parking in his parking spot reserved as parking space #1011, entering at the back entrance of the main hospital building (Building 200) near the outpatient pharmacy, taking an elevator down to the basement, and walking to the ASU where he had stored his scooter in a corner near his workstation. Ex. 2 at 36.

RESPONSE: Admit.

19. In early March 2020, staff at Hines watched as the threat of COVID-19 approached and observed that, with only minimal testing capabilities and without vaccines, hospitals were being overrun. Ex. 14 at 6-7.

OBJECTION: This contention is not supported by admissible evidence. Defendant seeks to support this contention with pages 6 and 7 of the deposition of Jon Beidelschies, who appeared as a Rule 30(b)(6) witness (ECF No. 31-3 at 3:13-21, ECF No. 31-3 at 42). Nothing in the cited pages of the 30(b)(6) deposition supports this contention. (ECF No. 31-3 at 44-45.)

20. In light of the growing concerns about COVID-19, the VA central office instructed all VA facilities (including Hines) to implement procedures for screening staff and patients for symptoms of COVID-19 prior to entering the facilities. *Id.* at 6.

RESPONSE: Admit in part, deny in part. The first phrase (“In light of the growing concerns …”) is not supported by anything in the cited pages of the 30(b)(6) deposition. (ECF No. 31-3 at 44.) Plaintiff admits the remainder of the contention.

21. Hines leadership received the instruction to implement screening procedures over a weekend in early March 2020 and had a short time to decide how to implement the new procedures over a vast, 147-acre medical campus. *Id.* at 6, 8.

RESPONSE: Admit.

22. At Hines, the incident command structure tasked with making all decisions and operational changes related to screening procedures, and COVID-19 generally, consisted of executive leadership, clinical leadership and subject matter experts (including the chiefs and clinical leads for infectious disease, acute medicine, cardiology, respiratory, ICU, and nursing), and administrative leadership and subject matter experts (including the emergency manager, chief of logistics, and the chief engineer). *Id.* at 7.

RESPONSE: Admit.

23. As part of implementing screening procedures, the incident command determined where they could stand up active screening locations and which entrances would be closed based on limiting factors, including the number of staff available to screen patients and staff, the limited quantity of thermal handheld thermometers and personal protective equipment available, proximity to private rooms for secondary screening, and geographic disbursement of the entrances to minimize the inconvenience to veterans and staff. *Id.* at 9-11; 27-28.

RESPONSE: Admit.

24. These limitations meant that the vast majority of entrances had to be closed, though the incident command used qualitative data to identify high-volume entrances to minimize internal barriers for veterans and staff. *Id.* at 8-9, 12-13.

RESPONSE: Admit

25. The incident command anticipated that the entrance closures would impact some employees with reasonable accommodations and that individual employees would work with their direct supervisors and human resources (in other words, the LRAC) to re-engage in the interactive process if their reasonable accommodation had been impacted. *Id.* at 21-24.

RESPONSE: Admit.

26. On March 12, 2020, Hines leadership notified Hines employees that starting on March 16, 2020, all employees would "be required to enter through designated entry points" for screening, providing a list of entrances that would be open and staffed for screening. Ex. 15.

RESPONSE: Admit.

27. The only designated entrances at Building 200 were the main entrance at the front of the building and the emergency room entrance; however, the rear entrance to Building 200 (near Bourke's designated parking space) was not listed as a designated entrance. *Id.*

RESPONSE: Admit.

28. From March 2020 until about May 14, 2020, Bourke continued to access his workspace and scooter via the undesignated entrance at the rear of Building 200 without first being screened. Ex. 2 at 38, 70.

RESPONSE: Admit.

29. After parking in his usual reserved parking space and accessing his workplace via the undesignated entrance at the rear of Building 200, Bourke would enter the building, access his scooter and then use his scooter to go through the facility to the main or ER entrances to be screened. *Id.* at 38, 41-42.

RESPONSE: Admit.

30. On May 14, 2020, Hines locked the door at the rear entrance to Building 200, and the VA police informed Bourke that he could no longer enter there. Ex. 16; Ex. 2 at 43.

DISPUTED: Admit.

31. That same day, Bourke emailed VA Police Deputy Chief Eric Ousley, since deceased, and LRAC Shawn Scheirer to have a new, temporary parking space assigned to him “until the back of Bldg. 200 is opened up again.” Ex. 16; Ex. 17 at 9.

DISPUTED: This contention mischaracterizes Exhibit 16, an email sent by plaintiff on May 14, 2020. The word “temporary” does not appear in that email. (ECF No. 31-3 at 79.) Plaintiff requested in that email, “a new reasonable accommodation parking spot due to my disabilities causing hardship and pain in walking.” Exhibit 17 at 9 is a reference to the deposition of Major McFields in which he described a conversation he had with the plaintiff “during the week that included Friday, March 13.” (McFields Dep. 9:15, ECF No. 31-3 at 89.)

32. In his May 14, 2020, email, Bourke specifically requested a new reserved parking space and an unidentified locked room or closet in or near the ER for storing his scooter (with a key to be issued to him). Ex. 16; Ex. 2 at 58, 71-72; Ex. 9 at 17, 36.

RESPONSE: Admit.

33. Bourke requested that he be able to maintain his original reasonable-accommodation parking space near the rear of Building 200. Ex. 18 at USA000261.

RESPONSE: Admit.

34. Graham and Scheirer re-engaged Bourke in the interactive process to identify a new, temporary reasonable accommodation. Ex. 5 at 18-19; Ex. 9 at 8; Ex. 2 at 70-72; Ex. 6 at 7.

RESPONSE: Disputed. Plaintiff directly controverted the existence of an “interactive process” at his deposition. (Bourke Dep. 71:3-16, ECF No. 31-2 at 74.) This contention is not supported by the cited exhibits:

(1) Exhibit 5 is the deposition of Angela Graham; the questions and answers at pages 18-19 relate to the moving of parking spots before COVID door closings. (Graham Dep. 15:1, ECF No. 31-2 at 127.)

(2) Exhibit 9 is the deposition of Shawn Scheirer, who stated at page 8 of his deposition that “[t]here was no conversation with Mr. Bourke prior to the police contacting him letting him know that that door was closed and he could no longer use it.” (Scherer Dep. 7-8, ECF No. 31-2 at 20:20-21:1.)

(3) Exhibit 2 is plaintiff’s deposition; plaintiff stated at page 71 that “they really didn’t interact with me.” (Bourke Dep. 71:3-16, ECF No. 31-2 at 74.)

(4) Exhibit 6 is the deposition of Christopher Wirtjes, who testified only that he was “aware” that an interactive process occurred “that involved Mr. Bourke and his RA parking spot.” (Wirtjes Dep. 6:6-18, ECF No. 31-2 at 177.)

35. The VA assured Bourke that he would retain his parking space near the rear entrance of Building 200. Ex. 2 at 56, 58; Ex. 9 at 8, 16, 37.

RESPONSE: Admit.

36. As part of the interactive process, Hines considered Bourke’s request that he be assigned the first handicapped parking space near the entrance to the ER. Ex. 19 at USA000228; Ex. 9 at 36; Ex. 20.

RESPONSE:  Admit.

37. While Graham was able to identify a wall in the ER waiting area with an outlet for charging, there was no secure space for Bourke to store his scooter near the ER or main entrances. Ex. 5 at 33 (Graham testifying that when Bourke “said that he wanted to go through the emergency room, I asked would it be feasible to park

the scooter close to the ED."); Ex. 9 at 17-18, 20, 36; Ex. 6 at 19.

RESPONSE: Admit.

38. Additionally, Wirtjes, Graham's chief, did not believe he could get authorization for Bourke to leave his scooter in the area of the ER entrance because it was a "high traffic area on off tour[]" hours when Bourke would need to store his scooter there. Ex. 19 at USA000228; Ex. 6 at 10-11 (Wirtjes testimony explaining that this was "at the very beginning of the COVID pandemic and the emergency room was the heart of the intake of all our COVID patients. There-we were putting up tents and different things to try to mitigate the flow, keep sick people from healthy people, and there was constant rearranging and planning and how to run the emergency room, and any sort of restriction or anything in the way, we were trying to get everything out of there that didn't need to be there. So adding something to that during that environment was just not reasonable for the health and safety of our-of the patients coming in, and staff.").

RESPONSE: Admit.

39. Scheirer testified that an additional complication with Bourke's preferred parking space in front of the ER and main entrances was that it was already designated as a general handicapped space for veteran patient and visitor use, in addition to general employee use. Ex. 9 at 23-24.

RESPONSE: Admit in part, deny in part.

First, plaintiff did not have a "preferred parking space in front of the ER and main entrances." (Bourke Dep. 56:8-10, ECF No. 3102 at 59.)

Second, this contention is not supported by the cited material, the deposition of Shawn Scheirer at 23:15-24:3, ECF No. 31-2 at 262-63. There, Scheirer testified about Scheirer Deposition Exhibit 13, an email marked as USA000226. This exhibit is included in the summary judgment record as Exhibit 21 and has nothing to do with Scheirer's belief that it would be

illegal to provide plaintiff with a parking space in front of the ER and main entrance.

40. The VA police explained that they would have had difficulty keeping Bourke's preferred parking space clear for him. Ex. 2 at 54, 72.

RESPONSE: Admit.

41. Graham identified the entrance at Building 1, Section C (where she had been temporarily parking and storing her reasonable-accommodation scooter overnight and on weekends), as a possible temporary reasonable accommodation for Bourke. Ex. 19 at USA000228; Ex. 5 at 10-12.

RESPONSE: Admit.

42. The entrance at Building 1, Section C was staffed for screening and had a secure area in the Patient Advocate Department where Bourke could store his scooter. *Id.*

RESPONSE: Admit in part, deny in part. The entrance at Building 1, Section C did not have a secure area where plaintiff could store his scooter. (Bourke Dep. 57:15-68:2, ECF No. 31-2 at 60-61.)

43. Graham and a doctor had been storing their scooters in the Patient Advocate space when they were not on duty since the COVID-19 screening procedures were implemented in March 2020. Ex. 5 at 10-12.

RESPONSE: Admit in part, deny insofar as this contention implies that plaintiff's scooter could be safely stored in the same area as Angela Graham and Dr. Silver. (Graham Dep. 12:24-13:21, ECF No. 31-2 at 123-24.) Plaintiff had a "go-go scooter, which is one that can [be broken down] and fit in the trunk of a car." (Bourke Dep. 21:10-21, ECF No. 31-2 at 24.) Unlike the larger scooters used by Graham and Dr. Silver, plaintiff's scooter "is so easy

to steal. They would just take it apart and throw it in the trunk of any car."

(Bourke Dep. 50:6-12, ECF No. 31-2 at 53.)

44. While the Patient Advocate Department space did not offer a dedicated, locked room for Bourke to store his scooter, the Patient Advocate space was outside of the public view and common areas, was near the VA Police Department, and was not a space with after-hours traffic. Ex. 5 at 24-25 (Graham describing the Patient Advocate space as "a secluded area ... [N]o one was in that area at night when we left. The area was locked down."); Ex. 9 at 16-17 (Scheirer testifying that the Patient Advocate space is "outside the public view and outside of common areas or after-hour traffic"); *id.* at 20 ("the police station is on the same hall corridor" as the Patient Advocate space, and there "is very little if any after-hour traffic that would be putting his scooter at risk.").

RESPONSE: Admit in part, deny insofar as this paragraph implies that plaintiff's scooter could be safely stored in the Patient Advocate space. See response to contention 43.

45. Graham testified that she had left her keys in her scooter on at least one occasion and that the scooter remained secure and in place. Ex. 5 at 24.

RESPONSE: Admit.

46. The VA police confirmed that there was a parking space directly in front of the entrance to Building 1, Section C available to reserve for Bourke as a temporary reasonable-accommodation parking space. Ex. 20 at USA000271.

RESPONSE: Deny. This contention is not supported by the emails that appear in USA000271, ECF No. 31-3 at 137.

47. Scheirer walked both options and determined that considering Bourke's claimed disability, the available parking space in front of Building 1, Section C had less walking and fewer barriers between what would have been Bourke's parking space, an entrance with mandatory screening, and his scooter, than either his original parking space or his preferred parking space in front of the ER. Ex. 9 at 17 (Scheirer testifying that the Building 1, Section C parking space "involved very few steps from the point of the employee parking to the point of the employee getting screened and to having access to his mobility device[.]"); *id.* at 28-29, 36-37 (describing the process LRAC Scheirer took to assess the possible

accommodations to determine the distance and possible trip hazards or other risks involved with each option).; *id.* at 37 (describing the walk from the Building 1, Section C parking space as "a shorter distance to travel").

RESPONSE: Object to "claimed disability." See response to contention 7.

Plaintiff responds to each sub-contention as follows:

a. "Scheirer walked both options." (Scheirer Dep. 29:16-17, ECF No. 31-2 at 268.)

RESPONSE: Admit.

b. "and determined that ... the available parking space in front of Building 1, Section C had less walking and fewer barriers between what would have been Bourke's parking space, an entrance with mandatory screening, and his scooter, than either his original parking space or his preferred parking space in front of the ER.

RESPONSE: Deny. The entrance at Building 1, Section C was "way, way too far away from [plaintiff's] work station." (Bourke Dep. 50:13-14, ECF No. 31-2 at 53.) Plaintiff was not offered a reserved parking space in front of Building 1, Section C: "[T]hey wouldn't even give me a reserved parking spot there. They said, 'No. You take your chances.'" (Bourke Dep. 55:18-20, ECF No. 31-2 at 58.)

48. Graham concluded that the walk from the handicapped parking space in the front of Building 200 (near the ER or main entrances) would have been a farther walk for Bourke than from the reserved parking space near the entrance to Building 1, Section C. Ex. 5 at 27.

RESPONSE: Deny. This contention is not supported by anything at page 27 of Graham's deposition, ECF No. 31-2 at 138. Graham gave the answer that relates to distance at lines 3-11 of her deposition:

Question: Was any other accommodation offered to him to your knowledge?

Graham: No. Not to my knowledge. Because that was the feasible–most feasible accommodation I could get David at the time. Because, see, in front of Building 200, he would have had to utilize the handicapped and he would have had to walk a further distance. So to get him a shorter distance to walk, it would have been feasible for him to take the C Section and park his scooter.

Graham Dep. 27:1-11, ECF No. 31-2 at 138.

Graham also admitted that, with the alternate parking spot, plaintiff “will need assistance with getting to his car when this is completed.” (Email, Graham to Scheirer, May 18, 2020, Plaintiff’s Exhibit 1.)

49. Bourke acknowledged that the distance involved in the Building 1, Section C accommodation offered the least amount of walking. Ex. 2 at 53-54.

RESPONSE: Disputed. Bourke stated: “True, it was a little longer than the back of the hospital, but it would have been a heck of a lot shorter than all the other areas that they had asked me to outside of C section, Building 1.”

(Bourke Dep. 53:25-54:4, ECF No. 31-2 at 56-57.)

50. On May 18, 2020, Graham offered Bourke a temporary reasonable-accommodation parking space in front of Building 1, Section C. Ex. 18 at USA000262; Ex. 5 at 12.

RESPONSE: Admit.

51. On June 3, 2020, after meeting with Graham, Bourke declined the offered temporary reasonable accommodation “for safety concerns for the secure storage of my equipment.” Ex. 21; Ex. 5 at 19-20.

RESPONSE: Admit.

52. After declining the offered accommodation, Bourke parked in general handicapped parking at another building and walked much farther to his ASU workspace (and scooter). Ex. 21; Ex. 2 at 59.

RESPONSE: Admit.

53. On or around June 29, 2020, the rear entrance of Building 200, near the outpatient pharmacy, was reopened and staffed for COVID-19 screening from 5:00 am until 10:00 am. Ex. 22 at USA000663-64; Ex. 17 at 29-30; Ex. 2 at 63-64; Ex. 23 (confirming reopening of outpatient pharmacy doors).

RESPONSE: Admit.

54. The doors have remained open, and Bourke was able to access this entrance from his original reserved parking space at the rear of Building 200 until he changed positions in late 2022 or early 2023. Ex. 2 at 64-65; Ex. 24 (confirming Bourke's continued access to his original parking space).

RESPONSE: Admit.

55. On June 29, 2020, Bourke filed a formal complaint of employment discrimination with the VA's equal employment opportunity (EEO) office, alleging a violation of his reasonable-accommodation parking space (along with a claim that is not at issue in the current litigation, related to his veteran's benefit request for a lift to be installed in his car). Ex. 25.

RESPONSE: Admit.

56. The claim accepted for investigation was whether Bourke "was discriminated against based on Disability, when [...] his requests for Reasonable Accommodations have been denied." Ex. 26 at USA000071.

RESPONSE: Disputed. The charge (Exhibit 25, ECF No. 31-4 at 2) asserted two claims; the first was "reasonable accommodation (violated)." *Id.* The Department of Veterans Affairs read the complaint to raise the following claim:

Whether the complainant was discriminated against based on Disability, when since December 4, 2018 and continuing,¹ his requests for Reasonable Accommodation have been denied.

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 employee fails to provide an accommodation. [citation omitted]

(Exhibit 26, ECF No. 31-4 at 19.)

57. On March 1, 2022, after a hearing before the EEOC administrative judge, the AJ concluded that the VA offered Bourke an effective accommodation but that Bourke ceased participating in the interactive process when he declined to accept the offer and refused to consider any alternative to his accommodation of choice. Ex. 27 at USA00025-26.

RESPONSE: Admit.

58. In arriving at his decision, the AJ specifically found that Bourke's concerns about security were "highly speculative." *Id.* at USA00024.

RESPONSE: Admit.

59. The VA's EEO office adopted the AJ's decision in a final agency decision issued on March 21, 2022. *Id.* at 1-2.

RESPONSE: Admit.

60. Bourke brought his lawsuit under the Rehabilitation Act, filing the complaint on June 15, 2022. Dkt. 1.

RESPONSE: Admit.

61. Bourke asserts a claim under the Rehabilitation Act, alleging that the VA failed to accommodate his disability when it "re-scinded" his reasonable-accommodation parking space as a result of COVID-19-related door closures. *Id.* ¶¶ 9, 12.

RESPONSE: Admit.

62. While the administrative EEO complaint included a claim regarding Bourke's request for a lift to be installed in his car, his current lawsuit does not claim that any failure or delay relating to the installation of the lift was a violation of the Rehabilitation Act. Dkt. 28.

RESPONSE: Admit.

63. During his deposition in connection with this case, Bourke testified that he was able to park in his original reasonable-accommodation parking space behind Building 200 and to access his scooter via the entrance at the rear of Building 200 through May 14, 2020. Ex. 2 at 43, 48, 70.

RESPONSE: Admit.

64. While Bourke claimed that Hines "really didn't interact" with him to find a new, temporary reasonable accommodation-parking space, he also testified to having meetings and conversations with his supervisor and others regarding possible temporary accommodations, including the parking space and storage for his scooter at Building 1, Section C, and the parking in front of the ER. *Id.* at 70-72.

RESPONSE: Admit.

65. Bourke also testified that his preferred accommodation, and the accommodation he requested, was the first handicapped parking space outside the ER. *Id.* at 58, 71-72 (testifying that he asked for "that first ... handicapped spot right outside the [ER]").

RESPONSE: Admit.

66. Bourke testified that he received explanations as to why Hines could not offer him his preferred accommodation, including that the VA police would be unable to keep his requested parking space in front of the ER clear. *Id.* at 54, 72-73.

RESPONSE: Admit.

67. Bourke testified that another employee's scooter charger was stolen from a different department (not the Patient Advocate space) and that he had heard (but "couldn't confirm") that someone's scooter was stolen from a hallway. *Id.* at 52-53.

RESPONSE: Admit.

68. Bourke neither requested nor produced any documents (nor did he disclose any witnesses who could offer first-hand testimony) relating to the alleged thefts. Ex. 28-30.

RESPONSE: Admit.

69. Bourke testified that he declined the offered temporary reasonable accommodation because his scooter was smaller than Graham's scooter and easier to steal. Ex. 2 at 50.

RESPONSE: Admit.

70. During his deposition, Bourke acknowledged that he regained access to the rear entrance to Building 200 (near the outpatient pharmacy and his original reasonable-accommodation parking space), on or around June 29, 2020, when a screener was placed at that door. Ex. 2 at 63-64.

RESPONSE: Admit.

71. While Bourke testified that he "thought it was longer than that" he did not testify that he regained access to the rear entrance at Building 200 on any other date. *Id.*

RESPONSE: Admit.

[Plaintiff submits a statement of additional facts as a separate document.]

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 0830399
Joel A. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 427-3200
knf@kenlaw.com
attorneys for plaintiff