

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 RULE 56.1(b)(3)
STATEMENT OF ADDITIONAL FACTS**

Plaintiff submits the following “Statement of Additional Facts” in opposition to defendant’s motion for summary judgment:

1. As part of processing plaintiff's request for a "reasonable accommodation," the VA received documentation (Request for Medical Documentation ECF No. 31-2 at 196) showing that plaintiff could not walk more than 40 feet because of back pain and breathing difficulties. (Request for Medical Documentation ECF No. 31-2 at 197.)

2. In March of 2020, plaintiff complained to Associate Police Chief Eric Ousley of the Hines Police Department about the impact of the closure of the door by the outpatient pharmacy (hereinafter “pharmacy entrance”) on his “reasonable accommodation” parking space. (Bourke Dep. 37:22-38:14, ECF No. 31-2 at 41.)

3. Plaintiff told Ousley that, even though there was not a screener assigned to the door by the pharmacy entrance, he would enter through the pharmacy entrance, retrieve his scooter, drive to the main entrance, and submit to screening before going to his work area. (Bourke Dep. 38:7-14, ECF No. 31-2 at 41.)

4. Ousley gave plaintiff permission to continue to enter through the pharmacy entrance on the understanding that plaintiff would “continue to be screened every day.” (Bourke Dep. 38:15-20, ECF No. 31-2 at 41.)

5. At the start of each workday until May 14, 2020, plaintiff would walk from his “reasonable accommodation” parking spot to the pharmacy entrance, retrieve his motorized scooter from a locked office, and submit to screening, either at the main hospital entrance or the Emergency Room. (Bourke Dep. 36:14-37:2, 42:2-9, ECF No. 31-2 at 39-40, 42.)

6. The locked office provided “a very secure location that was behind locked doors” for the motorized scooter. (Bourke Dep. 35:3-4, ECF 31-2 at 38.)

7. On May 14, 2020, Shawn Schierer, a “Human Resource Specialist” at the Hines Hospital, instructed the Hines Police Department to stop plaintiff from continuing to use the pharmacy entrance. (Schierer Dep. 12:1-20, ECF No. 31-2 at 251.)

8. The VA did not initiate any conversation with plaintiff about his use of the pharmacy entrance before ordering plaintiff to stop using the that entrance. (Schierer Dep. 7-8, ECF No. 31-2 at 20:20-21:1.)

9. Had the VA engaged in an interactive process with plaintiff before prohibiting from entering through the pharmacy door, the VA would have learned that a screener from the hospital Emergency Room could have been detailed to the pharmacy entrance to screen plaintiff when he arrived for work. (Bourke Dep. 54:24-55:9, ECF No. 31-2 at 57-58.)

10. After learning that he could no longer enter through the pharmacy entrance, plaintiff requested the VA to provide him with a new reserved parking space adjacent to the front lobby; the VA rejected this request because it would have required that a handicapped parking spot be designated for an individual person. (Schreier Dep. 36:1 to 37:7, ECF No. 31-2 at 275.)

11. In refusing plaintiff's request for a reserved parking space adjacent to the front lobby, the VA disregarded the commands of Section 17(b) of the "VA Handbook 5975.1," Defendant's Exhibit 8, ECF 31-2 at 198-238. Section 17(b) provides as follows:

b. When an employee requests a space near the building as a reasonable accommodation (and goes through the accommodation process), that employee must be provided an assigned space with the shortest route to their workspace. The Americans with Disabilities Act Accessibility Guidelines specify the size of the space and the access area.

(VA Handbook 5975.1, Section 17(b), ECF N. 31 at 228.)

12. The VA also rejected plaintiff's request to store his scooter overnight in the Emergency Room. (Defendant's Exhibit 19, Email, Wirtjes to Graham, May 15, 2000, ECF No. 31-3 at 128.)

13. The VA has not presented any evidence that plaintiff's request to store his scooter in the Emergency Room was ever presented to the person with authority to grant or deny that request: The VA rejected that request because Christopher Wirtjes, plaintiff's second level supervisor did not "think we can have a scooter parked in the ED on off hours as this can be a high traffic area on off hours." (Defendant's Exhibit 19, Email, Wirtjes to Graham, May 15, 2000, ECF No. 31-3 at 128.)

14. Wirtjes did not have authority to approve parking a scooter in the Emergency Room and could only state that the person with this power was "[p]robably the chief of staff." (Wirtjes Dep. 11:4-8, ECF No. 31-2 at 181.)

15. Other than Wirtjes's belief, no work was done to investigate the feasibility of plaintiff storing his scooter in the Emergency Room. (Graham Dep. 35:10-14, ECF 31-2 at 146.)

16. Plaintiff rejected the VA's proposal that he enter the hospital through Building 1, Section C because that entrance was "way, way too far away from my work station" (Bourke Dep. 50:13-14, ECF No. 31-2 at 53) and

the VA refused to provide him with a reserved parking space adjacent to the entrance. (Bourke Dep. 55:18-20, ECF No. 31-2 at 58.)

17. The VA recognized that, if plaintiff parked at Building 1, Section 1, he “will need assistance with getting to his car when this is completed.” (Email, Graham to Scheirer, May 18, 2020, Plaintiff’s Exhibit 1.)

18. The VA has not come forward with any evidence that it offered to provide plaintiff with such assistance. (Graham Dep. 40:7-11, ECF No. 3102 at 151.)

19. No one at the VA measured the distance plaintiff would be required to walk under any proposed accommodation until December of 2020, when Brian Fong, a facility planner at the Hines VA (Plaintiff’s Exhibit 9, Fong Dep. 4:16-23), measured the distance from a parking spot to a secured storage area in building 228 (*id.* at 6:18-22) as “pushing the 40-50 ft distance marker for the RA” (Plaintiff’s Exhibit 8, Email, Fong to Morris, December 2, 2020) and concluded that a conference room in Building 228 could accommodate plaintiff’s limited ability to walk. (*Id.*)

20. The VA recognized that, if plaintiff parked at Building 1, Section 1, he “will need assistance with getting to his car” after his “parking spot is moved and available.” (Email, Graham to Scheirer, May 18, 2020, Plaintiff’s Exhibit 2.)

21. The VA has not come forward with any evidence that it offered to provide plaintiff with such assistance. (Graham Dep. 40:7-11, ECF No. 31-2 at 151.)

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