

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS**

Defendant, Secretary of the Department of Veterans Affairs, though his attorney, Morris Pasqual, Acting United States Attorney for the Northern District of Illinois, submits the following responses to plaintiff's statement of additional facts pursuant to Local Rule 56.1:¹

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Admit.

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Deny that Bourke testified that he spoke *only* with Chief Ousley in March 2020. Admit

¹ Any admission of fact is in the context of addressing plaintiff's motion for summary judgment and does not constitute an admission in any other context or future proceedings.

that Bourke testified that he spoke to Chief Ousley *and* Major Desaun McField in March 2020. Defendant's Statement of Material Fact (DSMF) Ex. 2 at 38:1-6 (Dkt. 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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Deny that Bourke testified that he stored his scooter in a locked office and deny that Bourke was screened before entering his work area. DSMF Ex. 2 at 34:25-35:4 (Bourke's testimony that he stored his scooter at his workstation in the ASU, a space that was "behind locked doors"), 38:10-11 (testifying that "every morning I was making my way to my scooter" *then* getting screened) (Dkt. 31-2 at 37-38, 41). Bourke testified that he told Chief Ousley *and* Major McField that after entering via his usual entrance (where there was no screener) he would get his scooter and "take the scooter to the main entrance and get screened." DSMF Ex. 2 at 38:8-13 (Dkt. 31-2 at 41). Prior to being screened, Bourke used his scooter to move through Building 200 to a screener. Pl. Resp. to DSMF ¶ 29 (Dkt. 32 at 7) (unqualified admission to statement that Bourke would "use his scooter to go through the facility to the main or ER entrances to be screened").

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Defendant objects to this paragraph because the stated fact is in dispute and is immaterial. With this objection, deny. The cited evidence does not support the statement that Chief Ousley consented to Bourke's continued use of the pharmacy door after screening procedures were instituted at Hines. In the cited deposition passage, Bourke testified that *Major McField* was the one to give him "permission" to continue to use that entrance. DSMF Ex. 2 at 38:16 (Dkt. 31-2 at

41). Bourke cites to no evidence of a separate conversation with Chief Ousley. At his deposition, Major McField corroborated the fact that he spoke to Bourke but had a different recollection of the conversation. Major McField stated that in March 2020 he had advised Bourke to contact the LRAC for a temporary spot but gave Bourke permission to continue to use the pharmacy door until he obtained a new temporary spot, “but only for this week.” DSMF Ex. 17 at 6:8, 7:9-18 (Dkt. 31-3 at 86, 87).

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.)

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Admit only that Bourke continued to use the pharmacy door until May 14, 2020. Deny that Bourke complied with screening procedures by “submitting to screening” after entering an undesignated door and navigating through Building 200. The VA’s COVID screening procedures instructed all employees to enter Hines facilities *and* be screened at one of the designated *entry* points. DSMF Exs. 15 (email to Hines staff with instructions on accessing the facilities via “designated access points”), 14 at 6:11-16, 10:12-18 (testimony of then-Assistant Director Beidelschies regarding the purpose of screening procedures early in the pandemic) (Dkt. 31-3 at 76-77, 44, 48). Bourke evaded that policy by entering the ASU space without being screened, retrieving his scooter from the ASU workspace, and then using his scooter to make his way through Building 200 to the main entrance (again, before being screened), where he was finally screened after having navigated through staff and patient spaces in Building 200. DSMF Ex. 2 at 34:25-35:4 (Bourke’s testimony that he stored his scooter at his workstation in the ASU, a space that was “behind locked doors”), 38:8-14 (testifying: “even though they [. . .] don’t have a screener back there, that every morning I was making my way to my scooter, and before I even removed my

jacket, I would take the scooter to the main entrance and get screened”); (Dkt. 31-2 at 37-38, 41); Pl. Resp. to DSMF ¶ 29 (Dkt. 32 at 7) (unqualified admission that Bourke would “use his scooter to go through the facility” prior to being screened).

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.)

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Deny that Bourke testified that he stored his scooter in a locked office. DSMF Ex. 2 at 34:25-35:4 (Dkt. 31-2 at 37-38). Bourke testified that in the ASU, he parked his scooter at his “work station in a corner where they showed [him] where they wanted it. It was in a very secure location that was behind locked doors.” *Id.*

7. On May 14, 2020, Shawn Scheirer, 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.)

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Deny. The cited deposition testimony does not support the statement. LRAC Scheirer did not testify that he instructed the police to bar Bourke’s access to the pharmacy door. In the cited deposition testimony, LRAC Scheirer is responding to questions about a May 14, 2020, email. DSMF Ex. 9 at 10:16-11:4 (Dkt. 31-2 at 249-50); Def. Ex. 31 at USA000259-60. (email marked by plaintiff as “Exhibit 9” and presented as such during LRAC Scheirer’s deposition). In response to this line of questioning, LRAC Scheirer testified only that he became aware that Bourke was entering the Hines medical facility via the pharmacy door, which was supposed to be secured due to the COVID lockdown procedures. DSMF Ex. 9 at 12:1-13 (Dkt. 31-2 at 251). In the email exchange at issue in the deposition Q&A LRAC Scheirer did not “instruct” the police to bar Bourke’s use of the pharmacy door. Def. Ex. 31 at USA000259. Instead, he is responding to an email from Bourke, who asked Chief Ousley of the VA Police to identify a new parking space for

him. *Id.* at USA000259-60. Bourke's original email does not state who told him he could no longer use the pharmacy door; rather, Bourke is asking for a new reasonable accommodation parking space for use "until the back of Bldg. 200 is opened up again." *Id.*

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Admit.

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Defendant objects to this paragraph because it is speculative and relies on inadmissible hearsay. The cited testimony is Bourke's recollection of a statement purportedly made by an individual who Bourke has neither named nor identified as a witness. *See* DSMF Ex. 30 (Dkt. 31-4 at 59) (Bourke's Rule 26(a) disclosures listing only two witnesses, Bourke and Dr. Raj Uppal). The cited testimony is inadmissible hearsay. With this objection, deny. Bourke has not produced or identified any evidence that in May 2020 he asked for a dedicated screener to be posted to the pharmacy door as a temporary accommodation or that this was a feasible or reasonable accommodation at the time.

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Defendant objects to paragraph 10 because it contains multiple facts. In fact, paragraph 10

is substantively the same as paragraphs 28 and 29 of Plaintiff's Local Rule 56.1(a)(2) Statement of Material Facts (PSMF). With this objection, as to the first clause, admit. Further stating that the contemporaneous evidence in the record indicates that in May 2020, Bourke requested *specifically* to be accommodated with scooter storage in the ER, along with parking nearby. DSMF Ex. 16 (Dkt. 31-3 at 79) (May 14, 2020, email from Bourke to Chief Ousley and LRAC Scheirer asking for "a new reserved parking spot" and an "area room or closet, in the ED [emergency] department, where I could lock up my electric scooter safely[.]").

As to the second clause, admit only that *one* reason the VA determined that Bourke's request to park near the entrance to the ER was not feasible was because the VA would not "redesignate a handicapped spot to an individual person." DSMF Ex. 9 at 36:2-7 (Dkt. 31-2 at 275); *see also* DSMF Ex. 17 at 19:23-20:3 (Dkt. 31-3 at 99-100) (Major McField's testimony that Hines does not have "separate handicapped spots for employees versus veterans [patients]"). Further stating that the VA also determined that there was no place in the ER for Bourke to securely store his scooter during his off hours, making parking in front of the ER entrance impractical for Bourke. *See* Pl. Resp. to DSMF ¶¶ 37 (Dkt. 32 at 8-9) (unqualified admission to fact that Bourke's supervisor, Angela Graham, was unable to identify possible storage within the ER space).

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Defendant objects to this paragraph because it makes improper legal argument. With this

objection, deny that Bourke has cited to any evidence to support the statement that the VA violated this or any other portion of VA Handbook 5975.1. Admit that the VA Handbook contains the quoted passage.

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Admit.

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Deny. Bourke admits that Graham could not identify a secure space for Bourke to store his scooter in the ER space. Pl. Resp. to DSMF ¶ 37 (Dkt. 32 at 8-9). Bourke also admits that Wirtjes identified multiple COVID pandemic-related issues with utilizing ER space for scooter storage. *Id.* at ¶ 38 (Dkt. 32 at 9). Per VA Handbook 5975.1, both Graham and Wirtjes (Bourke's first- and second-line supervisors) are designated management officials with authority to decide if the VA will provide a particular accommodation. DSMF Ex. 8 at 5 (Dkt. 31-2 at 203) (at 2.a. describing the "DMO" as the "decision-maker").

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Admit that Wirtjes testified that approval to store Bourke's scooter during the COVID-19 pandemic would "probably" have to come from the "chief of staff." DSMF Ex. 6 at 11:4-8 (Dkt.

31-2 at 181). Wirtjes also testified that he knew he “wasn’t going to be able to get approval for” Bourke to store his scooter in the ER. *Id.* at 11:1-2 (Dkt. 31-2 at 181). Deny that Wirtjes did not have authority to evaluate the reasonableness of Bourke’s requested accommodation. Per VA Handbook 5975.1, Wirtjes, together with Graham, had authority to make a final determination on whether to grant Bourke’s proposed temporary accommodation. DSMF Ex. 8 at 5, 26 (Dkt. 31-2 at 203, 24). Bourke has not cited to any evidence to support his assertion that Wirtjes was required to present Bourke’s patently unreasonable request to the chief of staff.

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.)

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Deny. The evidence Bourke cites does not support the conclusion that Wirtjes was making decision based on his “belief” or that “no work was done to investigate the feasibility of plaintiff storing his scooter in the” ER. Wirtjes testified that in 2020 he was the chief of the patient administration service and he testified to the conditions under which Hines was operating the ER at the beginning of the pandemic. DSMF Ex. 6 at 5:9-10; 18:13-19:6 (Dkt. 31-2 at 175, 188-89). When Graham was asked at her 2023 deposition whether there was “any work that was done to investigate the feasibility of David parking his scooter in the ED,” she responded that she didn’t “know anything about that.” DSMF Ex. 5 at 35:10-14 (Dkt. 31-2 at 146). Just prior to this testimony, though, Graham stated that she had inquired (or, “investigated,” to use Bourke’s term) into the feasibility of storing Bourke’s scooter in the ER. *Id.* at 33:3-6, 34:4-5, 34:11-20 (Dkt. 144, 145). Additionally, *contemporaneous* evidence indicates that in May 2020, Graham asked LRAC Scheirer about Bourke storing his scooter in or near the ER, and stated that “[t]here is a[n] outlet there that he can use[] to charge up the scooter.” DSMF Ex. 19 at USA000228 (Dkt. 31-3 at 128). Further, Bourke has admitted that Graham attempted to identify secure storage for Bourke’s

scooter in the ER space but could not find a secure location. Pl. Resp. to DSMF ¶ 37 (Dkt. 32 at 8-9).

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Deny that the cited evidence accurately states the primary reason Bourke rejected the VA's offered temporary accommodation. Bourke testified that "the main reason" he "would not accept that *parking spot*" was due to concerns about the security of his scooter. DSMF Ex. 2 at 50:3-12 (Dkt. 31-2 at 53) (emphasis added). This testimony is corroborated by contemporaneous evidence, namely the email Bourke sent to Graham informing her that he was rejecting the Section C accommodation "in order to leave my scooter in a locked-secure area at my work station." DSMF Ex. 21. That email makes no mention of the Section C accommodation being too far from his workstation, nor does it mention any issue with the VA not identifying an accompanying parking space outside Section C. *Id.* And Bourke testified during his deposition that he would have accepted the Section C accommodation *if* he was offered a locked space for storing his scooter. DSMF Ex. 2 at 57:24-58:2 (Dkt. 31-2 at 60-61) ("If I was offered a locked spot, I would have accepted, but since they would not give me a locked room and a key, I refused the spot.").

Further stating, the quoted and cited testimony is misleading and is inconsistent with other testimony by Bourke and with the contemporaneous evidence. Regarding Bourke's statement that "that entrance was 'way, way too far away from my work station,'" this quote is taken out of context. Read in context, Bourke's criticism was not that he'd have to *walk* too far, but that the distance he'd have to travel *with his scooter* from Section C to the ASU was too far. *Id.* at 50:3-

21 (Dkt. 31-2 at 53). Similarly, it is disingenuous for Bourke to rely on the cited testimony to state that the VA “refused to provide his with a reserved parking space” at Section C. Bourke acknowledges that Graham “wanted [him] to park in the handicapped spot, disabled spot, outside the *C Section, Building 1*. DSMF Ex. 2 at 50:16-18 (Dkt. 31-2 at 53) (emphasis added). Bourke was included on emails from his supervisor and others discussing scooter storage *and* a parking space near Section C. DSMF Ex. 18 at USA0000261-62 (Dkt. 31-3 at 123-24). The record contains numerous emails among VA staff regarding the parking space at Section C. DSMF Ex. 20 at USA000271-76 (Dkt. 31-2 at 137-42). At LRAC Scheirer’s direction, the engineering department generated a work order for installation of a reserved parking sign at Section C. *Id.* at USA000270-71 (Dkt. 31-3 at 136-37).

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.)²

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Admit only that Graham sent an email to LRAC Scheirer asking him to notify her “when David parking spot is moved and available. He will need to have assistance with getting to his car when this is completed.” Pl. Ex. 3 (Dkt. 42 at 8). A common sense understanding of this request would be that once Bourke’s parking space was moved to Section C, he would also be storing his scooter there, and on the day of the move, if he were to leave his scooter at Section C, his parking space would be unacceptably far away from that entrance. He would need assistance on the day of the move if he had parked his car near the pharmacy door or another entrance but would be leaving his scooter at Section C. However, Graham also testified that her concern was that Bourke

² The email cited and quoted in paragraph 17 appears at Pl. Ex. 3 (Dkt. 42 at 8), not Pl. Ex. 1.

might deny the Section C accommodation. DSMF Ex. 5 at 40: 2-6 (Dkt. 31-2 at 151). Graham's concern was not that Bourke would need assistance on a daily basis at Section C but that he might need assistance if he rejected that accommodation. Graham's email was sent on the afternoon of May 18, 2020, but Bourke did not reject the Section C accommodation until June 3, 2020, nor did he request any assistance at that time. DSMF Ex. 21 (Dkt. 31-4 at 2).

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.)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Admit, and further responding that Bourke did not ask for further assistance or a different accommodation once he rejected the VA's temporary re-accommodation at Section C. DSMF Ex. 21 (Dkt. 31-4 at 2).

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.*)

Defendant's Response to Plaintiff's LR 56.1(b) Statement of Additional Facts:

Defendant objects to paragraph 19 as immaterial. Bourke's complaint alleges discrimination from March 2020 through July 2020. Dkt. 1, ¶¶ 9, 14. As it related to Bourke's parking space, his underlying administrative EEO complaint alleged denial of his reasonable accommodation beginning on May 14, 2020. Def. Ex. 32. Bourke now admits that the window of alleged denial of his accommodation is narrow: May 14, 2020, through June 29, 2020. Pl. Resp. to DSMF ¶ 28, 53, 54 (Dkt. 32 at 6, 14) (Bourke's unqualified admissions that he was able to utilize his original accommodation through May 14, 2020, that he regained full access to that original accommodation on or around June 29, 2020, and that he continued to have uninterrupted

access to his original accommodation until he transferred out of the ASU in late 2022). The facts stated at paragraph 19 occurred well after the facts at issue in this case and were taken by a VA employee with no connection to the facts at issue. Bryan Fong testified that reasonable accommodations were “not a normal scope” of his job and, also, that he was not involved in the VA’s efforts to re-accommodated Bourke in May 2020. Pl. Ex. 9 at 5:20, 11:11-14 (Dkt. 42 at 47, 53).

With this objection, admit that Fong was a facility planner at Hines from February 2020 to March 2021. Pl. Ex. 9 at 4:18-22 (Dkt. 42 at 46). Deny that Fong testified that he “measured” any distance via a precise methodology. *Id.* at 7:19-20; 8:11-15 (Dkt. 42 at 49, 50). Deny that there is evidence to suggest that Fong and LRAC Scheirer used different methods to “measure” possible accommodations because they both testified that they “walked” various paths. *Id.*; DSMF Ex. 9 at 29:14-17; 36:16-20 (Dkt. 31-2 at 268, 275). Fong testified that he “walked” the area at the main entrance to Building 228 as a way of measuring the distance between the entrance there and possible locations for Bourke’s scooter. Pl. Ex. 9 at 7:19-20; 8:11-15 (Dkt. 42 at 49, 50). LRAC Scheirer testified that he “walked every single” option, referring to the pharmacy door, the ER entrance, and the C Section entrance. DSMF Ex. 9 at 29:14-17; 35:15-22; 36:16-20 (Dkt. 31-2 at 268, 274, 275). In consideration of Bourke’s physical limitations, LRAC Scheirer determined which option offered the shortest walking distance and which route had the fewest trip hazards. *Id.* at 28:23-29:13 (pharmacy door and C Section entrance); 36:7-12 (ER entrance); 36:19-37:3 (Section C entrance) (Dkt. 31-2 at 267-68, 275-76). Deny that Fong was involved in the VA’s efforts to re-accommodate Bourke in May 2020. Pl. Ex. 8 at 11:11-14 (Dkt. 42 at 53).

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.)

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Deny. The quoted email does not state that “if plaintiff parked at Building 1” he would regularly need assistance. In context, the May 18, 2020, email does not suggest that Bourke would need routine assistance other than on the date the parking spot is moved. Pl. Ex. 3 (Dkt. 42 at 8). Graham sent the email to LRAC Scheirer asking him to notify her “when David parking spot is moved and available. He will need to have assistance with getting to his car when this is completed.” *Id.* A common sense understanding of this request would be that once Bourke’s parking space was moved to Section C, he would also be storing his scooter there, and on the day of the move, if he were to leave his scooter at Section C, his parking space would be unacceptably far away from that entrance. He would need assistance on the day of the move if he had parked his car near the pharmacy door or another entrance but would be leaving his scooter at Section C. Further, regarding the email, Graham testified that her concern was that Bourke might deny the Section C accommodation. DSMF Ex. 5 at 40: 2-6 (Dkt. 31-2 at 151). Graham’s concern was not that Bourke would need assistance on a daily basis at Section C but that he might need assistance if he rejected that accommodation. Graham’s email was sent on the afternoon of May 18, 2020, but Bourke did not reject the Section C accommodation until June 3, 2020, nor did he request any assistance at that time. DSMF Ex. 21 (Dkt. 31-4 at 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.)

Defendant’s Response to Plaintiff’s LR 56.1(b) Statement of Additional Facts:

Admit, and further responding that Bourke did not ask for further assistance or a different

accommodation once he rejected the VA's temporary re-accommodation at Section C. DSMF Ex. 21 (Dkt. 31-4 at 2).

Respectfully submitted,

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