

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

GORDON A. GRAHAM,)	
)	
Petitioner,)	
)	
v.)	
)	
ROBERT A. Mc DONALD,)	Docket No. 15-0112
Secretary of Veterans' Affairs;)	
)	
LEIGH A. BRADLEY, Esquire,)	Hon. Robert N. Davis
General Counsel,)	Judge
U.S. Department of Veterans' Affairs;)	U.S. Court of Appeals for
)	Veterans Claims
)	
THE HONORABLE ALLISON A. HICKEY,)	
Under Secretary for Benefits,)	
U.S. Department of Veterans' Affairs;)	
)	
PATRICK C. PRIEB,)	
Director,)	
U.S. Department of Veterans' Affairs,)	
Regional Office 346, Seattle, Washington;)	
)	
Respondents.)	

MOTION OF THE PETITIONER TO STRIKE THE DECLARATION OF
AYN-MARIE LOFGREN AND SUBMITTED AS EXHIBIT ONE OF THE
RESPONSE OF THE RESPONDENT

CERTIFICATE OF SERVICE

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In Re Gordon A. Graham, Petition for Extraordinary Relief, 15-0112

MOTION OF THE PETITIONER TO STRIKE THE DECLARATION OF
AYN-MARIE LOFGREN AND SUBMITTED AS EXHIBIT ONE OF THE
RESPONSE OF THE RESPONDENT

Pursuant to U.S. Vet. App. Rule 27, Petitioner, Gordon Alex Graham, respectfully moves this Court to strike the declaration of Ayn-Marie Lofgren dated February 27, 2015, and submitted to the Court as exhibit one of the Respondent's response to the Petition for a Writ of Mandamus.

The declaration states that it is based upon personal knowledge. Upon review it is obvious that the declaration contains a great deal of hearsay. The declaration contains factual errors, to include the amount stated in paragraph XI., \$ 69,341.00. In fact the amount paid was \$ 68,994.16.

The Petitioner has supplemented the record before the Court with the decisions and documents necessary to inform the Court of the actions taken by the Respondent. A recitation of promises is not appropriate as a response to a matter of this weight. While this is an extraordinary matter and provides an exception to the general rule that the Court may not engage in fact finding, the document in question is not based upon personal knowledge but is in large part hearsay. It also contains at least one significant error of fact.

Counsel for the Respondent has been contacted and his position is not determined at this time.

In Re Gordon A. Graham, Petition for Extraordinary Relief, 15-0112

The Petitioner, by this motion, respectfully requests that the declaration of Ayn-Marie Lofgren be stricken.

/s/ ROBERT P. WALSH
Robert P. Walsh-Michigan Bar P-42833
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Date: 03/05/2015

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CERTIFICATE OF ELECTRONIC FILING

I, Robert P. Walsh, hereby certify that I have

1. Filed this document using the Electronic Filing System of the U.S. Court of Appeals for Veterans Claims which will automatically send it to counsel for the Respondents,

Mr. Mark M. McNabb
Office of General Counsel (027C)
U.S. Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Telephone (202) 632-7109

And;

2. I have mailed a copy of this document to the Petitioner by first class mail at his address of record.

/s/ Robert P. Walsh
Robert P. Walsh-Michigan Bar P-42833
Attorney for Claimant-Petitioner

Date: March 5, 2015

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