

Copies of 31 Emails to and from Petitioner and Respondents.

From: G.Alexander Graham [REDACTED]

Sent: Tuesday, September 15, 2015 11:49 AM

To: HOLLOWAY, KRIS, VBASEAT

Subject: [EXTERNAL] BVA decision 13-09 654A

Dear Kris,

Hope this finds you well and rested after a good Labor Day weekend.

Apparently, after rereading the decision, it looks like Judge Clemente leaned heavily on VA Office of General Counsel Precedent #34 from 1997 regarding "avocational activities". Regardless, we can move forward. No hard feelings on this from my side, I assure you. I saw it as merely a semantic glitch.

Attached, if it will transmit, is the BVA decision with my SSN redacted to protect against identity theft. If you prefer the original, I can mail it. With this new VBMS thing, I'll probably have to send it via Janesville, Wisconsin for you to get it. I guess we never were able to find out why my rebuttal to your and Mr. Boyd's May 2014 SSOC was never received. Fortunately, I saved the certified mail receipt to prove it arrived.

I look forward to working with you to accomplish the project. I will contact Farmtek 's ILP representative and also provide you with her contact information very shortly. I'll be sure to have her update the project costs as they were only good for three months when she initially began compiling the project in March.

This is going to happen at a very fortuitous time. My raised planters are all beginning to rot after 5 years and they were only planned as a poor man's temporary solution. The new hydroponic tables the representative recommended will eliminate me having to depend on others to lift heavy bags of potting soil. This will definitely increase my independence in everyday living- a real win-win for everyone. Regards,

Gordon "Alex" Graham

On Tuesday, September 15, 2015 2:31 PM, "HOLLOWAY, KRIS, VBASEAT"

[REDACTED] > wrote:

Got it thanks! If you can get the dimensions of the greenhouse, BTU's needed to heat the space, access points, floor material, fans, electrical, water supply ready; we can try to move on this once we get the initial paperwork out of the way. Contractor (s) will need to bid on all or part of the project.

G.Alexander Graham <[REDACTED]>

To HOLLOWAY, KRIS, VBASEAT 09/15/15 at 3:06 PM

Dear Kris,

The dimensions of the greenhouse will encompass my former raised bed area which is approximately a 24 by 48 foot area. The preliminary bid is attached but may be out of date. It was also suggested to me to include the sunshade and I am not familiar with it. Apparently it will further mitigate the bright sunshine which harms my skin.

As to floor material, I have a foundation around three sides of the future structure but will require pouring the fourth wall. When that is accomplished, we can backfill it and pour a 4 inch slab on top for the floor. We have the dirt on site from other excavations which will save money. I'll assemble the contractors for the concrete work and get bids. Farmtek has the rest of the install included except for plumbing and electrical. I pre-positioned those assets adjacent to this area in 2005 when we built the house so they, too, will be appreciably less money to install and connect than expected.

Karen Meister is the Farmtek ILP coordinator and her contact information is at the bottom of the bid. She may have the BTU requirements for this as I do not.

HOLLOWAY, KRIS, VBASEAT <[REDACTED]>

To G. Alexander Graham 09/15/15 at 2:31 PM

Got it thanks! If you can get the dimensions of the greenhouse, BTU's needed to heat the space, access points, floor material, fans, electrical, water supply ready; we can try to move on this once we get the initial paperwork out of the way. Contractor (s) will need to bid on all or part of the project.

From: G.Alexander Graham [mailto:[REDACTED]]

Sent: Sunday, September 20, 2015 12:18 PM

To: HOLLOWAY, KRIS, VBASEAT

Subject: [EXTERNAL] Davis Bacon prevailing wages on ILP Greenhouse

Dear Kris,

Karen and I found one thing missing from the bid. Due to my balance issues, I need fall protection. A 3/4 inch rubber mat must be installed over the slab on grade floor to protect me from a concussion or injury because I am on Warfarin blood thinner due to a VA-induced septal infarction during my one-year inpatient stay at the Seattle VAMC. Seems I developed deep vein thrombosis while lying in bed for a year and then had a heart trauma after an Overdose on Heparin. I've been on the blood thinner now for five years and it is projected for the rest of my life. A fall on concrete might cause intracranial bleeding and death.

Karen also needs to know, as I do too, about bid structure. Does VA require Davis Bacon prevailing wage or can we hire local non-union labor for the installation and hook up? Please advise your soonest to allow us to seek the appropriate bids in a timely manner.

Regards,

Gordon "Alex" Graham

On Wednesday, September 23, 2015 2:49 PM, "HOLLOWAY, KRIS, VBASEAT" [REDACTED] > wrote:

Received your message. VA does consider Davis Bacon Act. VA considered a fair and reasonable service. I forwarded your Appeal results and quote to management. I have not received orders, one way or another at this time

----G.Alexander Graham <gaegraham@yahoo.com>

To Jack.Kammerer@va.gov 12/12/15 at 2:05 PM

Dear Col. Kammerer,

I write to ask for information as well as assistance. It appears there is a dearth of both at the Seattle Regional VR&E office. On September 4th, 2015, I was awarded a grant for an ADA-approved, heated greenhouse based largely on my extremely severe disability picture. I have two 100% total disabilities and a handful of smaller ones (60%, 40%, 30% and 10%) that make my life challenging to say the least. As you have been in a war, I assume you are familiar with what transpires. I did two tours in Vietnam, Thailand and Laos from 1970-72. The lasting effects on my health from a simple through and through gunshot wound and Agent Orange exposure long ago have gradually snowballed into a particularly nasty set of disabilities. Horticulture is the last hobby I can manage outdoors.

Apparently, no one in the Seattle Office has any experience with ILP or else no one has ever awarded one of this magnitude. I am told the vocational rehabilitation officer and/or his subordinates have finally decided to ask for guidance from your Central Office on the award.

As a concerned stakeholder in this enterprise and the intended recipient, it strikes me as rather odd that I am not involved in the decisional process. Perhaps you are unaware of the timeline on this. I applied for the ILP in May 2011. I was categorically told there were no provisions for "avocational applications". After numerous cites to 38 CFR §21.160, .162 and 38 CFR §3120, I finally filed my appeal. The requests were all denied in spite of rebuttal and probative evidence in support of the application based on case law and supportive medical evidence. The Form 9 Substantive Appeal was "lost" and, but for the USPS certified mail receipt, I would have been forced to start anew. The lost

Form 9 was later miraculously "found" but only after I supplied the USPS article number and a copy of the receipt showing signed delivery.

After the Seattle VR&E's failure to issue a timely Supplemental Statement of the Case (SSOC) in the spring of 2014 following my SOC rebuttal and filing of new and material evidence a third time, I finally filed an Extraordinary Writ of Mandamus (see CAVC #15-115) requesting the VA Secretary issue a Form 8 certifying the Appeal. The Seattle VA Veterans Service Center Manager (VSCM) finally complied in late February 2015. My appeal was advanced on the docket under 38 CFR §20.900(c) by Veterans Law Judge Vito Clemente and I was able to obtain a Travel Board Hearing before him April 29th, 2015. For the record, the advancement on the docket was for medical reasons.

On September 4th, 2015 his decision granted me the greenhouse. Since then, I have been unable to begin a colloquy with my designated Vocational Rehabilitation Specialist nor one with the VR&E's Seattle Director, David Boyd. As a major stakeholder in this enterprise, I find it disconcerting that so little effort is being made to keep me in the loop on the long delayed progress. Every morsel of information gleaned so far is by querying my counselor via email. My phone calls to them go unanswered. Considering the Seattle VA's VR&E caseload has steadily decreased to a mere 7 cases in FY 2015, I find it incongruous that communication with my rehabilitation counselor to find out the progress of a four and one half year old claim is analogous to pulling teeth out of a live alligator. With that paltry a caseload, any excuse as to his workload being overwhelming is unsupported by the VA's very own statistics.

VA Secretary Bob McDonald has begun insisting that VA is now "Veteran-centric" and receptive to the needs of it's constituents.

I have no idea of the complexity of ascertaining the parameters of a greenhouse grant but Seattle's VR &E folks apparently consider it far more complex than a SAH or a HISA grant. I fear I might pass away before the specifications are settled upon at the rate it is progressing. I submitted all the technical data for the greenhouse per Mr. Kris Holloway's request several months ago. In addition, since VA did not have a copy of the BVA decision, I sent them one. If the VBMS cannot transmit a six-page decision across country in less than a month, I fear for the future of the electronic records initiative begun by USB Allison Hickey in 2009.

Considering the precipitous annual declines in the awards, I fear the IL program is almost unknown in the Veterans community. Wyoming, as an example, has had zero (0) IL rehabilitations since record keeping began in 2004. The Manila VR&E likewise shows none either. Several others such as the White River, Vermont office show similar inactivity. Under, or non-utilization of such a valuable program for America's most severely disabled Veterans is a travesty and a waste of scarce Administration resources. Congress explicitly set aside extensive funding for this in 1984 and the program is gradually sinking into oblivion. Considering that there are an abundance of SWA and Vietnam Veterans maimed by IEDs, Bouncing Bettys and the like, finding 2,700 souls to award an ILP grant to annually should be a cakewalk. For some reason, the message is not being disseminated at the VR&E level where it would be the most logical place to inform Veterans of their potential entitlement to such a valuable program. I certainly don't consider myself to be anomaly among the universe of severely disabled Veterans.

If you would be so kind, the favor of a reply would be appreciated to clear up this enigma. Obviously, the folks in Seattle are sailing around in circles. My health is not improving with age and I had hoped VR&E was more streamlined than the Veterans Benefits Administration's intractable backlog of appeals. If there is anything I can do to facilitate a quicker resolution to this, please do not hesitate to contact me.

Respectfully,

Gordon A. Graham (ILP stakeholder)

HOLLOWAY, KRIS, VBASEAT [REDACTED]>

To [REDACTED] com 12/09/15 at 11:16 AM

Hello Gordon, The Seattle VR&E office has requested guidance on implementation of your I.L. Plan from Central Office in D.C. Once we receive that guidance, the Seattle VR&E office will contact you.

G.Alexander Graham [REDACTED].com>

To HOLLOWAY, KRIS, VBASEAT 12/10/15 at 3:02 PM

Dear Kris,

Thanks also for the update, sir. I asked for some guidance from VR&E VACO this morning as well. ILP entitlements are apparently handled far differently from what we initially discussed. According to VACO, your office will have to put out the bids for the greenhouse and connection to power/water and select an approved VA contractor to do the whole thing from start to finish. I cannot be involved in soliciting bids for it whatsoever.

I guess I understand the confusion on your end. This is probably a much larger project than what you normally handle on a day-to-day basis. While looking at the VR&E's Table of Organization, I noted that local VARO VR&E Officers normally have full authority over grants with no higher authority. I suppose larger grants may be problematical regardless of authority to act. The FY 2015 statistics recently published on successful ILP rehabilitations has sunk to a new low of seven individuals locally. Apparently, Veterans are not aware of their entitlement to this valuable asset. Fortunately, I can do my part on my website to inform them. There certainly seems to be a lot of interest in it nationally.

As a committed stakeholder in all this, I do hope you will keep me informed of the future progress without my having to continually query you for the status. First off, I would like to know how long ago the IL plan was sent back to the Central Office for "guidance". All I currently have is your September 23, 2015 email saying you had "forwarded my appeal results and bid to management". Can you clarify that statement? Is management your supervisor David Boyd or the VR&E Central Office? On the off chance I have to file an Extraordinary Writ to obtain compliance with the Board of Veterans Appeals decision, I will need it for my records. Please be so kind as to supply me that information at your earliest convenience if you would.

I certainly don't want to sound confrontational but we've had a few misunderstandings and glitches in the last four years. Several of my filings, to include my first VA Form 9 (dated April 13, 2013) and the rebuttal to the May 2014 SSOC were lost in transit. But for my sending them certified mail, their

absence would have brought a halt to my appeal. I just want to make sure we all are on the same page. VA prides itself on being nonadversarial and pro-Veteran. I hope to maintain that equilibrium with your office.

-----HOLLOWAY, KRIS, VBASEAT [REDACTED]>

To G.Alexander Graham 12/10/15 at 4:09 PM

Hello Gordon, Yes, Mr. David Boyd is my supervisor. I do not have access to your case to respond one way or another to your questions. Until I am advised on what role, if any, I will have, I will have to defer your correspondence to my supervisor. Thanks

G.Alexander Graham <[REDACTED] com>

To HOLLOWAY, KRIS, VBASEAT 12/10/15 at 5:14 PM

Thanks for the information update. Perhaps you could pass that email to Mr. Boyd or give me his email address so I can communicate with him directly. I presumed you would be my Voc. Rehab officer for the duration of our acquaintance. After all, we have almost a four and one half year relationship at this point. Who could be more qualified? I will still need the information in any event so please consider my request still pending.

I do hope you and yours have a wonderful Christmas and New Year if we don't talk sooner.

HOLLOWAY, KRIS, VBASEAT [REDACTED]>

To G.Alexander Graham 12/21/15 at 8:21 AM

I passed your last inquiry on to Mr. Boyd since I do not have your case at this time. His email is: [REDACTED] va.gov. Thank You, you have a great Christmas as well.

(x)

G.Alexander Graham [REDACTED]com>

To [REDACTED]@va.gov Mar 22 at 11:34 AM

Dear Kris,

Hope this finds you well. I have a question. I wish to put in for a new IL grant for a NVLSP Lexis Nexis Veterans Benefits Manual with supporting CD disc and copies of 38 USC/38 CFR. The price is \$331.00. I am taking the VA non-attorney practitioner's exam to become an accredited representative soon. The VBM is recognized as the bible of the claims process. New law comes out every year, regulations change and the M-21 and M 28 are revised. My old, donated copy is dated 2011.

Do I need to begin a whole new IL program through Colleen Graney up in Bremerton or do I need to requalify? I was rated at 100% plus an extra 50% in 2011 when I first applied but I am much more severely impacted now. My ratings for Cryoglobulinemia and Porphyria alone were increased dramatically to 40% and 100% respectively so I have not "improved".

No news on the greenhouse . The VR&E folks at VACO are passing the plan around for concurrence signatures according to the assistant I spoke with.

G.Alexander Graham <gaegraham@yahoo.com>

To [REDACTED]@va.gov Mar 24 at 11:25 AM

Dear Mr. Boyd,

It has now been almost seven months since the BVA granted my request for a greenhouse. I have heard nothing since my brief communication with Mr. Holloway. Since the VA considers itself proactive and insists it works closely with stakeholders, I am asking you for an update.

I understand each VR&E office is independent from The VACO VR&E in Washington DC. Nevertheless, I can understand why they might want to have a more "hands-on" approach to my grant.

If you can, please update me on the process and where we are with regards to beginning construction on this. In the absence of any input, I have begun my spring plantings. It would be sad to have all that hard work bulldozed out of the way for a new greenhouse due to a lack on VA's part to communicate in a meaningful way. In the event you are powerless to effect the grant or are being left out of the loop, please give me an appropriate contact name and number to someone who can answer my queries.

If there is anything you are aware of regarding the grant, I would be deeply appreciative of you conveying it to me. I have emailed Mr. Kammerer on the subject and received nothing but silence in reply. Absent any movement on VA and VR&E's part to enlighten me as to particulars, I will be once again forced to litigate for a timely enforcement of the grant. I would prefer not to do that. Having an adverse relationship with you is the last thing I desire. Mr. Holloway tells me you are now my Vocational Counselor. I therefore look to you for information and a timeline leading to fulfillment of grant.

I have also copied this to my congressman, Derek Kilmer for a Congressional Inquiry as there seems to be no cohesive plan or guidance from your office or VACO VR&E. I look forward to hearing from you should you choose to comment.

BOYD, DAVID W, VBASEAT <[REDACTED]@va.gov>

To [REDACTED] com

CC BOYD, DAVID W, VBASEAT HOLLOWAY, KRIS, VBASEAT

Mr. Graham,

We do apologize for your inconvenience, your claim is very unusual and we are working to meet all regulatory guidelines in order to provide the services you requested. I have been working with Kris Holloway to complete our local requirements and we are now soliciting for an approved Construction Manager to assume responsibility of the project. I make no excuses, but sometimes when dealing with several government agencies, things do not happen as expeditiously as you would like.

There are still some steps that have to be accomplished that involve meeting with you. We would like to meet at the proposed construction site on Tuesday, March 29, 2016 at 11:00 to discuss and complete final paperwork that requires your signature. Are you available to meet with us at that time.

G.Alexander Graham <gaegraham@yahoo.com>

To BOYD, DAVID W, VBASEAT Mar 24 at 4:46 PM

Dear Mr. Boyd,

Thank you for your prompt reply. I have a phlebotomy scheduled for Tuesday the 29th. The best time is Monday morning the 28th after 9 o'clock in the morning. I will be febrile for a few days due to anemia following the phlebotomy and would prefer a clear mind when I meet with you. Either that or we can plan for a week later in early April-say the 5th or the 6th when I am sufficiently recovered.

Please advise your choice so I can reserve the time. Mornings are best

BOYD, DAVID W, VBASEAT <[REDACTED]@va.gov>

To [REDACTED]com

CC BOYD, DAVID W, VBASEAT Mar 25 at 10:17 AM

Mr. Graham,

Unfortunately, I will be out of town the week of April 4-7, how about meeting on April 12?

G.Alexander Graham <[REDACTED].com>

To BOYD, DAVID W, VBASEAT Mar 25 at 10:57 AM

April 12th will be fine. 11 0'clock AM also works well, too.

I look forward to the meeting.

G.Alexander Graham <[REDACTED].com>

To BOYD, DAVID W, VBASEAT Mar 25 at 11:10 AM

A postscript is in order. My representative, Attorney Robert Walsh, has informed me that he would like to read over the paperwork you were proposing I sign at next Tuesday's meeting. If you would be so kind as to copy and attach that as a .pdf to this email chain, I will forward it to him for his perusal.

Thank you for all your time spent on making this a reality.

BOYD, DAVID W, VBASEAT [REDACTED]@va.gov>

To gaegraham@yahoo.com

CC BOYD, DAVID W, VBASEAT HOLLOWAY, KRIS, VBASEAT Mar 25 at 11:26 AM

Thank you, we look forward to meeting with you at that time.

---G.Alexander Graham <[REDACTED].com>

To HOLLOWAY KRIS VBASEAT Apr 13 at 11:10 AM

Dear Kris,

Sorry it took so long to find this. Apparently I gave it to the Veterans Law Judge at the hearing April 29th 2015 and never got a copy. I contacted Pioneer Therapy yesterday and they made another copy for me (attached).

In addition, I attach the link for the Porphyria rating at 100% as it gives a clearer description of my disabilities in that regard for your records. Unfortunately, over the years my c-file has grown to 10,078 pages and is rather unwieldy. Finding info in there is difficult at best even with OCR capabilities on the new VBMS version.

<http://www.va.gov/vetapp15/Files5/1538035.txt>

I talked to my attorney this morning and he agrees that my medical conditions warrant a longer, two-year rehabilitation period. If, for any reason, I end up back in the hospital again, it would severely disrupt my IL rehabilitation and that might be detrimental to my agreement. If Mr. Boyd and the others above are in agreement, I will sign the IILP plan contingent upon a two-year rehabilitation as long as it embodies the general findings of the BVA decision docket # 13-09 654A with regards to a heated, ADA-compliant greenhouse with a raised table hydroponic system. The rubber mats are also imperative to protect me against falls/cerebral hemorrhaging due to the coumadin blood thinner I take.

I look forward to working with you both and making this a textbook case of a perfect IILP endeavor.

HOLLAWAY, KRIS, VBASEAT <[REDACTED]@va.gov>

To [REDACTED] com Apr 13 at 4:23 PM

On the way back to the office, I was thinking about the cookies your wife made. Thank her for me on her gracious hospitality. I'm just sorry that I did not have one for the road.

In looking at the Pioneer Therapy evaluation, it does appear aged a bit but I can see that the impairments and much of the finding are current, if you would agree? If you feel that your conditions have changes since this report, we can get another assessment done. Otherwise, it looks like we can use it.

In talking with Mr. Boyd, he would have no issues in modifying the ACD to 24 months. Also, If you have a medical Dr. that you regularly attend, I can correct

the Bremerton VAMC to the current facility/provider providing the service. Once I make the changes to the IILP, I will come down and have you sign the plan. I will fax it to you ahead of our meeting.

G.Alexander Graham <[REDACTED] com>

To HOLLOWAY KRIS VBASEAT Apr 14 at 9:26 AM

Dear Kris,

I'll make a "to-go" package of cookies for your next trip. I'm sorry about that.

If [REDACTED] assessment works for you and her qualifications meet your standards, let's use it. I feel it is fairly indicative of my circumstances at the moment. I have no qualms about a new one but see no specific need to reaccomplish this.

As I am not a frequent flyer on ILP, I'm not acquainted with the acronym 'ACD'. If that is the term for the duration of conducting the IILP, then we are copacetic at two years. I also wish to be sure we are all on the same page re all the components for the greenhouse. To clarify this, I hope the IILP includes all ingredients such as fertilizers, special mixes for the hydroponics, all power and propane requirements and anything else associated with the process for the two-year duration of the rehabilitation. We had a misunderstanding on that facet with the computer and I ended up paying for all the ink cartridges for the copier/printer. I do not expect you to supply seeds.

My attorney, Robert Walsh, also suggested we make sure we incorporate the language into the IILP this time so as to remove any potential confusion. We have a good record of the electrical and propane use for the last eight years to use for calculating the anticipated increase in usage. If that is not sufficient, we can have Peninsula Light meter it separately but that would entail running a new power line out there. The same applies for the propane. My wife thought it might be better to put in a separate tank exclusively for the greenhouse. The downside would be access to the new tank by the delivery truck. I will leave that up to you or the GSA contractors to decide.

Lastly, I am contacting my treating physician, [REDACTED] PA-C at Franciscan Medical Group regarding this. His telephone number is [REDACTED] I generally see him every three months absent any pressing medical needs. I also see Dr. [REDACTED] my oncologist, on a monthly basis for my phlebotomies. He works at [REDACTED] located at St. Anthony's hospital in Gig Harbor. His number is [REDACTED] He is not affiliated with Franciscan Medical Group. I will present [REDACTED] with the assessment done by [REDACTED] August 2014 to see if he concurs with her findings and to write something saying as much. If there is more required, please advise me and I will direct that it occurs. Again, I look forward to a productive relationship during my IILP with both you and Mr. Boyd. I also look forward to meeting him on your next trip over.

HOLLAWAY, KRIS, VBASEAT [REDACTED]@va.gov>

To [REDACTED] com Apr 14 at 10:20 AM

I understand you concerns regarding startup accessories. I will forward your email concerns to David Boyd

G.Alexander Graham <[REDACTED].com>

To HOLLAWAY, KRIS, VBASEAT Apr 16 at 6:07 PM

Dear Kris,

I submitted the [REDACTED] Therapy Center's 2014 assessment to [REDACTED] PA-C (my primary caregiver). Attached please find his signed copy concurring in Ms. [REDACTED] assessment. I will ask him to supply you with a letter to acknowledge his status in my medical care. I gave him a copy of the old IILP and highlighted Objective 3 on page two. You may include his address etc. on Objective 3 in the revised IILP and I'll give him a copy for his/Franciscan Health Care records.

--G.Alexander Graham [REDACTED] com

On Wednesday, April 27, 2016 4:20 PM, "HOLLOWAY, KRIS, VBASEAT"
◀ [REDACTED]va.gov> wrote:

Hi Gordon, I just wanted to drop you a line to give you an update on your IL events. Instead of finalizing the IILP for signature at this point, we are working with the GSA Contracting Division as required to find a contractor willing to take this case. The GSA contractor would be able to provide more construction details. I will keep you posted as I get the information from the GSA contractor. Thanks

To HOLLOWAY, KRIS, VBASEAT Apr 28 at 11:12 AM

Kris,

Knowing that VA takes an inordinately long time to organize things, perhaps it might be better to have the GSA contracting division contact Famrtek's IL coordinator, [REDACTED] directly. She indicated to me that they could accomplish the whole project in short order (two months or less) from start to finish. They have experienced crews who do this exclusively for Farmtek nationwide on a fairly regular basis.

[REDACTED]s contact information is :

[REDACTED]

[REDACTED] ext 1207, [REDACTED]@Growerssupply.com

Not to put too fine a point on it but the delay is now approaching eight months (May 4th) since the Board Of Veterans Appeals grant. I do understand there are logistical considerations and additional oversight from VR&E VACO. Nevertheless, the delay is becoming tantamount to noncompliance with the clear and unmistakable findings of Veterans Law Judge Vito Clemente's ruling.

As you are probably aware, I filed an Extraordinary Writ of Mandamus (CAVC 2015-0112) that promised VA would promptly adjudicate my appeal. Having complied with the Writ, the grant now sits in limbo. I feel I have demonstrated that the alleged delay is so extraordinary by the VA Secretary to act has risen to the level of refusing to act

-G.Alexander Graham [REDACTED] com>

To HOLLOWAY, KRIS, VBASEAT Apr 28 at 11:27 AM

Kris,

Please disregard the first email sent a few minutes ago. I inadvertently hit the send key prematurely.

Knowing that VA takes an inordinately long time to organize things, perhaps it might be better to have the GSA contracting division contact Famrtek's IL coordinator, [REDACTED] directly. She indicated to me that they could accomplish the whole project in short order (two months or less) from start to finish. They have experienced crews who do this exclusively for Farmtek nationwide on a fairly regular basis.

[REDACTED] contact information is :

[REDACTED]

[REDACTED]@Growerssupply.com

Not to put too fine a point on it but the delay is now approaching eight months (May 4th) since the Board Of Veterans Appeals grant. I do understand there are logistical considerations and additional oversight from VR&E VACO. Nevertheless, the delay is becoming tantamount to noncompliance with the

clear and unmistakable findings of Veterans Law Judge Vito Clemente's ruling. As you are probably aware, I filed an Extraordinary Writ of Mandamus (CAVC 2015-0112) January 6th, 2015. VA promised the BVA would promptly adjudicate my ILP appeal. Having complied with the Writ, the grant now sits in limbo. I feel I have demonstrated that the alleged delay by the VA Secretary is so extraordinary, given the demands on, and resources of the Secretary, that it is equivalent to an arbitrary refusal to act. See Erspamer v. Derwinski (1 Vet. Appeals 3 1990). My one and only option here is to return to the Court of Appeals for Veterans Claims and refile a new Writ to enforce the BVA's decision. I prefer to avoid that if possible as it consumes scarce judicial resources better spent on other Veterans' appeals.

Mr. Boyd's reassurances that this was on track were sufficient to convince me that VA is bargaining in good faith. Building a greenhouse certainly is not comparable to constructing the Taj Mahal. According to the folks at Farmtek who do it every day, it's a fairly simple undertaking. Please understand that I am impatient to get this project under way. Endless delays searching for a contractor is not a viable argument when Ms. [REDACTED] stands ready to fulfill the contract as soon as she is given the paperwork. Her bid price tendered last July is still viable and she guarantees she will honor the terms of that contract.

Please advise your intentions and/or time frame for completing the grant.

G.Alexander Graham <gaegraham@yahoo.com>

To HOLLOWAY, KRIS, VBASEAT Robert P. Walsh May 2 at 7:00 PM

Dear Kris,

In order to accomplish this grant, VA is required to have a licensed Vocational Rehabilitation Counselor (VRC) implement it if I am reading 38 CFR 21.160 and .162 correctly. Reading the Seattle VA leadership team resumes, I note that Mr.

(xx)

Boyd's accomplishments are "Prior to joining VA, Mr. Boyd served in the U.S. Army. Among other assignments, he patrolled the German border during the Cold War, commanded tanks in the European 7th Corps during Operation Desert Storm, and jumped out of airplanes with the 82nd Airborne Division." Nowhere do I see any of his professional qualifications that would permit him to be my VRC. 38 CFR 21.35 (k)(1)(2) is unequivocal as to what a VRC's professional curriculum vitae need constitute and the professional requirements necessary to supervise my IILP- let alone write it. If, as you indicate, he is in charge of my IILP, my attorney questions the validity of his VRC qualifications. If he indeed has VRC credentials, please provide the attorney with them.

In addition, I see another insurmountable problem building here. It would appear from what you have said so far regarding GSA involvement, that you are looking at the new VR&E Manual 28R (M28 Revised) for guidance. Please be advised that my claim for the greenhouse was filed in 2012, several years before the inception of the M 28R which became effective March 31, 2014. As such, the prior version (M 28) is still for application in this grant as it represents an unbroken claim stream from 2012 to present via my successful appeal. For legal cites, please see Holliday v. Principi (2001), Cohen v. Brown (1997) and Karnas v. Derwinski (1990). To wit, the regulation in effect at the time of filing will be the controlling one. Later changes to a regulation during the course of adjudication can never be for application unless the regulation grants retroactive reach. I see nothing in M 28 R granting that.

Further, the presumption of regularity assumes VA personnel are competent in the regular performance of their duties. However, that presumption can be overturned when what appears irregular is irregular. See Butler v. Principi 244 F.3d 1337,1340 (Fed. Cir. 2001). Considering the loss of not one, but two important documents I have submitted (2012 NOD & 2014 SSOC) which were documented via certified mail, return receipt requested, Seattle's VR&E office clearly and unmistakably lost the protection of that presumption before my appeal began. I was forced to submit my SSOC with a waiver of review in the

first instance at my BVA hearing April 29th, 2015 as it was nowhere to be found in the c-file. As for erroneously depending on the new M 28R for implementation of the IILP, once again, the presumption of regularity has been abrogated. Once abrogated, any and all presumptions of regularity regarding this grant became null and void.

All I asked for last month was an extended evaluation of two years versus your (or Mr. Boyd's) suggested 60 days (or one year) rehabilitation initially proposed in the first Form 28-8872 which required little more than concurrence from Mr. Boyd. That is assuming, arguendo, that he is indeed "in charge". That is within the parameters prescribed in 38 U.S.C. 3105 and 38 CFR 21.76. I do not see where this would require the involvement of a Vocational Rehabilitation Panel (VRP) or, for that matter, anyone above Mr. Boyd. 38 CFR 21.76 grants him that authority.

VA has been in constructive possession of the Farmtek bid now for over nine months. With this information in hand, planning for the grant can not come as an unexpected surprise requiring extensive planning. Knowing the cost, the obvious requirement was to forward it to VACO VR&E for their approval and action once the BVA decision was rendered. Eight months is ample time to coordinate this.

As all are aware, my health is tenuous and further delay based on inapplicable guidance dictated by relying on the wrong Adjudications Manual is no longer an operable excuse. I feel submittal of the IILP to Mr. Boyd along with the FL 28-520, IL Plan Approval Request this week is all that is required to get this project rolling. The old M 28 makes no mention of any GSA requirements or sending out for a GSA construction manager. As we have a qualified contractor on tap standing by ready to perform this at a confirmed price using both standard or prevailing Davis Bacon wage structure, the reason for further delay is useless posturing. Those in charge are free to disagree with my assessment and I welcome the dissent. Absent any positive action this week, Mr. Walsh or I will begin my legal quest to correct this at the Court.

Prompt attention is requested because any further delay will confirm one of two things: either an unwillingness to honor the BVA decision or an arbitrary refusal to act on the VA Secretary's part. I do hope you understand my dilemma. I have been patient and awaited action now for eight months. Any further delay can only be, and indeed will be, construed as an implied denial. Mr. Walsh stands ready to file the Extraordinary Writ of Mandamus if I do not see tangible written progress this week in the form of a signed VA 21-8872. I would have hoped the Veterans Administration would have realized the tenor of my resolve after four long years of appeals and the filing of my last Writ in January 2015.

You indicated that once this surpassed \$2,500.00, it was "above your pay grade" to authorize, Kris. I would strongly advise that I be put in touch with Seattle VA director Pritz Navaratnasingam in order to avoid this confusing chain of command of who is, or, perhaps, who is not, truly in charge. You have my telephone numbers. Should Mr. Navaratnasingam feel it beneath his station to discuss this with me directly, please have him contact Mr. Walsh. He can be reached at 269-962-9693. I don't seem to be able to impress upon anyone there the enormity of the consequences of further delay. I am sorry that you have been caught in the crossfire and become a de facto message runner. A little foresight by your superiors and a professional hands-on approach could have avoided this contretemps early on. Sadly, it was lacking.

In the event you eventually become my VRC on this project, I do hope this unpleasantness can be put behind us and we can accomplish this in a professional manner. You have been very personable and easy to deal with over the ensuing four years we've been acquainted. I respect your professionalism and your willingness to roll up your sleeves and dig in to accomplish it. It's unfortunate that all VA employees do not share your VA commitment to core values. I sincerely hope you can convey the urgency (and necessity) of a prompt response this week to the responsible individuals.

HOLLAWAY, KRIS, VBASEAT <[REDACTED]@va.gov>

To [REDACTED] com May 5 at 8:31 AM

Sorry to get back to you late on your email. I am waiting on further orders to proceed, if it is me that will assist?. I know that your case has been picked up by a GSA contractor and things are progressing.

G.Alexander Graham <[REDACTED].com>

To HOLLAWAY, KRIS, VBASEAT May 6 at 10:10 AM

Dear Kris,

I fully understand your predicament of being the tail end Charlie in all this but please understand that I am a very much a stakeholder and have what most would consider to be the majority interest in this matter. My confidence in VA, based on their prior performance metrics in all areas of the VHA and VBA I have come in contact with, leads me to believe this will drag on endlessly.

As an aside, from looking at the VA's VR&E organizational chart, each VR&E regional office is autonomous and the Washington DC central office has no command/authority other than an advisory role. Other than keeping track of monies spent on the IL program in order to avoid budget problems, the sole authority for the administration of the ILP lies here in Seattle- presumably with Mr. Boyd.

Absent any other dialogue, a signed IILP or proof of intent to comply with the BVA decision, I will proceed with the Extraordinary Writ of Mandamus next week. I had fervently hoped to avoid this but see no other "lever" to pull to obtain compliance. Ignoring even the extraordinary delay in the implementation of the grant, the recalcitrance of those in charge to communicate (other than you) is very telling. Integrity, Commitment, Advocacy

G.Alexander Graham [REDACTED]com>

To HOLLOWAY, KRIS, VBASEAT May 6 at 10:26 AM

Dear Kris,

Sorry. I pressed send inadvertently.

I fully understand your predicament of being the tail end Charlie in all this but please understand that I am a very much a stakeholder and have what most would consider to be the majority interest in this matter. My confidence in VA, based on their prior performance metrics in all areas of the VHA and VBA I have come in contact with leads me to believe this will drag on endlessly or move at a glacial pace.

As an aside, from looking at the VA's VR&E organizational chart, each VR&E regional office is autonomous and the Washington DC central office has no command/authority other than an advisory role. Other than keeping track of monies spent on the IL program in order to avoid budget problems, the sole authority for the administration of the ILP lies here in Seattle- presumably with Mr. Boyd. Since I cannot seem to impress upon him the urgency this matter requires via my communications with you, nor begin a dialogue with him, I will proceed under the assumption that there is no game plan.

Absent any other dialogue, a signed ILP or proof of intent to comply with the BVA decision, I will proceed with the Extraordinary Writ of Mandamus next week. I had fervently hoped to avoid this but see no other "lever" to pull to obtain compliance. Ignoring even the extraordinary delay in the implementation of the grant, the recalcitrance of those in charge to communicate (other than you) is very telling.

Integrity, Commitment, Advocacy, Respect and Excellence (ICARE) are the core values repeatedly expressed by VA but all seem to ring hollow here. You do realize that absent your involvement, I have never had any meaningful conversation on ILP- let alone commitment or advocacy from higher authority. The most important element (excellence) is non existent from my perspective.

BOYD, DAVID W, VBASEAT <[REDACTED]@va.gov>

To [REDACTED].com

CC BOYD, DAVID W, VBASEAT HOLLOWAY, KRIS, VBASEAT HANNEM, KAROLYN D. VBASEAT May 10 at 1:34 PM

Mr. Graham,

We acknowledge that this has been a long process and we thank you for your patience on what you may interpret as our unwillingness to honor the BVA decision or an arbitrary refusal to act on the VA Secretary's part. The earlier delay in providing services was because your request is a highly unusual independent living request that required us seek advisory opinions from our higher headquarters to answer questions raised about the delivery of services. I would also like to clear up a few misconception you may have about the process, this is not a grant, but a service delivered by VR&E Services. The greenhouse you are requesting must be provided by VR&E Services and we must certify both at the beginning of the process and again at the end of the process that it meets the required intent.

Although we are the regional representatives of VR&E Services, we cannot deviate from prescribed policies and practices for delivering those services. As vocational specialist, we are not trained or prepared to oversee major construction projects, therefore we had to submit your request through the regional contracting office to solicit bids for a Construction Manager that will be assigned to work with Mr. Hollaway to deliver the services prescribed. I contacted the contracting office today and they are working to bring closure to

your bid process, they anticipate another 30 to 45 days for completion. The intervention by a Construction Manager is necessary because in the past there were concerns raised by reviewing officials, permitting officials, as well as rehabilitation counselors themselves about assigned construction projects, therefore VR&E Services changed procedures a few years ago requiring the assignment of Construction Managers to provide guidance and expertise on these IL projects.

Again, I thank you for your patience on this endeavor and hope as you do that it can be accomplished as soon as possible. If you have further questions or concerns, please contact you [REDACTED]
[REDACTED]

G.Alexander Graham <[REDACTED] com>

To [REDACTED]@va.gov [REDACTED]va.gov [REDACTED]@va.gov
Robert P. Walsh **May 14 at 7:54 PM**

Attention: Mr. David W. Boyd

Ms. Karolyn D. Hannem

Mr. Kris M. Holloway

May 14, 2016

Please make sure this email is copied and filed in my VR&E claims file.

After perusing my VR&E files and the September 4, 2015 Board of Appeals decision in the affirmative, I concur with your assessment that an IL program is

not a "grant" per se. However, it does not become a "service" as you maintain, until an entitlement is established. The entitlement began over eight months ago. The appeal was advanced on the docket for good reasons. Further delay is unwarranted. VA has had ample time to learn this entitlement process as the law (38 USC § 3120) was promulgated and passed by Congress in 1981.

Please review the three findings of fact by the Board of Veterans Appeals Veterans Law Judge Vito Clemente. I list them here (paraphrased) for you.

- 1) Veteran is severely disabled and vocational path is not currently feasible.
- 2) Veteran is housebound in fact and has a well-documented years-long hobby growing vegetables and fruit. Disabilities clearly and unmistakably of VAMC record document photosensitivity, intolerance cold exposure and sometimes require the use of a wheelchair or walker. These disabilities are well-known to VA and most are, in fact, twenty year protected ratings.
- 3) Based on the facts in this case, the evidence is at least in equipoise regarding whether having a heated, ADA-compliant greenhouse would allow the Veteran to function more independently in the family and community without the assistance of others or a reduced level of the assistance of others.

These findings of fact were all evidence of record (EOR) in 2011, 2012, 2013, 2014 and 2015. It took four and one half years to arrive at a correct decision based on these facts. None of them materially changed in the interim other than a net increase/severity in disabilities. In that same four plus years, a November 21, 2012 Notice of Disagreement (NOD) of the denial was "lost" as well as a rebuttal to the May 7th, 2014 SSOC timely filed on May 21, 2014. The VA hews to an interpretation of VA law that it is presumed the employees and the agency are well-versed in 38 CFR. This is called the Presumption of Regularity

and is much discussed in *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed.Cir.2001)

("The [presumption of regularity] doctrine thus allows courts to presume that what appears regular is regular, the burden shifting to the attacker to show the contrary."); *Mindenhall v. Brown*, 7 Vet. App. 271 (1994) (this presumption of regularity applies to procedures at the RO). Butler also states, however, that what appears irregular is irregular. For over four years, the Seattle VR&E personnel have been laboring under the misconception that avocational pursuits (read hobbies) are not covered by the IL Program. Further, important legal filings in constructive possession of VA employees have been lost or misplaced voiding the presumption of regularity doctrine regarding handling of submitted claims evidence.

Any statements claiming to have perused my voluminous 10,078-page claims file and taking note of my physical limitations regarding harmful exposure to sunlight and cryoglobulinemia (cold sensitivity in extremities) simply does not comport with the facts in the denial. The Veterans Law Judge was amply clear on this inasmuch as the denials did not even mention the disabilities. Each and every discrepancy above voids any protections afforded the VR&E that employees properly discharged their duties. See *United States v. Armstrong*, 517 U.S. 456, 464 (1996) ("[I]n the absence of clear evidence to the contrary, courts presume that [Government agents] have properly discharged their official duties.").

Once this presumption is violated, the afforded protection is null and void. This is now where VA's Seattle VR&E finds itself, ladies and gentlemen.

In light of these failings, I hope VA can understand my position. I have been forced to litigate nonstop for almost twenty two years to obtain my correct disability ratings due to a misinterpretation of the regulations. Now, I find I have invested another four plus years in litigation over a VR&E program- again over a VA misinterpretation of their own laws. VA lost my filings needed to timely appeal or rebut my VR&E denial. I had to prove I had timely appealed my greenhouse denial in order to reinstate it. VA dismissed or made light of my medical disabilities which clearly and unambiguously demonstrated entitlement to this ILP "service". For Seattle's VR&E Officer to suddenly come forward eight

months after the long-overdue "entitlement" was awarded to explain the interminable delay is welcome news. However, it is long overdue and explains nothing. VA has now been administering the IL Program for over thirty five years. Familiarity should be a given with the process by now.

VR&E has been engaged in this endeavor since my submittal of Form 28-1902w on March 18th, 2011. Bremerton intake specialist Colleen Grainey, initially declared that there was no such thing as an Independent Living Program (May 4, 2011). VA has been adversarial ever since. Mr. Holloway steadfastly maintained on July 6th, 2011, and Mr. Boyd signed off on it, that the Vocational Rehabilitation program under ILP did not permit "avocational" pursuits. This assessment directly contradicted VA's Office of General Counsel (OGC) legal precedent 34-1997 decided November 5th, 1997. Since the OGC(021) precedent specifically addressed a) recreational applications and b) a request for a computer and peripherals, my cite to it for legal purposes of my "entitlement" was on point. The VR&E officer never addressed this precedent. My computer request had to be "granted" by VR&E's Central Office via Administrative Appeal.

The Veterans Law Judge alluded to a litany of denials throughout the process that were either poorly reasoned or unsupported by VA's own VR&E regulations and OGC precedents. I have no reason now to expect any different, nonadversarial treatment which is why VA may perceive my tenor as uncalled for or overheated rhetoric. Absent any communications or explanations from your office, my status as a stakeholder in the IL program essentially has been as an observer and little more. Worse, my concerns and queries about this process go unanswered or denied without legal sufficiency.

30-day notice

Please consider this thirty (30) day notice that absent any meaningful effort to begin an active, meaningful colloquy, my representative will resume efforts to obtain compliance with the BVA decision.

(xxx)

Please try to communicate soon when you require full-time access to the site for commencement of construction, a good faith timetable for construction and completion as well as confirmation of contact with [REDACTED] Farmtek's IL Program Coordinator. Farmtek is licensed and bonded to install their products and are VA approved contractors according to Ms. [REDACTED]. Contact information on the GSA contractor Mr. Boyd contends is assigned to the project is requested as well.

On the advice of my representative, I have decided to wait to file a Writ with the Court of Appeals for Veterans Claims (CAVC) petitioning for compliance. Absent any substantial evidence of progress on VA's part within the thirty day notice, he will revisit the decision
