IN THE UNITED STATES COURT OF

APPEALS FOR VETERANS CLAIMS

Gordon A. Graham	)	
Petitioner, pro se	)	
	)	
v.	)	Docket No. 16-2098
	)	
Robert A. McDonald	)	
Secretary of Veterans Affairs	)	

Request For Reconsideration

In order to keep the Court more informed of recent communications either initiated or received, the petitioner wishes to apprise the Court of disturbing revelations recently revealed concerning the testimony of Mr. David Boyd made under penalty of perjury. Petitioner feels these circumstances cast an entirely new light on the request for an Extraordinary Writ and require reconsideration.

In his declaration under penalty of perjury, in item number **II. 6**, Mr. Boyd declared "Activities included repeated consultations with Mr. Graham".

In the email petitioner sent Mr. Holloway querying him on when these consultations took place, Mr. Holloway replied on August 16th, 2016 in Exhibit 1, page 13:

"The IILP was derived from the Statement of the Case, your appeal documents, VBA recommendations, Rehabilitation goals and identified needs as it relates to being able to perform; as in your case, "access" a greenhouse activity, heated and ADA standards."

Petitioner is appalled to think the VR&E personnel would baldly consider NODs, SOCs, Form 9s, unanswered SSOCs and the like from the previous five years as "repeated consultations" in the context of 38 USC §3107(a). Nowhere in the formulation of the Statute can petitioner discern the intent of Congress to make this entitlement so impossible to attain. It would appear the Secretary has resorted to clever semantics to convince the Court he has complied with the statute and included petitioner in the process of jointly formulating an Individualized Independent Living Plan (IILP) when in fact it is evident from the attached emails that nothing whatsoever ever transpired.

Based on the September 4th, 2015 decision of Veterans Law Judge Vito Clementi, the VR&E's findings of fact were in error and unsupported. It would appear from their very own emails that these two Administration employees are now resorting to semantic gerrymandering to hoodwink the Court into believing substantive conversations that complied with VA regulations in the joint planning of an Individualized Independent Living Plan (IILP) *subsequently* took place.

Petitioner feels that in light of the enormity of the statements, the Court is entitled to view this information before arriving at any decision regarding issuance of an Extraordinary Writ of Mandamus. Viewed in this perspective, petitioner feels the Court may see the actions of the VA in a different light.

Petitioner also wishes to express his dismay at the continuing arrogance of the VR&E officers in purposefully misconstruing petitioner's request for a Veterans Benefits Manual for volunteer pro bono work on Veterans claims as a wholly "vocational aspiration". In addition, it appears VR&E personnel are unaware of the rules concerning when one can file a NOD. It would be premature (and grossly illegal) to attempt to file out of time after a successful appeal. Petitioner points out he is simply waiting for a properly constructed IILP that includes him as a valid stakeholder with a vested interest in the procedure. To date, in gross violation of 38 USC and 38 CFR, that has not happened in spite of what VR&E personnel would have the Court believe- under penalty of perjury, no less.

It also seems incongruous that the VA now has a computerized Veterans Benefits Management System (VBMS) that permits viewing of a Veteran's files in multiple, remote locations simultaneously, but yet Mr. Holloway maintains he is unable to access the file when it is not physically at arm's reach. The mysteries of these electronic inner workings continue to baffle petitioner.

The Court has held that: "The government's interest in Veterans cases is not that it shall win, but rather that justice shall be done, that all veterans so entitled receive the benefits due to them." Barrett v. Nicholson, 466 F.3d 1038, 1044 (Fed. Cir. 2006). Comer v. Peake 552 F.3d 1362 (Fed. Cir. 2009) has further held that: "The VA disability compensation system is not meant to be a trap for the unwary, or a stratagem to deny compensation to a veteran who has a valid claim, but who may be unaware of the various forms of compensation available to him. To the contrary, the VA 'has the affirmative duty to assist claimants by informing veterans of the benefits available to them and assisting them in developing claims they may have.' quoting Jaquay v. Principi, 304 F.3d at 1280."

It would seem clear that the Secretary and his VR&E minions have surreptitiously moved the goalposts. Petitioner was apprised of the Independent Living Program in March 2011 and encouraged to apply. Petitioner has been met with a litany of "Well, not exactly." throughout the pendency of his pursuit of this valuable program for *severely* disabled Veterans. After five years of incessant filings and appeals, petitioner is now informed at the last moment he will be given a rump settlement based on old, discounted denials and the Secretary's new, improved interpretation of 38 USC §3107.

While the Court may feel petitioner has not exhausted all his judicial remedies in pursuit of his entitlement to ILP services, petitioner would beg to point out that he has been hornswoggled. Nowhere in this process has petitioner been allowed to participate as a stakeholder as envisioned by Congress. The whole process has been an endless sham proceeding to deny the Veteran a legitimate entitlement. Once granted on appeal, the rules have subtly changed to disenfranchise the petitioner yet again. The Court would now have petitioner begin anew, as it were, and relitigate ground already traversed in pursuit of a grant of services lawfully awarded. This perpetuates the "hamster wheel" mentality of the Veterans Administration whereby a Veteran spends his whole life attempting to achieve what was promised by law. Petitioner would point out he has already spent the last twenty two years pursuing justice (see CAVC # 2012-1980, #2015-0115) in his claims and this entitlement appears to simply be more of the same "delay and deny" tactic.

Wherefore, petitioner requests the Court grant his humble request for an Extraordinary Writ of Mandamus compelling the Secretary to honor the September 4th, 2015 decision of Veterans Law Judge Vito Clementi posthaste. Petitioner would point out it is now six days shy of a year from the appeal decision with no resolution in sight. Indeed, at the present rate, petitioner may expire before the VA builds the promised greenhouse. Petitioner wishes to apologize for the fact that his health continues to deteriorate necessitating a revision of the IILP. Had the VA timely granted the service in 2012, this eventuality might never have come to pass.

Petitioner is in ill health and doesn't have the stamina to pursue this endlessly in search of semantic perfection. From the attached emails, it is more than obvious that the Veterans Administration has not been forthright in their dealings. Purposeful obfuscation, obstruction and misconstrual of facts under penalty of perjury should never be sanctioned or rewarded by the Court to the detriment of the Veteran.

Attached: Exhibit 1 (16 pages of emails)