

*Not published*

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 18-0938

GORDON A. GRAHAM,

PETITIONER,

v.

DAVID J. SHULKIN, M.D.,  
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before BARTLEY, *Judge*.

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

On February 22, 2018, self-represented veteran Gordon A. Graham filed a petition for extraordinary relief in the nature of a writ for mandamus.<sup>1</sup> Mr. Graham asserts that a writ of mandamus is necessary to compel the VA regional office in Seattle, Washington, to comply with a September 4, 2015, Board of Veterans' Appeals (Board) decision granting entitlement to an individualized independent living plan (IILP). Petition at 1, 13-14.

In his petition, Mr. Graham avers the following facts. In September 2015, the Board awarded entitlement to an IILP under VA's Vocational Rehabilitation and Employment (VR&E) program in the nature of a heated, American with Disabilities Act (ADA)-compliant greenhouse. Petition at 1. After initial negotiations, VA presented Mr. Graham with a proposed IILP pursuant to the Board decision. *Id.* In July 2016, Mr. Graham refused VA's proposal, which included a 15-foot by 20-foot greenhouse that was not ADA-compliant. *Id.* Following his disagreement, Mr. Graham met with his vocational rehabilitation counselor and a VR&E officer in October 2016 to resolve the disagreement. Petition at 2 & Exhibit (Ex.) A. As a result of that meeting, a mutually-negotiated plan was promulgated, which included, inter alia, a 20-foot by 28-foot greenhouse. *Id.* On October 14, 2016, this "final proposal" was memorialized and sent electronically to Mr. Graham, who responded the same day that he believed the proposal to be a "workable solution" except for one additional change. *Id.*

Having received no written response, Mr. Graham, in December 2016, contacted his vocational rehabilitation counselor requesting an update and requesting two additional changes. Petition at Ex. A. The vocational rehabilitation counselor responded indicating that additional

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<sup>1</sup> Although Mr. Graham is self-represented, the Court notes that he is a non-attorney practitioner admitted to practice before this Court.

approval was needed prior to completing the agreement and he would contact Mr. Graham when such approval was obtained. *Id.* Mr. Graham made similar inquiries and received similar responses in April and July 2017. *Id.*

In December 2017, Mr. Graham was contacted by a different VR&E officer to review and implement the "final offer" proposed by the director of the VR&E. Petition at 3 & Ex. C. This proposal included, inter alia, a 15-foot by 20-foot greenhouse. *Id.* In February 2017, the same VR&E officer contacted Mr. Graham again, presenting an "ultimatum" that Mr. Graham accept this recent proposal by March 14, 2018, or have the greenhouse file closed permanently. Petition at 3, 6.

Mr. Graham asserts that a writ of mandamus is warranted because he lacks alternative means to attain the desired result and has demonstrated a clear and undisputed right to the writ. Petition at 4-11. He further asserts that, under the circumstances of his case, a writ is warranted because of the "continued parade of delays, promises[,] and illegitimate revisions," *id.* at 11, misfeasance, and a "concerted quasi-judicial effort" to thwart implementation of the IILP, entitlement of which was approved nearly two-and-a-half years ago, *id.* at 14.

In order to address Mr. Graham's assertions, the Court requires additional information from the Secretary. *See* U.S. VET. APP. R. 21(d).

Upon consideration of the foregoing, it is

ORDERED that the Secretary, within 30 days after the date of this order, file a response to Mr. Graham's petition, addressing the specific allegations contained therein and providing any documentation pertinent to the Court's resolution of this matter.

DATED: March 1, 2018

BY THE COURT:



MARGARET BARTLEY  
Judge

Copies to:

Gordon A. Graham

VA General Counsel (027)