

**RAILROAD MEDICAL INTIMIDATION UNDER THE GUISE OF  
THE COLLECTIVE BARGAINING AGREEMENT**

**FLOOD THE ZONE WITH B.S.**

**OVERWHELM THE SYSTEM'S ABILITY TO UNDERSTAND  
AND TO REACT EFFECTIVELY**

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**"THIS IS WHAT YOU SHALL DO"**

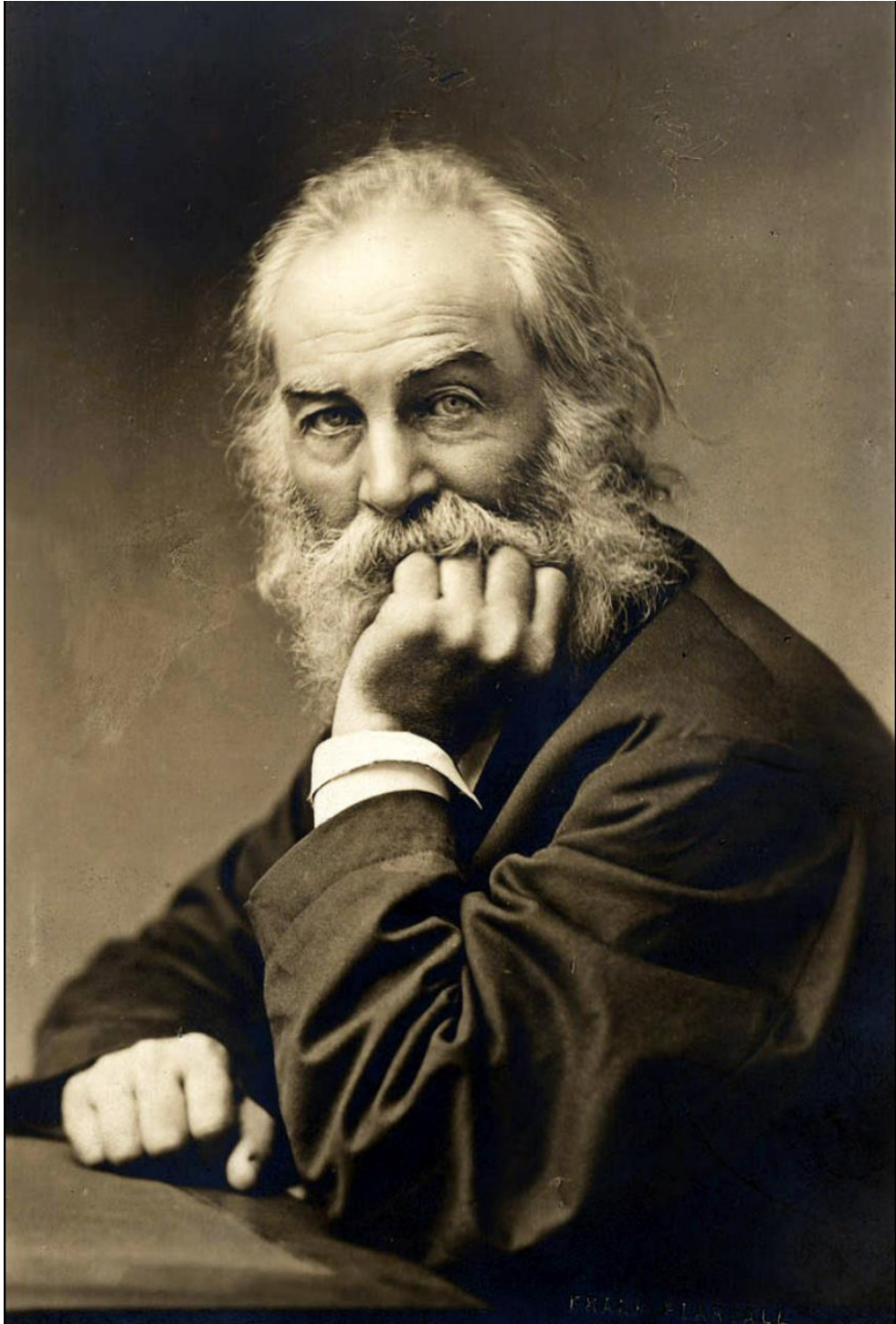
**-- Walt Whitman**

**“An informed Marine is a dangerous Marine”**

**-- Shelby Gonzalez' husband Ryan**

**The subject of this presentation is the railroad's medical review process as it plays out in FELA cases. The purpose of the presentation is to show exactly how the medical review process is designed to work in FELA cases and how to handle it if it is used against a brother, sister, or yourself.**

**Understand your point of perspective:  
Humanity, common sense, and equanimity.**



# This is what you shall do:

Love the earth and sun and the animals, despise riches, give alms to everyone that asks, stand up for the stupid and crazy, devote your income and labor to others, hate tyrants, argue not concerning God, have patience and indulgence toward the people, take off your hat to nothing known or unknown, or to any man or number of men.

Go freely with powerful uneducated persons, and with the young, and with the mothers of families. Re-examine all you have been told in school or church or in any book, and dismiss whatever insults your own soul; and your very flesh shall be a great poem, and have the richest fluency, not only in its words, but in the silent lines of its lips and face, and between the lashes of your eyes, and in every motion and joint of your body.

WALT WHITMAN

# Song of the Open Road

BY WALT WHITMAN

1

Afoot and light-hearted I take to the open road,  
Healthy, free, the world before me,  
The long brown path before me leading wherever I choose.

Henceforth I ask not good-fortune, I myself am good-fortune,  
Henceforth I whimper no more, postpone no more, need nothing,  
Done with indoor complaints, libraries, querulous criticisms,  
Strong and content I travel the open road.

The earth, that is sufficient,  
I do not want the constellations any nearer,  
I know they are very well where they are,  
I know they suffice for those who belong to them.

(Still here I carry my old delicious burdens,  
I carry them, men and women, I carry them with me wherever I go,  
I swear it is impossible for me to get rid of them,  
I am fill'd with them, and I will fill them in return.)

**Understand the railroad's point of perspective:**



Michael Lewis in Rome, Italy, on March 25, 2020. In an earlier interview with the journalist Michael Lewis, Barron said, "The Democrats don't matter. The real opposition is the media. And the way to deal with them is to flood the zone with shit." | Alessandra Benedetti/Corbis/Getty Images

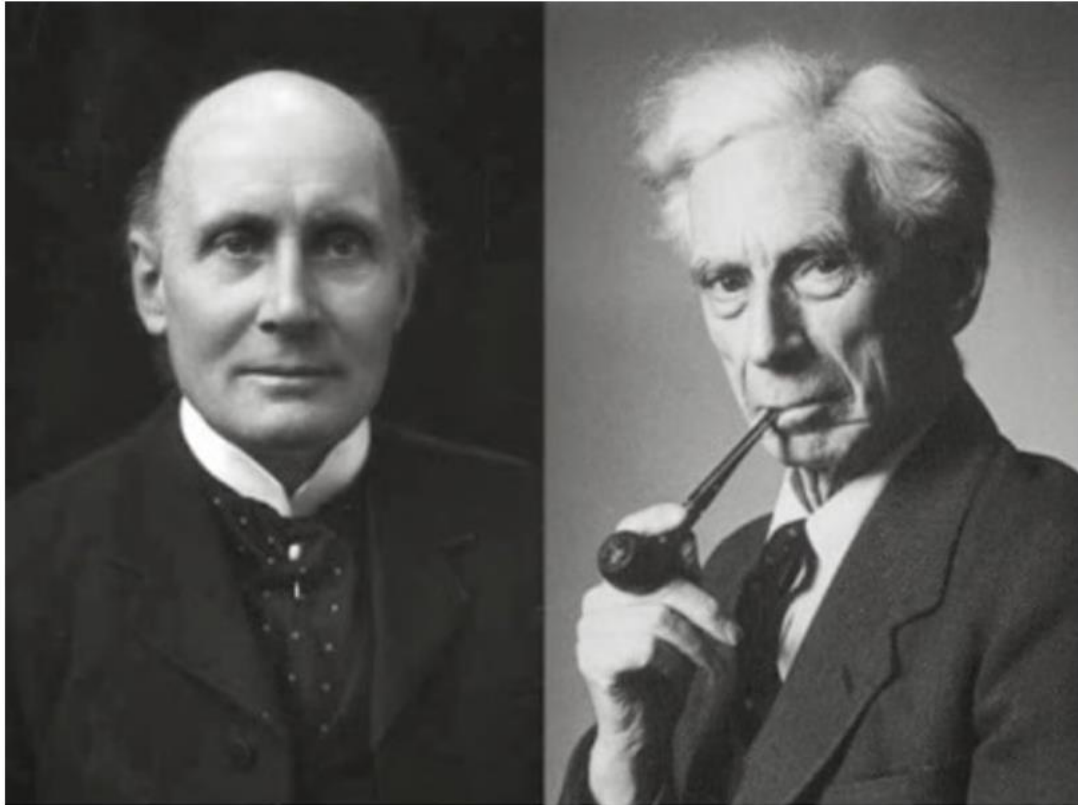
**"Flood the zone with shit": How misinformation overwhelmed our democracy**





I think therefore am.

~ Rene Descartes



Alfred North Whitehead  
(1861-1947)

Bertrand Russell  
(1872-1970)

*"Bertie thinks I am muddleheaded; but then I think he is simpleminded" -- A. N. Whitehead*

After 379 pages of mathematical reasoning...

\*54·43.  $\vdash :: \alpha, \beta \in 1 . \supset : \alpha \cap \beta = \Lambda . \equiv . \alpha \cup \beta \in 2$

*Dem.*

$\vdash . *54 \cdot 26 . \supset \vdash :: \alpha = \iota'x . \beta = \iota'y . \supset : \alpha \cup \beta \in 2 . \equiv . x \neq y .$

[\*51·231]  $\equiv . \iota'x \cap \iota'y = \Lambda .$

[\*13·12]  $\equiv . \alpha \cap \beta = \Lambda \quad (1)$

$\vdash . (1) . *11 \cdot 11 \cdot 35 . \supset$

$\vdash :: (\forall x, y) . \alpha = \iota'x . \beta = \iota'y . \supset : \alpha \cup \beta \in 2 . \equiv . \alpha \cap \beta = \Lambda \quad (2)$

$\vdash . (2) . *11 \cdot 54 . *52 \cdot 1 . \supset \vdash . \text{Prop}$

From this proposition it will follow, when arithmetical addition has been defined, that  $1 + 1 = 2$ .



## How To Convince a Reluctant Scientist

At the end of reasons comes persuasion.  
—Ludwig Wittgenstein, *On Certainty*

**A**t the end of every successful argument, no matter how weighty the evidence or powerful the reasoning, the beholder performs a nonrational act: the leap to acceptance. It may be short—one may feel pushed—but a leap it always is.

What makes a scientific argument persuasive? Granted, there is no one nation called “science” but a panoply of tribes with their respective handicrafts. A cosmologist might nod, and a chemical engineer squirm, when someone argues that the unobserved *must* exist for the observed to make sense. Certain branches of physics absolutely demand reproducibility—but an anthropologist may get only one chance to live amid the !Kung.

There are some basic persuaders, more or less familiar, more or less honored. Robert K. Merton’s five elements of scientific endeavor—originality, detachment, universality, skepticism and public accessibility—all play a role. If results and methods follow the rules we know, and if we find the candor and testability we expect, we are at least nearer to feeling well disposed. Yet in the sciences as elsewhere, conviction involves other forces, both reason and nonreason.

Our sense of what connects, what fits, what ramifies, can often move us to acceptance. Results that bear little connection to existing work will persuade little. But if study A forges connections between studies B, K and S, or if it newly illuminates an established fact, a tiny epiphany can happen.

Or a massive one. Sir Isaac Newton’s audience was impressed when he derived his laws of physics from observations made by Galileo—but overwhelmed when he then showed that the moon, planets and stars obeyed these same principles. It did not escape the notice of James D. Watson and Francis Crick that their proposed structure for DNA helped to explain the copying mechanism of the genetic material. Ramification may work also from with-

out. If we realize the argument we have just heard is supported by independent evidence, our personal paradigms may start to budge. Some scientists initially resisted John Ostrom’s argument that the ancestors of modern birds were ground-dwelling theropods. But when we watch a hawk hop after a desert rat, we are not far from the awkward leap of *Archaeopteryx*.

To be persuasive, then, you can be only so original. Total originality, to the point at which no one else speaks your language, may cripple your argument’s progress in the world (as happened initially to Thomas Young’s wave theory of light). Call it the Law of Obviousness: better to be a half-step ahead and understood than a whole step and ignored.

**P**restige sells, too. Freeman Dyson has noted the “profound consequences” of status in the sciences. A famous team at a famous institution backed by famous money is a hard combination to resist. Even harder is the status that comes with large projects. Almost irresistible is the assent of prestigious colleagues or superiors.

Publicity, for better or worse, begets prestige. Scientists today—of necessity—are veritable master organists at the great keyboards of the media. Going public spurs debate, encourages verification, attracts funds. Today, when there is more science than ever before, a number of scientists see no alternative to invoking the hosanna and the gee whiz.

Many scientists believe arguments they have never read or heard, simply because most of their peers believe. As Thomas S. Kuhn writes, “There is no standard higher than the assent of the relevant community. The transfer of allegiance from one paradigm to another is a conversion experience that cannot be forced.”

And sometimes the sheer beauty of a demonstration can render an argument compelling. Einstein’s special theory of relativity gained acceptance not only by its power to explain observed phenomena but also by the elegance of the equation  $E = mc^2$ . Cell biologists wax rhapsodic over Erkki Ruoslahti’s exper-

iments showing that a certain molecule, called an integrin, mediates the adhesion of cells to the protein fibronectin. Ruoslahti’s work was of such beauty that other cell biologists found it extremely and immediately persuasive.

**M**uch of what makes a scientific argument convincing, in the end, has to do with things other than science. By saying so, we do not impugn or undermine the sciences so much as we recognize their humanity. Some postmodernist thinkers—those, for example, who practice the collection of methods called deconstruction—believe that the important role of the nonrational in the sciences is a scandal, when in fact that role is fairly familiar to anyone who actually does a science for a living.

Besides, such conceptual issues cease to have much importance past the lab door, which opens into a world of different priorities. In the workplace, scientists have utter faith in the reality of the world and in themselves. They have to. (Otherwise, their experiments, and perhaps they, may turn to tar.) The order of things, furthermore, pressures them to treat all data, especially their own, with thorough skepticism. After all, these pragmatic, naive, realist skeptics must eventually submit their findings to another entity in which they trust—the candid, bruising machinery of peer review.

How, then, does the history of science unfold? According to reason, drawn by the ineluctable, magnetic pull of truth? Or by bursts, gaps, sudden nonrational disjunctions? Perhaps the latter amounts to the former, since the aggregate of thousands of nonrational moments—when individual scientists are persuaded, convinced, converted—adds up to a progress of sorts. Conversion happens when a piece falls into place and renders the whole puzzle new. Often the new vision is so powerful that our decision to accept may seem hardly a decision at all. Yet a decision it always is. Precisely because they are not rational, such leaps—from final ice floe to riverbank—are wonderfully, deeply human.

*JOHN TIMPANE is a writer who teaches English at Lafayette College in Easton, Pennsylvania.*



Every problem contains the seed of  
it's own solution.

— *Norman Vincent Peale* —

**“The work will show you how to do it.”**

**-- Estonian saying**

## **CONFIDENTIAL**

**The following is email correspondence from an active FELA case involving the BNSF. It is correspondence showing how the medical review process works in the real world. It shows how the principles we are discussing apply in the real world.**

**It is correspondence the BNSF has, and it likely will become public record in the case.**

**The client is eager for this to be used at this seminar.**

**Still, the law of unintended consequences teaches that it is best to keep things like this confidential.**

**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#)  
**Cc:** [Jordan G. Davis](#); [jlaney](#) ; [Travis Duncan](#) ; [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, April 29, 2022 4:54:27 PM  
**Attachments:** [Riley 2022-04-26 \(Duncan EM Re RTW\).pdf](#)  
[Cox North Hospital 2022-04-08 \(Duncan Work Conditioning Functional Progress Note\).pdf](#)

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Mr. Laney,

Ms. Gladney recently recommended to Mr. Duncan that he look to me for guidance regarding return-to-work issues, and you can see the email exchange below. For your convenience, I am attaching to this email the medical records referred to in that email correspondence.

I have reviewed the subject of the emails below and am concerned that Ms. Gladney is an employee of the BNSF who works with claims and, at least indirectly, with your office in the underlying FELA matter. Since all these matters are at issue in the FELA case and implicate other laws and legal issues, I am not comfortable corresponding directly with Ms. Gladney.

Nor am I comfortable attempting to perform my duties for Mr. Duncan indirectly by attempting to guide him in responding to Ms. Gladney, especially since she has referred Mr. Duncan to me. Therefore, I think it best to direct all communication regarding these return-to-work matters through counsel. I think it best for all communications directed to Mr. Duncan from the railroad to be directed through you to me, and all communications directed to the railroad from Mr. Duncan to be directed through me to you.

Please advise what Mr. Duncan needs to do to return to work consistent with the attached medical records. The attached medical records state:

1. Mr. Duncan “demonstrated the ability to perform 34% of the physical demands of his job as Signal Maintainer.”
2. “The return to work test items this client was unable to achieve successfully during this evaluation include: Occasional Squat Lifting, Occasional Bilateral Carrying, Kneeling Repetitive, Walking, Ladder/Other, Stepping up into a high rail truck, at least 30” step., Walk the ballast line and down in to the ditch and back up the ballast line.”
3. The answer to whether Mr. Duncan’s abilities were a “Job Demand Match?” for the following “Job Demands” were as follows (the following quotes are verbatim without any typographical errors corrected):
  - a. “Occasional Squat Lift...No.”
  - b. “Occasional Shoulder Lift...No.”
  - c. “Occasional Bilateral Carry...No.”
  - d. “Repetitive Kneeling...No.”
  - e. “Walking...No.”
  - f. “Ladder/Other...No.”

- g. "Stepping up into a high rail truck, at least 30"s... ..No."
- h. "Walk the ballast line, down in to the ditch and ba... ..No."

The bases for the foregoing limitations are set out at pages 2 of 3 and 3 of 3 of the attached, April 11, 2022, Work Conditioning Functional Progress Note. At page 3 of 3, this Work Conditioning Functional Progress Note further specifies that the "Client's Ability to Perform Job Simulated Activity" for "Step up onto box, lead with right then with left and descending with opposite leg. Began with 6" step, then 8" step, then 12" step, the 14" step," and "Client requested to walk over uneven surfaces including soft mats and balance pads," were "Client demonstrated the ability to perform this test on an AVOID basis."

The attached "long term work limitations and or full release for work" document from Ms. Karla Riley dated April 26, 2022, notes the January 13, 2022, restriction "No uneven surfaces," references the April 11, 2022, Work Conditioning Functional Progress Note, and states that Mr. Duncan is "able to return to gainful employment, it just may not be in your current position," and recommends Mr. Duncan seek "a 30 day trial." Alternatively, "if you are unable to perform your position fully, then see what options are available for you to be transferred into another position and or opening within your employers available job postings."

In addition to the foregoing, I learned a little bit ago that Mr. Duncan had an appointment with his pain doctor today. I learned that the doctor prescribed Tramadol.

**Please consider this letter to be Mr. Duncan's request for the "30 day trial" return to work within the limitations set out in Ms. Riley's "long term work limitations and or full release for work" and the Work Conditioning Functional Progress Note referenced therein.**

As Ms. Gladney notes, the railroad has the information necessary to extend Mr. Duncan's Leave of Absence. **Mr. Duncan hereby requests extension of his Leave of Absence.** From the attached medical records, **Mr. Duncan requests his leave of absence to be extended permanently unless and until he is returned to work consistent with the attached medical records.**

I am copying the same people who were copied on the emails below to inform them of what is being done with regard to further handling of the matters at issue. I do not think it appropriate for us as lawyers to directly communicate further with each other's clients, and therefore, I do not intend to copy Ms. Gladney or Mr. Alvested further, and I would request that Mr. Duncan not be copied on further correspondence either. You and I will be responsible for informing our respective clients of the information that should be provided to them.

Thank you for your attention to this. Because of the importance of the matters at issue and various time limitations relevant to them, we respectfully request a prompt reply.



Chris

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**From:** [Jeffery Laney](#)  
**To:** [Chris Leach](#); [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#)  
**Cc:** [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Thursday, May 5, 2022 10:01:58 AM

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Mr. Leach,

I received your email of April 29 regarding Lisa Gladney's correspondence with your office related to your client's return to work. In your email, you suggest that Lisa Gladney works with claims and my office in the underlying lawsuit filed by Mr. Duncan. As I believe you are aware, Ms. Gladney is a Field Manager for the Medical and Employee Health Department ("MEH") of BNSF. Her department and its mission are not a part of the claims or legal department. She does not "work with" claims or my office any differently than any other BNSF employee, such as your client's co-workers or supervisors who may be called upon to provide information from time to time. Similarly, neither my office nor claims directs MEH in how it performs its activities, even in litigated cases.

As it relates to your client's treatment, leave of absence and return to work, such matters are coordinated through MEH who routinely communicates with BNSF employees and, when necessary, their legal counsel, regarding those issues. I do not coordinate those areas any more than I coordinate his schedule, health benefits or other aspects of his employment with BNSF. It is not only possible, but rather the norm, that employees and their attorneys communicate with MEH without engaging in prohibited communications regarding the lawsuit. If your client wishes to return to work, he will need to go through the normal return to work process coordinated by MEH. Accordingly, please continue to direct any questions or communications regarding those issues to MEH.

Thank you for your cooperation.

Yours very truly,

***Jeffery W. Laney***

***Haden, Cowherd & Bullock, LLC***

Office: [\(417\) 883-5535](tel:4178835535) Fax: [\(417\) 883-5541](tel:4178835541)

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**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#); [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#)  
**Cc:** [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Thursday, May 5, 2022 10:12:45 AM

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Jeffery,

Thank you for this. Is there a time when we can get together to talk? I had a similar issue in another case in which Mr. Alvested was involved, and the information I obtained through depositions of a number of BNSF personnel, both in claims and in the MEH department was different than this.

Chris

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**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#); [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#)  
**Cc:** [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 6, 2022 11:57:20 AM

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Jeffrey,

Relevant to the leave of absence question, I just learned that Mr. Duncan's podiatrist today recommended further surgery. By copy of this email, I am asking our paralegal, [Shelby Gonzalez](#), to get these notes promptly. I will send them to you when I get them. I believe you have your own authorization also. If not, let me know.

Please let me know when we can talk. I have not seen an extension of Mr. Duncan's leave of absence.

Chris

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**From:** [Jeffery Laney](#)  
**To:** [Chris Leach](#); [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#)  
**Cc:** [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 6, 2022 4:04:55 PM

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Chris,

I'll be back in the office Monday afternoon. I should be available after 1:30.

Regarding the extension on the MLOA, to reiterate, that should be coordinated with BNSF directly.

Have a good weekend.

Yours very truly,

***Jeffery W. Laney***

***Haden, Cowherd & Bullock, LLC***

Office: [\(417\) 883-5535](tel:(417)883-5535) Fax: [\(417\) 883-5541](tel:(417)883-5541)

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**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#); [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#)  
**Cc:** [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Monday, May 9, 2022 9:24:41 AM

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Jeffrey,

Would it work for you if I call you at 2:00 p.m.? If so, what is the best number to use.

Regarding contacting Ms. Gladney directly, I will want to look at the ethics rules, especially Rule 4.2 and discuss whether the subjects of any contact with Ms. Gladney are subjects that are at issue in the litigation, whether Ms. Gladney is represented directly or indirectly by you in the case, whether she is represented by anyone else in the case, whether statements she makes may bind the railroad, and whether liability for any acts or omissions on her part may be imputed to the railroad (e.g. in regard to injury or damages and/or aggravation of injury or damages related to any potential [I believe the rule is directed to potential as opposed to actual circumstances] interference with medical care, interference with mitigation of damages, ADA violation, CBA violation, 20109 violation, etc.).

To cover the matter comprehensively, we should address the same questions from the perspective of Mr. Duncan: whether the subjects of any of his contacts with Ms. Gladney are subjects that are at issue in the litigation, whether Mr. Duncan is represented by me in the case (obviously yes), whether statements he makes may bind him, and whether acts or omissions on Mr. Duncan's part may be imputed (attributed more precisely) to him (e.g. in regard to the railroad's affirmative defense of mitigation of damages).

I will plan on calling you at 2:00 p.m., but let me know if another time will be more convenient, and please also let me know the best number to use to reach you.

Thank you.

Chris

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**From:** [Jeffery Laney](#)  
**To:** [Chris Leach](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** Re: Duncan | Medical Leave of Absence Extension  
**Date:** Monday, May 9, 2022 9:29:00 AM

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Chris,

I'm in a depo this morning, but should be done by then. You can give me a call on my cell

Yours very truly,

***Jeffery W. Laney***

***Haden, Cowherd & Bullock, LLC***

Office: [\(417\) 883-5535](tel:4178835535) Fax: [\(417\) 883-5541](tel:4178835541)

**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Monday, May 9, 2022 9:33:00 AM

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Will do. If you are still in your dep, I will leave you a message and we can get together when it works for you.

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**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 10:34:17 AM

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Jeff,

When we talked about all of this, we left it that you were going to discuss it all with your client and get back with me as to what procedure we should follow to comply with the rules of court, including the ethics rules regarding ex parte contacts with represented parties, and both of our dedicated insistence that neither of us become witnesses in the case. I followed up and left you a message last week.

I am sure you have gotten busy, as I have, but the lead time on these MLOAs are so short that the next is due. My thought is the pending you informing me of what we should do that would comply with all the rules and procedures at issue, we should do the following:

1. All contacts with employees of your client who do or may fall within Rule 4-4.2, especially Comment Paragraph 7, will be directed to you from me.
2. All contacts with Mr. Duncan should be directed to me from you.
3. I believe I have your authority to copy the people copied on this email when addressing matters involving Mr. Duncan's leave of absence. If this is not correct, please let me know when you let me know the procedure generally that you believe we should be following.
  - a. Pending your recommendation regarding the procedure generally, I believe it important to copy Ms. Gladney and Leave Administration on behalf of Mr. Duncan so that there is no doubt that he has complied with the requirement to do so in order to preserve his leave of absence.

Please accept this as Mr. Duncan's compliance with the requirements to maintain his leave of absence. The extension of his leave of absence was too short for us to obtain certain further medical records relevant to this request, but we are in the process of obtaining them and will forward them when they are obtained. One of the health care providers will not provide medical records sooner than ten (10) days from the day they are requested. The medical records previously provided support this request.

In addition, to the medical records and other medical information previously provided that support this request, I also want to forward the following information from Mr. Duncan relevant to this request:

Since Mr. Duncan's last Doctors appointment on May 6th 2022 with Dr Geoffrey Bricker, further surgery has been recommended on Mr. Duncan's left ankle. This information previously was provided. Surgery was scheduled for today, May 27<sup>th</sup>, 2022, but before Mr. Duncan could be cleared for surgery, he needed to meet with his

new primary care physician, Dr Partain at OCH Evergreen Clinic for a pre surgery evaluation on May 18<sup>th</sup>, 2022. Subsequently, Mr. Duncan received a call on Monday May 23rd from his podiatrist / surgeon's office stating that some necessary forms had not been completed by Mr. Duncan's primary care physician. Because of this the surgery had to be rescheduled. Mr. Duncan also is waiting on a pain management referral to a new clinic. Cox Health has discontinued its pain management clinic. Currently, Mr. Duncan is taking Tramadol, pregabalin, and cyclobenzapr on a daily basis. As stated above, Mr. Duncan is in the process of obtaining the medical records that document this information. He will provide those to us, and we will provide those to you, as soon as he receives them.

Please let me know whether there is anything else you need or want from us. We simply request your outline of the procedure we should follow to comply with all the rules and procedures at issue.

If we do not talk sooner, have a good Memorial Day holiday.

Chris

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**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [Jeffery Laney](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [LeavesAdmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 10:50:57 AM

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Mr. Duncan does not need to provide medical records to extend his leave. He simply needs a note from a treating provider. It needs to be on the provider's letterhead. It needs to have an estimated end date. It needs to indicate either that he can not work at all, or that he has restrictions.

Mr. Duncan can send that directly to Leaves Admin to extend his leave.

If a physician has completed paperwork for RRB, he could also provide a copy of that to them. Any of these would be more than sufficient to extend his leave.

Lisa

Lisa Gladney, RN, CCM, COHN-S  
Field Manager, Medical and Employee Health  
P: 417-829-2107 Fax: 866-371-1484

*This message may contain confidential and/or privileged information and should be read or retained only by the intended recipient. If you are not the intended recipient, please notify the sender, delete the message and do not use or disseminate any information contained herein. Thank you.*

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**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [Jeffery Laney](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [LeavesAdmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 10:56:10 AM

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Ms. Gladney.

Thank you for this. As strange as this all is, until we receive guidance from Mr. Laney, we will need to refrain from communicating directly with you, although we will continue to copy you per what we understand to be Mr. Laney's authority to do so.

Chris

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**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [Jeffery Laney](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) [LeavesAdmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 10:58:15 AM

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Mr. Laney,

Per Ms. Gladney's email below, which is appreciated, we will obtain the doctor's note she outlines.

We cannot obligate the doctor to respond to our request immediately, but we will request this of the doctor's office today and we will get it to you as soon as we receive it.

Chris

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**From:** [Jeffery Laney](#)  
**To:** [Chris Leach](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#)  
[Leavesadmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 10:59:58 AM

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I apologize for not getting back to you earlier. I thought I had, but in reviewing my emails see that I did not. I'm copying everyone you previously included in your correspondence, including Ms. Gladney. I will defer to her (or other appropriate BNSF personnel) to directly address the MLOA request with you.

Regarding communications between your firm and BNSF related to Mr. Duncan, routine communications between your firm and BNSF related to Mr. Duncan's ongoing treatment or return to work may continue to be exchanged with BNSF as those activities are not directed by or coordinated with defense counsel or claims and I do not believe they come within the scope of 4-4.2. Communications regarding the subject matter of the current FELA litigation, including requests for information that are more appropriately served as discovery requests, should continue to be directed to me. I do not object to being copied on communications directed to MEH (and you should certainly contact me if you believe any MEH communication to your firm or Mr. Duncan goes beyond these routine matters) but the communications should continue to be directed to the appropriate BNSF personnel in accordance with usual practices. I note that you request any communication with Mr. Duncan should be directed to you, through me. I respectfully suggest that routine RTW and MLOA communications should continue to be coordinated directly between BNSF and your office. I appreciate working with you on this issue and, as we discussed, there is not a great deal of clarity from either bench or bar as how to proceed. If you are aware of any formal or informal advisory opinions indicating that we should proceed otherwise, I would certainly be interested in reviewing them.

Thank you.

Yours very truly,

***Jeffery W. Laney***

***Haden, Cowherd & Bullock, LLC***

Office: [\(417\) 883-5535](tel:417-883-5535) Fax: [\(417\) 883-5541](tel:417-883-5541)

---

**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ;  
[Leavesadmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 11:35:39 AM

---

Jeff,

No problem. I have been too busy myself.

I will need to get a big whiteboard and chart out all of this to picture the process in my mind. I will do that as soon as I can and get back with you.

I think we can do a lot by way of agreement, given that Rule 4.2 contemplates consent of a party's counsel to contact. I want to make sure there is no such thing as a non-waivable Rule 4.2 issue.

I will make it a priority to get back with you as soon as possible so that everyone on this email can do what they have to do with all the directness the law will allow us.

Chris

---

**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ;  
[Leavesadmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 11:39:14 AM

---

Jeff,

Pending my ability to study all of this, and given Ms. Gladney's email and our response, may we consider Travis' medical leave of absence to have been extended?

Chris

---



**From:** [Jeffery Laney](#)  
**To:** [Chris Leach](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ;  
[Leavesadmin](#)  
**Subject:** Re: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 11:48:34 AM

---

Lisa, is that accurate?

Yours very truly,

***Jeffery W. Laney***

***Haden, Cowherd & Bullock, LLC***

Office: [\(417\) 883-5535](#) Fax: [\(417\) 883-5541](#)

---

**From:** [Gladney, Lisa M](#)  
**To:** [Jeffery Laney](#); [Chris Leach](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) [LeavesAdmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 11:53:16 AM

---

His leave doesn't expire until 5/31.

I'm sure he will be able to provide something to Leaves Admin by then. I know they have even taken an appointment card before that shows when the work status will be addressed.

Lisa Gladney, RN, CCM, COHN-S  
Field Manager, Medical and Employee Health  
P: 417-829-2107 Fax: 866-371-1484

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---

**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#)  
**Cc:** [Jeffery Laney](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#)  
[LeavesAdmin](#)  
**Subject:** Re: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 12:41:18 PM

---

Jeff,

I am afraid that Ms. Gladney's email is a good demonstration of the fundamental problem. Would you be available to discuss this Tuesday? I will get my legal research done by then.

Chris

---

**From:** [Jeffery Laney](#)  
**To:** [Chris Leach](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ;  
[LeavesAdmin](#)  
**Subject:** Re: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 1:16:11 PM

---

Yes. I'm available most of the day. Give me a call.

Yours very truly,

***Jeffery W. Laney***

***Haden, Cowherd & Bullock, LLC***

Office: [\(417\) 883-5535](#) Fax: [\(417\) 883-5541](#)

**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#)  
[LeavesAdmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 1:17:10 PM

---

Thank you. I will do my best to do the heaving lifting on the research before we talk.

---

**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Gladney, Lisa M](#); [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ;  
[LeavesAdmin](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Friday, May 27, 2022 3:07:42 PM  
**Attachments:** [2022-05-27\\_023218.pdf](#)

---

Jeff,

Mr. Duncan was able to obtain the attached records, so I want to forward them to you and the group copied.

Chris

---

---

**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Gladney, Lisa M](#);  
[Jeffery Laney](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Tuesday, May 31, 2022 10:48:25 AM  
**Attachments:** [4.2 Ethics Rules.pdf](#)  
[2022-05-27\\_023218.pdf](#)

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Dear Leaves Administration,

As you are aware from the correspondence below on which you have been copied, I represent Mr. Travis Duncan under the Federal Employers' Liability Act, 45 U.S.C. §§ 51, *et sequitur* (FELA), and the BNSF is represented by Mr. Laney. I am writing you in my capacity as Mr. Duncan's lawyer in the underlying FELA action.

Pursuant to Missouri Rule of Professional Conduct 4-4.2, especially Paragraph 7 of the Comment (attached) and the authority BNSF counsel has given me below to contact you, assuming you are not independently represented by counsel in this matter (as referenced in Rule 4-4.2), and pending further work with BNSF counsel to clarify who should and should not be contacting whom regarding these matters, **please accept this as Mr. Travis Duncan's request for leave of absence and compliance with the requirements for leave of absence**. Mr. Duncan has been prescribed Tramadol and leave of absence is necessary for Mr. Duncan to be able to obtain the further surgery prescribed for his ankle injury, to recuperate, and then to rehabilitate.

I am unable to advise you regarding any legal issues related to this matter, and I encourage you to obtain the advice of counsel regarding it. BNSF counsel is copied on this email, and I am providing a copy of 49 U.S.C. § 20109 (c) (2) pertaining to an employee's right to "follow( ) orders or a treatment plan of a treating physician" that I assume you are aware of and understand, but if you are not, you may want to discuss this with BNSF counsel.

It is my understanding that BNSF has all the same medical records Mr. Duncan has and we have on his behalf. Attached are the most recent medical records that Mr. Duncan has obtained and that were provided by attachment to one or more of the emails below. **It appears to Mr. Duncan and me that BNSF has everything necessary to approve the leave of absence Mr. Duncan is requesting. Please reply to let us know that the leave of absence has been approved.**

If you do not approve the leave of absence, please inform me of exactly why it is that the leave of absence is not being approved and the basis for your authority under the collective bargaining agreement or other source of authority for not approving it. Please also inform me of what is required, if anything, for such approval under such authority that has not been provided. Mr. Duncan promptly will comply with whatever is required but lacking.

Until BNSF counsel and I determine who should contact whom under the laws and

rules that apply to these matters, Mr. Duncan requests Ms. Gladney (copied on this email), Mr. Alvested, you, and anyone else employed by or associated with the BNSF to refrain from contacting Mr. Duncan regarding any matter at issue, or known to become at issue, in the underlying FELA case. Mr. Duncan requests all such communications to him be made through BNSF's counsel. Mr. Duncan will direct all such communications to the BNSF through me as his FELA counsel.

Thank you for your attention to this email and to our request for approval of Mr. Duncan's leave of absence for the medical reasons stated.

Chris

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**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Jordan G. Davis](#)  
**Subject:** FW: Duncan | Medical Leave of Absence Extension  
**Date:** Tuesday, May 31, 2022 11:07:33 AM  
**Attachments:** [4.2 Ethics Rules.pdf](#)  
[2022-05-27\\_023218.pdf](#)

---

Jeff,

I needed to get something to Leaves Administration today because of Ms. Gladney's last email. I think the email covers the bases, meets Mr. Duncan's obligations, and leaves us to figure this out.

I have some serious briefing to accomplish today, but I will check emails from time to time. If we need to talk today, I will make time. Otherwise, I am thinking that I should get in the car and meet with you in person at your office as soon as it works for us. I think we are going to need a whiteboard and some serious candor and focus to figure this out.

My other thought is inspired by attaching my marked-up copy of 4.2 to the email to Leaves Administration. I noted the comment referring to obtaining a court order to clarify the rights and responsibilities in this subject area. I am thinking that after we do our best, we should present our resolution, as well as any points that could not be resolved, to the Court for producing the final guiding outline in the form of an order.

Let me know your thoughts and availability to get together. I am copying the person who does my scheduling, Jordan Davis, to assist us in scheduling.

Chris

---

**From:** [Chris Leach](#)  
**To:** [Jeffery Laney](#)  
**Cc:** [Jordan G. Davis](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Tuesday, May 31, 2022 4:17:40 PM

---

I will make this work. By copy of this email, I am asking **Jordan** to get with me in the morning to arrange and calendar this. We have some traveling in this time period and it will take a little planning, but we definitely will do this.

---

---

**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Gladney, Lisa M](#);  
[Jeffery Laney](#)  
**Subject:** RE: Duncan | Medical Leave of Absence Extension  
**Date:** Wednesday, June 29, 2022 6:24:48 PM  
**Attachments:** [surgery doc2022-06-27\\_092885.pdf](#)

---

Dear Leaves Administration,

On May 31, 2022, Ms. Hendrix, Manager Corporate Support, contacted Mr. Duncan directly and extended his leave of absence only until tomorrow, June 30<sup>th</sup>. As discussed more fully below, we continue to request all contacts regarding these matters to be directed to me care of railroad counsel. However, we still are in the process of working with railroad counsel, Mr. Laney, to identify the right course on these issues.

Because Mr. Duncan was operated on the 17<sup>th</sup> and still is recovering, he requests further extension of his leave of absence. Attached is the only document Mr. Duncan has recording the fact of his surgery on the 17<sup>th</sup>. We are in the process of obtaining the medical records generated by this surgery. We will provide them to Mr. Laney as soon as they are received.

If there is anything further you need to extend Mr. Duncan's leave of absence, please let me know.

Thank you.

Chris

---

**From:** [LeavesAdmin](#)  
**To:** [Chris Leach](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Gladney, Lisa M](#);  
[Jeffery Laney](#)  
**Subject:** RE: (1 of 2) RE: Duncan, Travis 0095646 | Medical Leave of Absence Extension  
**Date:** Thursday, June 30, 2022 1:52:16 PM

---

Mr. Leach,

We are unable to extend Mr. Duncan's leave as the attached document doesn't state the duration / time frame in which he will need to continue to be off work. Please provide a new note with the required information.

As stated below by Lisa Gladney on 05/27/22:

He simply needs a note from a treating provider. It needs to be on the provider's letterhead. It needs to have an estimated end date. It needs to indicate either that he can not work at all, or that he has restrictions.

Mr. Duncan can send that directly to Leaves Admin to extend his leave. If a physician has completed paperwork for RRB, he could also provide a copy of that to them. Any of these would be more than sufficient to extend his leave.

Thank you,

**Lisa Dickens** | **BNSF** Railway Labor Relations – Leaves Administration | ✉  
| ☎ Leaves Administration 817-352-3371 | Fax 817-867-5759

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---

**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Gladney, Lisa M](#);  
[Jeffery Laney](#)  
**Subject:** RE: (1 of 2) RE: Duncan, Travis 0095646 | Medical Leave of Absence Extension  
**Date:** Thursday, July 7, 2022 11:34:16 AM  
**Attachments:** [Bricker 2022-07-05 \(Duncan HCP Excuse from Work\).pdf](#)

---

Lisa,

Attached is the note you requested. Please reply to confirm that Mr. Duncan's leave of absence is approved.

Thank you.

Chris

---

**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [Shelby Gonzalez](#); [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: (1 of 2) RE: Duncan, Travis 0095646 | Medical Leave of Absence Extension  
**Date:** Thursday, July 7, 2022 4:25:23 PM

---

Thank you for work status.  
Leaves Admin has extended his leave through 8/15/2022.

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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---

**From:** [Shelby Gonzalez](#)  
**To:** [Gladney, Lisa M](#); [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: (1 of 2) RE: Duncan, Travis 0095646 | Medical Leave of Absence Extension  
**Date:** Tuesday, August 16, 2022 12:03:11 PM  
**Attachments:** [doctors note 2022-08-16 113503.pdf](#)

---

Ms. Gladney,

Please see the attached doctors note to extend Mr. Duncan's MLOA. Please let me know if you have any questions.

Thanks,  
Shelby

---

---

**From:** [Gladney, Lisa M](#)  
**To:** [Shelby Gonzalez](#); [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#); [Jeffery Laney](#)  
**Subject:** RE: (1 of 2) RE: Duncan, Travis 0095646 | Medical Leave of Absence Extension  
**Date:** Tuesday, August 16, 2022 1:38:15 PM

---

Thank you.

Leaves Admin has been copied, so they will handle the leave extension.

Lisa

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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---



**From:** [LeavesAdmin](#)  
**To:** [Shelby Gonzalez](#); [Gladney, Lisa M](#); [Chris Leach](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) [Jeffery Laney](#)  
**Subject:** RE: Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Tuesday, August 16, 2022 3:08:35 PM

---

Good Afternoon,

Mr. Duncan's leave has been extended 60 days through 10/13/2022.

Thank you,

**Lisa Dickens** | **BNSF** Railway Labor Relations – Leaves Administration | ✉  
| 📞 Leaves Administration 817-352-3371 | Fax 817-867-5759

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---

**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#); [Shelby Gonzalez](#); [Gladney, Lisa M](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Wednesday, October 12, 2022 11:31:06 AM  
**Attachments:** [Bricker 2022-09-21 \(Duncan Permanent Work Restrictions to Sitting\).pdf](#)  
[Bricker 2022-08-16 \(Duncan Work Excused to 11-10-22\).pdf](#)

---

Lisa,

Attached are Dr. Bricker's work excuse forms dated August 16, 2022, and September 21, 2022. Mr. Duncan has been released to return to work with the restriction that he will need to be able to sit at work. Please accept this as compliance with the October 13, 2022, deadline Leaves Administration last set for Mr. Duncan's MLOA. Please also accept this as a request by Mr. Duncan for the railroad to accommodate this restriction.

The restriction Dr. Bricker has placed on Mr. Duncan raises a few questions we would like to ask you. We would appreciate it if you would provide us the information you can regarding the questions below. If any of these are not questions you can answer, but there is someone else in the railroad who can answer them, we would appreciate it if you would forward these questions to that person and ask them to respond.

As you may be aware from prior correspondence in this matter, BNSF's counsel, Mr. Jeffrey Laney, has given us permission to communicate directly with Leaves Administration, and he is copied on this email too. If he does not want anyone else to communicate with us regarding these questions, I am sure he will let us know.

1. The first question we have is whether Dr. Bricker's restriction can and will be accommodated in Mr. Duncan's railroad job. If the answer to this question is "yes," this makes the other questions moot, but if the answer is "no," we would appreciate whatever you can tell us in response to these other questions.
2. If the railroad cannot accommodate this restriction, are there other jobs on the railroad presently available within Mr. Duncan's home area that the railroad can offer him with this restriction?
  - a. If so, we would appreciate it if you would send us a list of these jobs. Mr. Duncan would like to look at the jobs the railroad presently has in Mr. Duncan's home area that an employee can perform seated. We then would like to get back with you if Mr. Duncan sees any jobs on the list that he may be interested in applying for.
  - b. Talking with Mr. Duncan this morning, I believe he intends to retain the services of a vocational counselor, Mr. Jack Greene, who will be assisting him with finding jobs within his restriction both inside and outside the railroad. I will be sending the information you provide us to Mr. Greene. My intention is to turn over these vocational matters to Mr. Greene because he is expert in them and I am not.

3. Our last question is: Does this sitting restriction mean that the MLOA process no longer applies to Mr. Duncan either because it cannot be accommodated, or, alternatively, because it will be accommodated, and therefore, Mr. Duncan will be returning to work with the accommodation.
  - a. It is my understanding that if an employee either is returned to work (with or without accommodation) or if the employee is disabled from his railroad job, the MLOA process no longer applies.
  - b. You probably have had the experience that health care providers often are frustrated by the MLOA process, especially because the demands made of them are so frequent. For instance, in Dr. Bricker's August 16, 2020, Work Excuse he advised that Mr. Duncan would not be returned to work until November 20, 2022, but the MLOA that Leaves Administration set expires October 13, 2022, approximately a month short of the term the doctor established.
  - c. We would like to know when the MLOA process no longer applies to Mr. Duncan so that his health care providers can be relieved of this work.

Thank you for your attention to this email.

Chris

---

**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#); [Shelby Gonzalez](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Wednesday, October 12, 2022 12:08:50 PM

---

Thank you for your email and questions.

I would need to have his doctor send me the last 2 progress/office notes. Once I receive that, I will be able to better answer your questions.

In the meantime, I will recommend we extend his leave until his next appointment. That will give him time to submit the office notes and allow me to begin the return to work process.

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [Jordan G. Davis](#); [Jeffery Laney](#)  
**Subject:** FW: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Friday, October 21, 2022 12:06:13 PM

---

Good afternoon.

Just wanted to let you know that I have not received the documentation I need in order to answer your questions or start the return to work process.

If you need my assistance in getting any of that information, please let me know.

Thank you,  
Lisa

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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---

**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [Jordan G. Davis](#); [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Friday, October 21, 2022 12:30:09 PM

---

Lisa,

I have been very busy, so maybe it is not an accurate memory, but I thought for sure I had sent you the relevant information.

I am buried meeting deadlines today and Monday. I will make sure to make this the first priority Tuesday and get back with you.

Chris

---

**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#); [Gladney, Lisa M](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Wednesday, November 23, 2022 3:17:25 PM  
**Attachments:** [Leaves Admin 2022-10-14 \(Duncan Ltr Ext MLOA to 11-4-2022\).pdf](#)  
[Leaves Admin 2022-11-16 \(Duncan Ltr Re MLOA Threat \).pdf](#)  
[Bricker 2022-09-21 \(Duncan Permanent Work Restrictions to Sitting\).pdf](#)  
[Bricker 2022-10-18 \(Duncan Work Restrictions to Sitting\).pdf](#)

---

Lisa,

We received a call from a claims agent regarding Travis Duncan's medical leave of absence. In that conversation, the claims agent requested we make a settlement offer.

I explained to the claims agent that we had written you on October 12, 2022, requesting to know whether BNSF would accommodate Travis' medical restriction, "Patient will need to sit while at work," and that you had written us on October 14, 2022, that "(t)he medical department recommended this extension to allow for clarification/review of (Travis') medical status." We understood this to mean that Travis' request for accommodation was being reviewed and that we would hear before November 4, 2022, whether that accommodation would be made.

Instead of information whether Travis' restrictions would be accommodated, you sent Travis the attached November 16, 2022, letter threatening action against Travis' job if Travis did not provide still further "documentation to justify your continued leave of absence."

It is reasonable to infer that the message you are sending Travis is that 1) BNSF is not going to accommodate his restrictions, and 2) it does not accept his doctor's restriction that "Patient will need to sit while at work" as justification for his leave of absence. The threat against Travis' job under these circumstances appears to be you signaling to Travis that he needs to get those restrictions lifted if he wants to get back to work. If that is correct, this would be denial or interference with Travis' medical treatment.

For Travis' part in response to your most recent letter, please find attached the October 18, 2022, restatement of Travis' restriction "Patient will need to sit while at work."

For your part, PLEASE ADVISE WITHIN TEN (10) DAYS OF THE RECEIPT OF THIS EMAIL WHETHER 1) BNSF ACCEPTS TRAVIS' RESTRICTION, "PATIENT WILL NEED TO SIT WHILE AT WORK" AS A MEDICAL RESTRICTION TRAVIS MUST FOLLOW, AND 2) WHETHER BNSF WILL ACCOMMODATE THIS RESTRICTION.

I am afraid that if we do not receive a clear, unambiguous statement that BNSF accepts Travis' medical restriction as one he must follow, and that BNSF either will or will not accommodate it, we will need to take appropriate legal action to protect

Travis' ability to preserve his job rights and his medical health at the same time.

Chris

---



**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ); [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Monday, November 28, 2022 11:30:16 AM  
**Attachments:** [RE Duncan MLOA Compliance and Accommodation Duncan Travis 0095646 ODIN Leave of Absence Extension.msg](#)

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Good morning, Mr. Leach.

I have attached a copy of the last communication I received from you on 10/21/2022. You were going to send me the last 2 office/progress notes from Mr. Duncan's provider. As of today, I have not received those. I also see that they are not in these attachments.

Without those office notes, I am unable to move forward with any return to work plan or determination.

Thank you,  
Lisa

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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---

**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Monday, November 28, 2022 12:48:19 PM

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Lisa,

What we sent you were the doctor's progress notes. The reference to "progress/office" notes appeared to us to mean either would suffice, and we assumed that what you were interested in were permanent restrictions which are in the progress notes.

If I am reading you correctly, you want progress "and" office notes. Please inform me whether this is correct, and also whether there is anything else I may be overlooking or not understanding that you want to make the accommodation decision.

By copy of this email, I am asking Jordan Davis in our office to obtain and to provide you any "office notes" the doctor has made.

Thank you for getting back to me so promptly. We will get any "office" notes to you as soon as we can obtain them.

Chris

---

**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Monday, November 28, 2022 1:25:01 PM

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What you have submitted are 'work statuses'.

A progress note (some doctor offices call them office notes) is the actual dictation from the visit.

Thank you,

Lisa

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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---

**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Monday, November 28, 2022 2:17:29 PM

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Lisa,

We just call those the “medical records.” Another example of the wisdom of the adage, “The beginning of all knowledge is a definition of terms.” *State ex. rel. Reardon, v. Mueller*, 388 S.W.2d 53, 57 (Mo. App. St. Louis Dist. 1965) (quoting “the old maxim”).

Travis has made an appointment with Dr. Bricker to pick up all his medical records on Wednesday. Assuming that the appointment takes place and that Dr. Bricker’s office provides Travis all of his medical records then, we will have all of them sometime Wednesday to send to you. We will send you whatever the doctor’s office provides us, along with Travis’ estimation whether the records look complete to him.

How long do you expect it will take from the time you receive these records until you inform us 1) whether BNSF will accept that Travis has the restrictions indicated (although I do not believe BNSF has authority to do otherwise; this is something we can discuss if BNSF decides that it does not accept that Travis actually has the restrictions indicated), and 2) whether BNSF will return Travis to work with the restrictions?

I would like to give Travis some time projection if you can provide us one.

Chris

---

**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Monday, November 28, 2022 2:35:01 PM

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If a treating provider has placed restrictions on their patient, I just work with that. My first question about the “sitting while at work” is that it seems a little odd. Since restrictions are in place for ALL activities, not just work, I would expect some ability to walk during the day. I’m hoping the records clear that up. Does the doctor mean a ‘sedentary’ job? That he will have to be in a wheelchair to go to the restroom or break area? I can’t imagine he is seated at all times.

Normally, I speak with the employee about accommodation before I start making any return to work decisions. Will you be allowing me to talk with Mr. Duncan?

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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---

**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [LeavesAdmin](#)  
**Cc:** [Alvested, Jeff W](#); [Jordan G. Davis](#); [Wes Shumate](#) ); [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Monday, November 28, 2022 3:39:51 PM

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Lisa,

This is something we will need to discuss after you receive the doctor's medical records and inform us whether BNSF will accommodate the doctor's restriction as it is. The importance of getting a simple answer to this simple question is demonstrated by your comment that there is something "a little odd" in the doctor's restrictions.

My understanding of the law, and my belief about the common sense behind the law, is that no one has the authority to second guess the treating physician. Certainly, no one has the authority to try to get the treating physician to change his restrictions, and no one has the authority to try to get the employee to get the treating physician to change his restrictions. This all is because no one has the authority to set the restrictions other than the treating physician.

If people who do not have authority to set medical restrictions endeavor to get an employee's medical restrictions changed, they can create confusion that interferes with the physician/patient relationship and can create dangers for the employee's health.

I believe that if we were to allow the doctor the authority he has to set restrictions in the physician/patient relationship, we might realize there is nothing "a little odd" in the doctor's restrictions. If we were to allow the doctor this authority, we would assume that the doctor is aware of what his patient has to do in a normal day of living his normal life. We would assume that Travis' doctor is not confining Travis to a wheelchair for all the activities of Travis' life because the doctor has made no such restriction.

If we were to take the doctor's restrictions at their word, then we would assume that the point of the doctor's restrictions is that ***Travis should not add*** work that requires Travis to be on his feet to the things he already must do with his ankle in the ordinary course of his life.

We also might consider that the restrictions were based on the difference between what a person with a health problem does in ordinary daily activities and what they are required to do in a job setting. In ordinary daily activities, a person can take breaks or decide the thing is not worth it and not do it at all. Alternatively, a person may decide to do certain ordinary daily activities that will aggravate their condition and cause them to suffer for it, but they may decide it is worth it for some reason, knowing that they then will be able to take the time necessary to rest and recuperate from overdoing it.

In a job setting, however, the person must accomplish the assigned work or risk

discipline or firing. If a person overdoes it one day, he may not be able to time off from work to rest and recuperate from overdoing it.

Travis' doctor's restrictions addressed the work setting. Their simple language means they are saying Travis should not be put in a work situation in which he needs to be able to be on his feet. He should not be put in a work situation in which he must decide between whether to be on his ankle or not in order to get his work done. He needs to be in a work setting in which he can do all his work from a seated position. If we take the restrictions at their word, the doctor is saying there should be no quibbling with Travis about whether he can do his work seated or not. The doctor is saying it needs to be clear that Travis can do all his work seated.

I am not speaking for the doctor here. He has spoken for himself. My point simply is that there are many reasons why his restrictions should not be called "odd," and there are many reasons why only those with the training, education, experience, and responsibility for the employee's health should be given the authority over what medical restrictions the employee should have. I think this is the meaning, for instance, of laws such as 49 U.S.C. § 20109 (c) (2) that prohibit interfering with an employee "following orders or a treatment plan of a treating physician." Medical restrictions are orders or treatment plans. BNSF's counsel is copied on this email and can chime in if he believes the law is otherwise.

I think the only question is whether the BNSF will accommodate the restriction as it is. This is why I believe the progress notes we have provided are all you need to inform us whether the BNSF will accommodate the restriction set out in those progress notes. That is the simple question for which Travis is seeking a simple yes or no answer.

These are my thoughts. Let's get you the medical records in addition to the progress notes already provided. Then let's learn whether you will accommodate the restriction as stated by the doctor. If so, there is no issue. Travis will return to work with that accommodation. If you will not accommodate that restriction, then Travis will need to follow his doctor's advice and find work that can accommodate that restriction. There may be other work inside the BNSF where that restriction can be accommodated.

We will get you those medical records as soon as we have them, and we expect to have them sometime Wednesday.

Chris

---

**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [DeLaRosa, Jessica](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Tuesday, November 29, 2022 8:18:03 AM

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That would be a question for Leaves Admin. They sent the letter. And Mr. Duncan would have received an updated letter from them, I believe.

Also... removing Mr. Alvested and adding Ms. DeLaRosa. She has taken over the claims handling for this case.

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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**From:** [Chris Leach](#)  
**To:** [Gladney, Lisa M](#); [LeavesAdmin](#)  
**Cc:** [DeLaRosa, Jessica](#); [Jordan G. Davis](#); [Wes Shumate](#) ); [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Tuesday, November 29, 2022 9:08:58 AM

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Lisa,

Thank you for this. Leaves Admin has been copied on these emails, and we are unaware of any letter that has been sent to Travis. Would you mind inquiring and letting us know what position Leaves Admin has taken and forwarding to us any letter they may have sent Travis?

I also believe that the last letter was sent to a former address of Travis'. I believe that Travis has made the railroad aware of his new address, but this is another reason to follow up to make sure that the letter did not go to his old address.

Chris

---

**From:** [LeavesAdmin](#)  
**To:** [Chris Leach](#); [Gladney, Lisa M](#)  
**Cc:** [DeLaRosa, Jessica](#); [Jordan G. Davis](#); [Wes Shumate](#) [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Tuesday, November 29, 2022 10:15:31 AM  
**Attachments:** [PIC Form.pdf](#)  
[Duncan, Travis Leave - ON Duty Injury.pdf](#)

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Good Morning,

Mr. Duncan's leave has been extended through 12/16/22. (letter attached)

We show his current address:

Springfield  
Missouri  
65802  
United States

If address is inaccurate, please have employee fill out the attached form.

Thank you,

**Lisa Dickens** | **BNSF** Railway Labor Relations – Leaves Admin Assistant Supervisor |



| Leaves Administration VMS 817-352-3371 | Fax 817-867-5759

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**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#); [Gladney, Lisa M](#)  
**Cc:** [DeLaRosa, Jessica](#); [Jordan G. Davis](#); [Wes Shumate](#) [Jeffery Laney](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Tuesday, November 29, 2022 11:48:04 AM

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Lisa,

Thank you for this notice.

Travis' current address is temporary, but I have sent the form to him, and he will fill it out and return it. Until then, FYI, his current, temporary address is  
    , Omaha, Nebraska.

Chris

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**From:** [Gladney, Lisa M](#)  
**To:** [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [DeLaRosa, Jessica](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#); [Jeremy Huckabee](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Wednesday, December 14, 2022 3:31:27 PM

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I have not yet received the medical records requested.  
I am unable to release him from the medical department without that.

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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**From:** [Chris Leach](#)  
**To:** [LeavesAdmin](#); [Gladney, Lisa M](#)  
**Cc:** [DeLaRosa, Jessica](#); [Jordan G. Davis](#); [Wes Shumate](#) ; [Jeffery Laney](#); [jdhuckabee@att.net](mailto:jdhuckabee@att.net)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Wednesday, December 14, 2022 1:21:35 PM  
**Attachments:** [Bricker 2022-12-01 \(Duncan Work Rstrx Doc\).pdf](#)

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Dear Lisa / Leaves Administration,

Attached is Travis Duncan's most recent statement of work restrictions. As you can see, Travis "will need to sit while at work." The duration of this restriction "can not be determined at this time."

Now that the restriction is clearly stated by Dr. Bricker, and Dr. Bricker has stated that it is of indefinite duration, Travis would like to know whether the railroad can accommodate this restriction at this time, meaning as of today. If the answer is "yes," then Travis would like to know whether the railroad will accommodate this restriction at this time, meaning as of today.

Travis also is thinking that it is the railroad that keeps sending him to get leaves of absence. He does not want any more leaves of absence. He wants to get back to work. He is concerned that he is being "parked" in perpetual leave of absence status, a kind of purgatory, where the railroad never will tell him whether or not it will accommodate him and he never will be able to pursue his next career if the railroad does not accommodate him.

We respectfully request the railroad's answers to the following questions before Travis is sent to get another work restriction form Dr. Bricker:

1. Can the railroad accommodate this restriction now, today?
2. Will the railroad accommodate this restriction now, today?

Travis has spoken with his union and they believe that the railroad can accommodate his restriction, at least temporarily, and have advised him to mark up for work which he will do promptly.

Thank you.

Chris

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**From:** [Jordan G. Davis](#)  
**To:** [Gladney, Lisa M](#); [Chris Leach](#); [LeavesAdmin](#)  
**Cc:** [DeLaRosa, Jessica](#); [Wes Shumate](#) ; [Jeffery Laney](#); [Jeremy Huckabee](#)  
**Subject:** RE: Duncan | MLOA Compliance and Accommodation Duncan, Travis 0095646 | ODIN, Leave of Absence Extension  
**Date:** Wednesday, December 14, 2022 3:35:00 PM  
**Attachments:** [OCH Evergreen Clinic 2022-05-06 to 2022-12-01 \(Duncan Dr. Bricker Med Records\).pdf](#)

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Ms. Gladney-

As Mr. Laney will confirm, the railroad has been provided all of Travis' medical records and has had an authorization to obtain the records for itself. Here are all of the medical records for Travis again via dropbox link. I have also attached all of the records from Dr. Bricker.

<https://www.dropbox.com/sh/>

*JORDAN G. DAVIS*

**Firm Manager**

Hubbell Law Firm, LLC

1100 Main Street, Ste. **2323**

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**From:** Gladney, Lisa M  
**Sent:** Thursday, December 15, 2022 11:18 AM  
**To:** Chris Leach <cleach@hubbelfirm.com>  
**Cc:** Jeffery Laney <jlaney  
**Subject:** Travis Duncan

Good morning, Mr. Leach.

We are unable to accommodate Mr. Duncan's restriction of Seated Work Only in his last held position or in the Springfield Signal Shop.  
I have placed Mr. Duncan in a Voc Rehab status as of today, so he will not have to maintain his leave.

Thank you,  
Lisa

Lisa M. Gladney, RN, CCM, COHN-S  
Heartland Division Field Medical Manager  
Office: 417-829-2107  
Fax: 866-371-1484

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