

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Charles C. Price,

Appellant,

v.

Case No. 09-IDS-12-0533

Department of Rehabilitation and Correction,
North Central Correctional Institution,

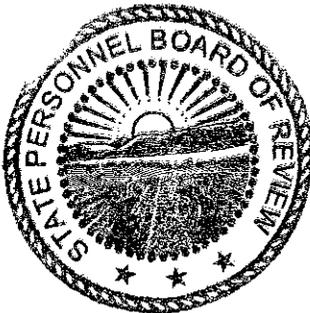
Appellee.

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** since there is no justiciable issue before this Board.



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

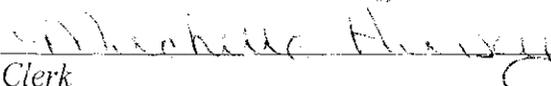


J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, August 19, 2010.



Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Charles C. Price

Case No. 09-IDS-12-0533

Appellant

v.

April 29, 2010

Department of Rehabilitation & Correction,
North Central Correctional Institution

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

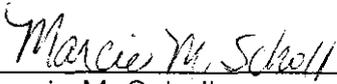
This cause comes on for consideration on April 29, 2010. Appellant Price filed an appeal on December 8, 2009, of his involuntary disability separation. This Board issued a Procedural Order on March 5, 2010 and Appellee filed its response on March 18, 2010 and Appellant's response was filed with this Board on April 6, 2010. Appellee filed a Motion to Dismiss on March 31, 2010 and to date, Appellant Price has not filed a memorandum *contra*.

Appellant Price was involuntarily disability separated, effective December 21, 2009, from his position of Correction Officer. In Appellant Price's response to question one of this Board's Procedural Order, he answered that he was on "Workers comp from Nov 24th 2009 until Feb 15th, 2010." He answered question number 3, as to if he received disability benefits from a retirement system with "No, only OIL from June 8th, 2009 to Nov 24th 2009, Workers comp Nov 24th, 2009 until Feb. 13th, 2010." He also states he was reinstated to his position on February 14, 2010.

In Appellee's Motion to Dismiss, those dates are confirmed by the affidavit of Sheila Goodwin, Human Capital Management Senior Analyst, which is attached to the Motion. Also attached to the Motion is Exhibit A, which is documentation from the Bureau of Workers' Compensation (BWC), confirming that Appellant Price did receive benefits from BWC from the time period of November 24, 2009 through February 15, 2010.

If this Board were to hold a hearing on the propriety of Appellant Price's involuntary disability separation, then the evidence would be limited to whether or not Appellant Price could perform the essential job duties of his position as of the effective date of his involuntary disability separation, which was December 21, 2009. The answer to that question has to be "NO" as both parties are in agreement and have documentation to prove that as of December 21, 2009, Appellant Price was receiving benefits from BWC. Appellant Price could not come before this Board and argue that he could perform his essential duties at the same time he was receiving benefits from BWC due to being temporarily totally disabled from doing his job. To do so, would be contradictory and would amount to fraud.

Therefore, inasmuch as the evidence has shown that as of December 21, 2009, Appellant Price could not perform the essential job duties of his position, it is my **RECOMMENDATION** that Appellee's Motion to Dismiss be **GRANTED** and this appeal be **DISMISSED** as there is no justiciable issue before this Board.



Marcie M. Scholl
Administrative Law Judge

:mms