

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

Cheryl B. Croft,

Appellant.

v.

Case No. 10-IDS-04-0086

Rehabilitation Services Commission,

Appellee.

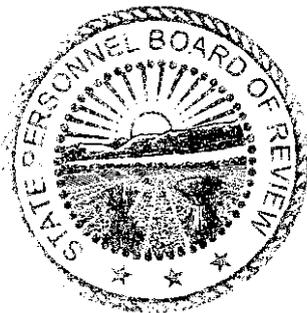
ORDER

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 the evidence in the record clearly indicates that Appellant could not perform the essential duties of her position as of the effective date of her involuntary disability separation.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



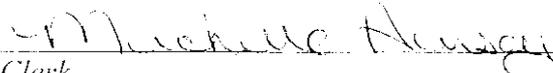


J. Richard Lumpe, *Chairman*

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, July 29, 2010.



Michelle Hensgen
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**

Cheryl B. Croft

Case No. 10-IDS-04-0086

Appellant

v.

May 28, 2010

Rehabilitation Services Commission

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

Appellant Croft filed a notice of appeal on April 1, 2010 of her involuntary disability separation, which was effective April 2, 2010. On May 4, 2010, this Board sent out a Procedural and Questionnaire to the parties and Appellee responded on May 12, 2010 and Appellant Croft responded on May 21, 2010.

In answer to question number three (3), which asked if the Appellant is currently receiving or has been receiving disability benefits from a retirement system, Appellee answered:

No, RSC is unaware of Appellant receiving any disability benefits from a retirement system. She has been on leave from work and receiving temporary total workers' compensation benefits since September 9, 2007 with an indeterminate return to work date.

Appellant Croft's response to that same question also states that she has been receiving workers' compensation benefits "since 9/9/2007 and believed she could return to work after completion of surgeries" (sic).

If this appeal would go to a hearing, Appellant Croft would have the burden of showing that she could perform the essential duties of her position as of the effective date of the involuntary disability separation, which was April 2, 2010. Since both Appellant Croft and the Appellee have stated that Appellant Croft is still receiving temporary total benefits from the workers' compensation system for presumably being temporarily totally disabled from working, it is highly unlikely that Appellant Croft could appear before this Board and testify that she could perform

the essential duties of her position as of April 2, 2010 at the same time she was collecting benefits from the workers' compensation system for not being able to work. To do so would be contradictory and could constitute fraud.

Appellant Croft stated in her response to the questionnaire that she would like to go back to work after her surgeries. At the point in time that she has been cleared to return to work, and if her reinstatement rights have not expired, Appellant Croft could request a reinstatement. If the Appellee would deny that request, for reasons other than the expiration of her reinstatement rights period, then Appellant Croft could, at that time, appeal the denial of reinstatement to this Board.

Inasmuch as the evidence in the record clearly indicates that Appellant Croft could not perform the essential duties of her position as of the effective date of her involuntary disability separation, it is my **RECOMMENDATION** that this appeal be **DISMISSED**.



Marcie M. Scholl
Administrative Law Judge

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