

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Patricia Burd,

Appellant,

v.

Case No. 10-IDS-10-0278

Department of Rehabilitation and Correction,
North Central Correctional Institution,

Appellee.

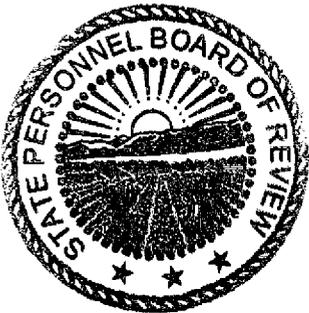
ORDER

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**.

Casey - Aye
Lumpe - Aye
Tillery - Aye

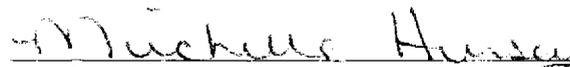



Terry L. Casey, *Chairman*

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, April 13, 2011.


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**

Patricia Burd,

Case No. 10-IDS-10-0278

Appellant

v.

March 16, 2011

Department of Rehabilitation & Correction,
North Central Correctional Institution,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon additional review of the information contained in the record. Appellant was involuntarily disability separated with an effective date of October 13, 2010. Uncontroverted evidence indicates that Appellant was receiving workers compensation benefits as of that date.

This matter is presently scheduled for record hearing on April 7, 2011, at 10:00 a.m. The question to be answered at record hearing in the instant appeal would be whether or not Appellant was capable of performing the essential duties of her position as of October 13, 2010. It would be fraudulent for Appellant to argue that she could have performed her duties as of that date when she was, at the same time, collecting workers compensation benefits. Appellant cannot argue to this Board that she could perform her duties and at the same time argue to the Bureau of Workers Compensation that she could not do those duties.

Therefore, based on the above rationale, it is my **RECOMMENDATION** that this appeal be **DISMISSED** and the record hearing scheduled for April 7, 2011, be **VACATED**.

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I note that Ohio Administrative Code Chapter 123:1-30-04 sets forth the conditions and procedures for applying for reinstatement from an involuntary disability separation. Should Appellant apply for reinstatement with Appellee and be denied, she may then appeal the denial of reinstatement to this Board.


Jeannette E. Gunn
Administrative Law Judge