

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

ROSETTA MELNICHENKO,

Appellant,

v.

Case No. 11-IDS-01-0015

TUSCARAWAS COUNTY
GENERAL HEALTH DEPARTMENT,

Appellee

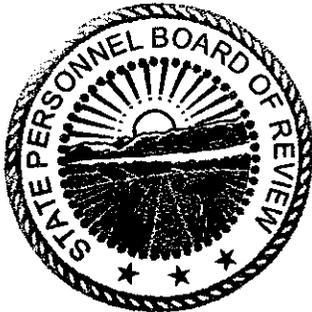
ORDER

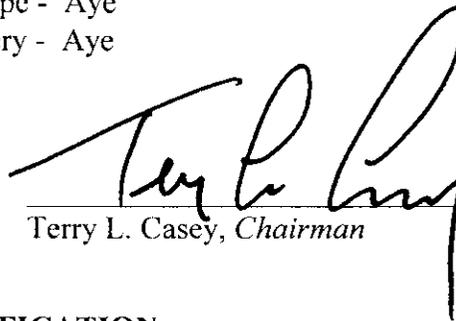
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 Appellee's denial of reinstatement is **AFFIRMED**.

Casey - Aye
Lumpe - Aye
Tillery - Aye

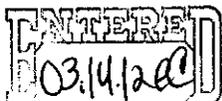



Terry L. Casey, *Chairman*

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 constitutes ~~(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, March 14, 2012.




Erin E. Conroy
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**

Rosetta Melnichenko,

Case No. 11-IDS-01-0015

Appellant

v.

February 9, 2012

Tuscarawas County General
Health District,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on to be heard on June 21, 2011. Appellant was present at record hearing and was represented by Shawn P. Lindsay, attorney at law. Appellee was present through its designee, Executive Director Linda Fanning, and was represented by Eugene P. Nevada, attorney at law.

Following the record hearing, the record was held open to allow for the video trial deposition of Dr. Arsal Ahmad and the parties' closing statements. A transcript of that deposition was filed with this Board on September 12, 2011, and the parties' closing statements were filed on September 28 and 29, 2011.

STATEMENT OF THE CASE

Linda Fanning testified that she has been employed by Appellee as its Executive Director since 1997. She indicated that she is responsible for personnel matters and oversight of the agency's day to day operations. Ms. Fanning confirmed that she knows Appellant and noted that Appellant was employed by Appellee for more than twenty years. The witness recalled that Appellant became eligible for disability retirement through the Ohio Public Employees Retirement System (PERS) in 2006; the last position held by Appellant was Clerical Specialist.

She stated that PERS notified Appellee in December 2010 that, following a medical examination conducted by its physician in June 2010, it had determined that Appellant was no longer eligible for disability retirement benefits and certified

her to return to work. Ms. Fanning recalled that before beginning a reinstatement process, Appellee scheduled an independent medical examination for Appellant, which Appellant attended. The witness testified that the physician selected by Appellee, Dr. Arsal Ahmad, was provided with a copy of Appellant's most recent position description.

Ms. Fanning stated that Appellee scheduled and Appellant attended a pre-reinstatement hearing on January 7, 2011. She noted that Appellant was provided with a copy of Dr. Ahmad's medical report, which concluded that Appellant was not capable of performing the duties associated with her former position, and had an opportunity to respond to the information contained therein. The witness recalled that Appellant presented no evidence to rebut Dr. Ahmad's conclusions. Ms. Fanning observed that Appellee subsequently made the decision to involuntarily disability separate Appellant, with an effective date of January 13, 2011.

The witness testified that she was aware that Appellant has applied to PERS for reinstatement of her disability retirement benefits.

Appellant confirmed that she applied to PERS for disability retirement benefits in 2006 and received benefits through the end of 2010. She recalled that PERS had allowed her to work as a part-time cashier from July 2010 through December, and that she quit that job in December because she believed she would be returning to her former position with Appellee. Appellant noted that she was also employed part-time at a local gift shop/florist while she was receiving disability retirement benefits and still works there.

Appellant testified that, in her opinion, she is capable of performing the duties of her Clerical Specialist position. She acknowledged that she did not present any medical evidence at her January 2011 pre-reinstatement hearing regarding her ability to return to work, but noted that she had since obtained a return-to-work slip from her physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

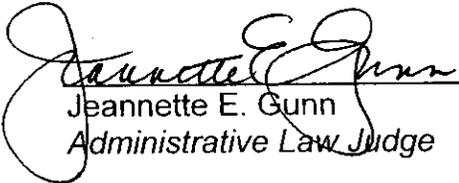
This appeal concerns a denial of reinstatement to employment with Appellee. In such an appeal, the burden of proof remains at all times with the employee. Appellant must establish, by a preponderance of the evidence, that she

demonstrated to the appointing authority that she had recovered sufficiently from her disabling illness, injury, or condition so as to be able to perform the essential job duties of her position, based on her education, training, or experience. Appellant must show that she timely applied for reinstatement and, at that time, provided to the appointing authority substantial credible medical or psychological evidence indicating that Appellant was capable of performing the essential duties of the position:

In the instant appeal, the reinstatement process was begun by PERS' certification to Appellee that Appellant had sufficiently recovered from the condition for which she was receiving disability retirement benefits, thereby making her ineligible to continue receiving such benefits. Appellant did not, at that time, submit a separate request to Appellee for reinstatement. O.A.C. 123:1-30-04, which governs an employee's right to reinstatement from a disability separation, provides in sub-section (H) that when an employee who has been granted disability benefits by a state retirement system is found to be physically and mentally capable of resuming service under R.C. 145.362, the appointing authority may request an additional medical or psychological examination pursuant to O.A.C. 123:1-30-03 prior to restoring the employee to his or her previously held position. Accordingly, Appellee requested that Appellant be examined by Dr. Arsal Ahmad, who conducted an examination of Appellant and concluded that she was not capable of returning to work in her previous capacity.

This Board must consider whether or not the appointing authority's denial of reinstatement was appropriate, based upon the information Appellee possessed at the time its decision was made. Testimony and evidence presented at record hearing established that Appellant did not provide Appellee with any medical evidence during her pre-reinstatement hearing to indicate that she was capable of performing the essential duties of the position. PERS' certification was based upon a medical examination conducted in June 2010, more than six months prior to the pre-reinstatement hearing; no evidence was presented to establish whether or not PERS' examiner was provided with a job description for the Clerical Specialist position or whether the specific duties of that job were made available to the examiner. Dr. Ahmad, who conducted his examination less than one month prior to the pre-reinstatement hearing, had access to information specific to Appellant's former position.

Upon a comprehensive review of the testimony and evidence presented in this matter, I find that Appellee's denial of reinstatement was appropriate given the information available to it at the time of its decision. Appellant failed to establish by a preponderance of the evidence that she provided substantial credible medical or psychological evidence to the appointing authority indicating that she was capable of performing the essential duties of her position. Therefore, I respectfully **RECOMMEND** that Appellee's denial of reinstatement be **AFFIRMED**.


Jeannette E. Gunn
Administrative Law Judge