

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

STEVEN GRAY,

Appellant,

v.

Case No. 12-IDS-01-0026

ERIE COUNTY BOARD OF DEVELOPMENTAL DISABILITIES,

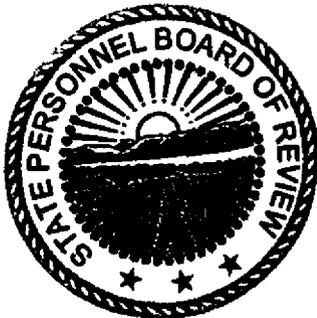
Appellee

ORDER

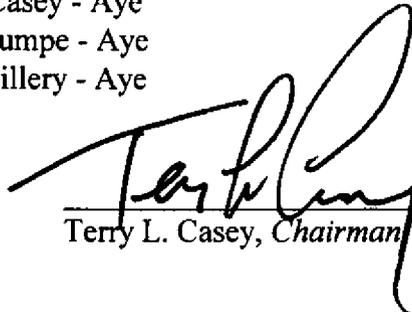
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the appeal is **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 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, July 11, 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**

Steven Gray,

Case No. 12-IDS-01-0026

Appellant

v.

June 20, 2012

Erie County Board of Developmental
Disabilities,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration on June 20, 2012, upon a review of the information contained in the file. Appellant filed a timely notice of appeal from his involuntary disability separation, effective January 31, 2012.

In order to more fully develop the record, this Board issued a Procedural Order and Questionnaire on February 21, 2012. Appellee filed a Response on March 1, 2012, and further supplemented the record with additional information on March 26, 2012. Appellant filed no memoranda *contra*.

Appellee asserted, and Appellant did not dispute the information provided, that Appellant made application to the Ohio Public Employees' Retirement System for disability benefits. As part of such application, an employee is required to provide a sworn statement describing his disability and indicating why he believes that he is incapacitated and unable to perform his job duties

Were the instant appeal to proceed to a record hearing before this Board, the question to be answered would be whether Appellant was capable of performing the essential duties of his position as of the date of his disability separation. It would be fraudulent and inconsistent for Appellant to argue to this Board that he could perform his duties as of that date, but at the same time represent to the Ohio Public Employees' Retirement System that he could not perform those same duties.

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Therefore, based on the above rationale, it is my **RECOMMENDATION** that this appeal be **DISMISSED**.



Jeannette E. Gunn
Administrative Law Judge

JEG: