

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

YVETTE R. GAINES,

Appellant,

v.

Case No. 12-IDS-06-0113

DEPARTMENT OF DEVELOPMENTAL DISABILITIES,
WARRENSVILLE DEVELOPMENTAL CENTER,

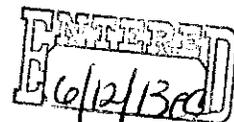
Appellee

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal. On May 2, 2013, this Board issued an Order lifting the Stay that had been ordered in this appeal and instructing the parties to supplement the record not only concerning a physician's return to work note that Appellant had alleged was in her possession at the time of the pertinent pre-separation conference but also concerning what weight, if any, Appellee would have put on that document, had that document been presented at the pre-separation conference. Thereafter, the parties so supplemented the record.

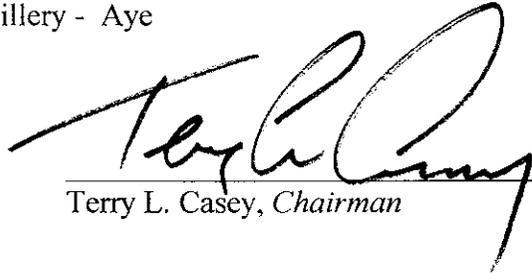
The Board has thoroughly examined the entirety of the record. This includes conducting a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, and now includes a review of Appellant's motion for reconsideration and all documents filed subsequently in this appeal. Based on that comprehensive review, the Board hereby reaffirms its previous adoption of the Recommendation of the Administrative Law Judge for the reasons previously stated, herein.

Further, after considering the parties' respective supplementations of the record, the Board cannot say that Appellee would have been required to come to a different determination at the conclusion of Appellant's pre-separation conference. This is because the afore-mentioned return to work note did not contain an unconditional return to work recommendation from Appellant's physician. Additionally, even if that document had been presented to Appellee at the conference, Appellee would still have had evidence indicating an approximate return to work date for Appellant that fell subsequent to the date of the pre-separation conference. Finally, Appellee would have had no documentation, as of the date and time of the conference, indicating that Appellant could immediately return to work without restrictions.



Wherefore, it is hereby **ORDERED** that this Board's **PREVIOUSLY ISSUED FINAL ORDER** in this matter **STANDS AS ISSUED**, pursuant to R.C. 124.03, O.A.C. 124-15-05, and O.A.C. 123:1-30-01 and that **APPELLANT'S INVOLUNTARY DISABILITY SEPARATION** is hereby **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, June 12, 2013.



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**

Yvette R. Gaines,

Case No. 12-IDS-06-0113

Appellant

v.

January 10, 2013

Department of Developmental Disabilities,
Warrensville Developmental Center,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of her involuntary disability separation, effective May 27, 2012. A record hearing was held in the instant matter on October 24, 2012. Appellant was present at record hearing and appeared *pro se*. Appellee was present at record hearing through its designee, HCM Senior Analyst Karen Reich, and was represented by Linda Ubokudom and Timothy Miller, assistant attorneys general.

Appellee moved to exclude any documents sought to be introduced by Appellant due to her failure to comply with its June 20, 2012, request made pursuant to O.A.C. 124-13-01, and such motion was granted. Appellant was, however, permitted to proffer documents in order to preserve them for the record.

STATEMENT OF THE CASE

Appellant testified that prior to her involuntary disability separation she held the position of Account Clerk 2 with Appellee, and that she has been employed by the State of Ohio for approximately twenty-five years. She identified Appellee's Exhibit 1 as a copy of her job description and stated that she was responsible for processing accounts payable and accounts receivable for the agency.

Appellant recalled that she went on disability leave due to job-related stress on or about December 17, 2011, and received disability benefits during that time. She noted that while she was on disability leave she became aware that she

needed hip replacement surgery for both of her hips. Appellant testified that she had her left hip replaced in March 2012, and continued to receive disability benefits through April 25, 2012. She stated that her physician told her that she could return to work in May 2012.

Appellant confirmed that she received notice of and attended a pre-separation hearing on May 21, 2012. She acknowledged that the pre-separation hearing notice stated that any medical evidence she wished to submit to show that she was capable of returning to work was required to be submitted at the pre-separation hearing. Appellant testified that although she had a letter from her physician stating that she could return to work the next day, it did not indicate that she could return to full duty; she stated that she did not submit the doctor's letter at the hearing because Appellee did not ask for it. She noted that her sister and a friend, who is an attorney, attended the pre-hearing with her and her friend asked if Appellant's doctor could fax information to the agency later that day; she stated that Appellee refused to allow her doctor to submit that information.

Appellant testified that she discussed the need to have her right hip replaced during the pre-separation hearing. She noted that she had her right hip replaced in June 2012, subsequent to her involuntary disability separation.

Karen Reich testified that she has been employed by Appellee for approximately thirteen years and currently holds the position of Human Capital Management Senior Analyst. She indicated that she is responsible for overseeing personnel matters at the Warrensville Developmental Center and stated that either she or Director Wendy DiGregorio typically conduct pre-separation hearings at the facility.

The witness explained that when an employee has exhausted his or her paid benefits, Appellee considers whether or not a disability separation should be initiated. She noted that Appellee began considering Appellant's potential disability separation when they were notified by the Department of Administrative Services (DAS) that Appellant was approaching her lifetime maximum disability leave benefits. Ms. Reich stated that the medical information that had been provided to Appellee indicated that Appellant was not able to return to work as of May 21, 2012, and no definite date of return had been provided by Appellant's physician.

Ms. Reich recalled that she was present at Appellant's pre-separation hearing and oversaw the proceedings, which lasted from thirty to forty-five minutes. She confirmed that she asked Appellant at the hearing to present any current medical information that she had, but Appellant did not provide any type of documentation. The witness testified that during the hearing, an individual who had accompanied Appellant took out his cell phone, stating that they could call Appellant's doctor and have him send information to the Appellee, but that no current medical information was provided by Appellant at the hearing. Ms. Reich noted that Appellant gave no indication that she was in fact capable of returning to work at that time, and commented that it would be necessary at some time in the future for her to have her right hip replaced.

The witness testified that based upon the medical information provided, Appellee elected to proceed with Appellant's disability separation following the pre-separation hearing. She observed that Appellee's practice is that once a pre-separation hearing has been scheduled, an employee may only return to work with a full-duty release from his or her physician. Ms. Reich noted that Appellant did not provide Appellee with such information and, based upon their conversations, the witness understood that Appellant was not able to return to work as of the date of hearing.

FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Prior to her involuntary disability separation, Appellant's last day in active work status was December 16, 2011; she received disability benefits from that date through April 25, 2012. Both Appellant and Appellee were notified on or about May 9, 2012, by the Department of Administrative Services (DAS) that Appellant had exhausted her one-year lifetime maximum eligibility with the State of Ohio disability leave program.

Appellant was subsequently notified by Appellee of its intent to implement a disability separation; she received notice of and participated in a pre-separation hearing on May 21, 2012. The notification letter provided to her stated that medical

evidence of her ability to return to work and perform the essential job functions of her position was required to be submitted at the pre-separation hearing.

The medical information relied upon by Appellee indicated that Appellant was not able to return to full duty as of the date of the pre-separation hearing. No definite date of return to work was provided to Appellee.

Although Appellant had in her possession at the May 21, 2012, pre-separation hearing a doctor's statement indicating that she could return to work the next day, the document did not indicate that she was capable of returning to duty without restrictions. Appellant did not provide the document to Appellee at the pre-separation hearing.

Subsequent to the May 21, 2012, pre-separation hearing, Appellee concluded that Appellant was unable to perform the essential duties of her position and disability separated her effective May 27, 2012. Appellant received a properly completed Order of Involuntary Disability Separation prior to the effective date of the action, and was advised in writing of her right to appeal Appellee's decision to this Board.

CONCLUSIONS OF LAW

In an appeal of an involuntary disability separation action, Appellee bears the burden to establish, by a preponderance of the evidence, its compliance with the procedural and substantive requirements set forth in R.C. sections 124.03 and 124.32 and in O.A.C. 123:1-33-01, *et seq.*

A review of the record in the instant matter indicates that Appellee relied upon the substantial, credible medical evidence that supported Appellant's approved disability claim in concluding that Appellant was not capable of performing the essential job duties of her position. Appellant was presented with the information relied upon by Appellee and was given an opportunity to testify and/or provide evidence on her own behalf at the May 21, 2012, pre-separation hearing.

Appellant was made aware in advance that any information indicating that she was capable of returning to work was required to be submitted by her at the pre-

separation hearing. Appellant testified that she had information from her physician with her at the hearing, although it was not complete, but failed to provide it to Appellee.

At the October 24, 2012, record hearing held in the instant appeal, Appellant stated that she was capable of returning to work as of the date of her pre-separation hearing. No evidence was admitted to support Appellant's contention, although Appellant was permitted to proffer documents. Appellant presented no additional testimony other than her own statement to dispute the evidence relied upon by Appellee.

Based upon all of the information contained in the record, I find that Appellee's reliance upon the substantial, credible medical evidence in its possession was proper, and Appellee has demonstrated by a preponderance of the evidence its compliance with the procedural and substantive requirements of the Ohio Revised Code and Ohio Administrative Code.

Therefore, I respectfully **RECOMMEND** that Appellant's involuntary disability separation be **AFFIRMED**, pursuant to R.C. 124.03 and O.A.C. 123:1-30-01, *et seq.*


Jeannette E. Gurn
Administrative Law Judge

JEG: