

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JILLENE WHATLEY,

Appellant,

v.

Case No. 12-IDS-06-0144

DEPARTMENT OF REHABILITATION & CORRECTION,
DAYTON CORRECTIONAL INSTITUTION,

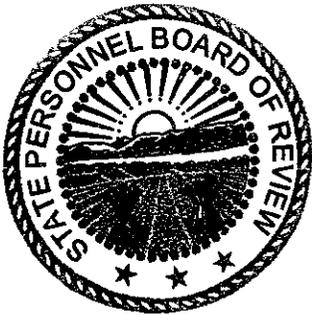
Appellee

ORDER

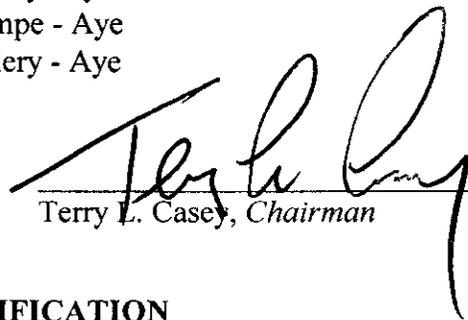
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the 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 instant appeal is **DISMISSED** as there is no justiciable issue present.



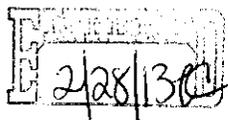
Casey - Aye
Lumpe - Aye
Tillery - Aye

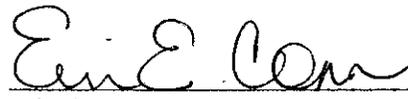

Terry L. Casey, *Chairman*

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, February 28, 2013.




Erin E. Conner
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**

Jillene Whatley,

Case No. 12-IDS-06-0144

Appellant

v.

November 19, 2012

Department of Rehabilitation & Correction,
Dayton 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 pursuant to Appellee's Motion to Dismiss, filed with this Board on November 2, 2012. Appellee asserts that this Board dismiss the instant appeal because there is no justiciable issue present. Appellant filed no memorandum *contra*.

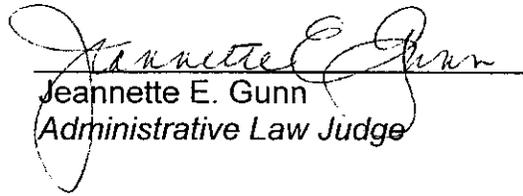
Appellant was involuntary disability separated from her position as a Correctional Officer, effective June 12, 2012. Uncontroverted information contained in the record indicates that Appellant was last in active work status on March 27, 2012. Information contained in the record further indicates that Appellant applied for Temporary Total Disability Compensation benefits from the Bureau of Workers Compensation on May 25, 2012, and was granted those benefits for the period of March 13, 2012, through August 21, 2012.

If this Board were to hold a hearing pursuant to Appellant's appeal, Appellant would be required to present evidence that she was ready, willing and able to perform the essential duties of her position as of the effective date of her involuntary disability separation, June 12, 2012. Since Appellant has represented to the Bureau of Workers Compensation that she was totally disabled on the date she was disability separated and has received money from workers' compensation due to her inability to work, it would be fraudulent for Appellant to now argue that she actually could have worked as of that date.

Therefore, because Appellant represented to the Bureau of Workers Compensation that she was unable to work as of the date she was disability

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separated and received benefits through that time and beyond, she may not now claim in good faith that she was capable of performing the essential duties of her position as Correctional Officer as of June 12, 2012. I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as there is no justiciable issue present.


Jeannette E. Gunn
Administrative Law Judge

JEG: