

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

ROGER D. MALONE,

*Appellant,*

v.

Case No. 12-IDS-08-0195

DEPARTMENT OF TRANSPORTATION,

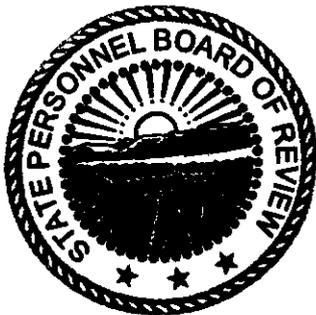
*Appellee*

**ORDER**

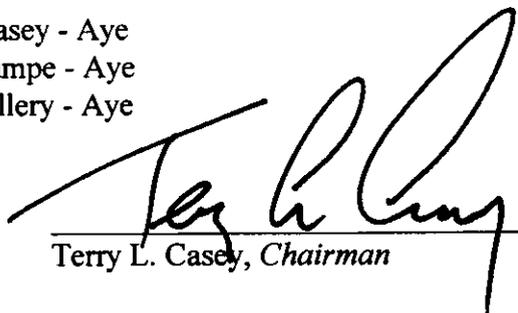
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.



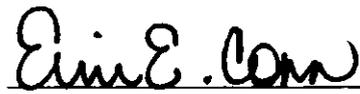
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, *Chairman*

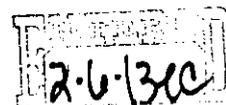
**CERTIFICATION**

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 06, 2013.

  
Erin E. Conn  
*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**

Roger D. Malone,

Case No. 12-IDS-08-0195

*Appellant*

v.

January 15, 2013

Department of Transportation,

Jeannette E. Gunn

*Appellee*

*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 December 28, 2012. Appellee requests 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 his position as a Highway Technician 1, effective August 25, 2012. Uncontroverted information contained in the record indicates that Appellant was last in active work status on October 17, 2011. Information contained in the record further indicates that Appellant applied for Temporary Total Disability Compensation benefits from the Bureau of Workers Compensation and was granted those benefits for the period of November 7, 2011, through at least October 25, 2012.

If this Board were to hold a hearing pursuant to Appellant's appeal, Appellant would be required to present evidence that he was ready, willing and able to perform the essential duties of his position as of the effective date of his involuntary disability separation, August 25, 2012. Since Appellant has represented to the Bureau of Workers Compensation that he was totally disabled on the date he was disability separated and has received money from workers' compensation due to his inability to work, it would be fraudulent for Appellant to now argue that he actually could have worked as of that date.

Therefore, because Appellant represented to the Bureau of Workers Compensation that he was unable to work as of the date he was disability separated and received benefits through that time and beyond, he may not now claim in good

Roger D. Malone  
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faith that he was capable of performing the essential duties of his position as Highway Technician 1 as of August 25, 2012. I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as there is no justiciable issue present.



Jeannette E. Gunn  
Administrative Law Judge

JEG: