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

Mechelle Lutsko,

*Appellant,*

v.

Case Nos. 2012-TFR-06-0136
2012-RED-06-0137
2012-MIS-06-0138
2012-RED-06-0139
2012-INV-06-0140
2012-MIS-06-0141
2012-MIS-06-0142
2012-REC-06-0145
2012-WHB-06-0146
2012-INV-06-0147
2013-INV-06-0133

Ross County Job & Family Services,

*Appellee.*

**ORDER**

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 motion is **GRANTED** and the instant appeals and requests for investigations are **DISMISSED**, pursuant to Ohio Revised Code Sections 145 and 124 and Ohio Administrative Code Chapters 145 and 123.

Casey - Aye
Lumpe - Aye
Tillery - Aye

Terry L. Casey, *Chairman*

ENTERED
9/4/2013

## 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 September 04, 2013.

Ann E. Carr

*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**

| | |
|---|---|
| Mechelle Lutsko, | Case Nos. 2012-TFR-06-0136 *et al.* |
| *Appellant* | |
| v. | July 22, 2013 |
| Ross County Job and Family Services | |
| *Appellee* | James R. Sprague<br>*Administrative Law Judge* |

## REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's filing of various appeals and requests for investigation. Appellant's filings concern Appellee's physically relocating Appellant's position and/or assigning Appellant new/modified duties.

Those actions generally preceded Appellee's merger with two other county departments of job and family services. The new entity assumed all responsibilities and potential liabilities of each of its three former component parts. In order to promote continuity for the purposes of this Board, Appellant's original appointing authority (*i.e.* Ross County Job and Family Services) has been kept as the named Appellee in the instant matters.

The records in these matters have undergone a lengthy and somewhat detailed development. This process includes: this Board's issuance of several Procedural Orders; the parties' multiple filings of non-dispositive material; the occurrence of a pre-hearing in these matters; and the parties' respective filing of motions to dismiss and corresponding memoranda *contra*.

At one point, these matters were held in abeyance pending Appellant's filing of an application for a Disability Retirement Benefit (DRB) with the Ohio Public Employees Retirement System (OPERS). As is now reflected in the instant records, Appellant's application was, in fact, approved by OPERS and Appellant has been on a DRB since that time. Further, OPERS utilized a retroactive effective date, when it granted Appellant's DRB application. Accordingly, this Board's Stay of the instant matters is hereby Lifted.

In regard to further basic background concerning Appellant's situation, we note that Appellant was involved in a serious automobile accident on the way to an initial organizational meeting of the new tri-partite job and family services entity (referenced, above) which entity was to be her new (or successor) employer. The accident apparently resulted in the occurrence of a disabling condition that was sufficiently serious to persuade the OPERS Board to grant Appellant's DRB application.

Appellant asserts that even OPERS' granting of this DRB and Appellant's concomitant present lack of a foreseeable return-to-work date do not moot out her appeals and investigation requests. Further, Appellant continues to assert that this Board should review the duties that Appellant previously performed *vis a vis* the duties that she was asked to perform; to see if an alleged reduction, among other things, occurred (or would have occurred) as a result of that change in job duties.

Appellee asserts that Appellant's change in job duties was prompted by Appellant's complaints/concerns expressed regarding Appellant's previous supervisor. Further, Appellee asserts, it was Appellee's recognition of Appellant's concerns that led Appellee to move Appellant's position and assign Appellant a somewhat differing set of duties to alleviate Appellant's discomfort. As well, Appellee asserts that it would essentially be "the doing of a useless thing" to attempt to review Appellant's duties that she performed for only a short period before the merger and before her accident. Finally, the argument is raised that such a review would only result in speculation about Appellant's future duties which are, at this point, governed principally by R.C. Chapter 145. and O.A.C. Chapter 145 (OPERS' respective Revised Code and Ohio Administrative Code governing provisions) and only secondarily by R.C. Chapter 124. and O.A.C. 123: 1-30 concerning reinstatement.

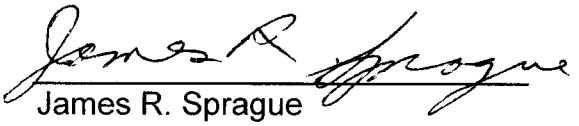
Thus, it appears that Appellant's DRB, which was, after all, granted retroactively, basically sets the legal parameters in these matters. As such, it appears Appellant would not be reinstated until OPERS determined that her condition no longer merited a DRB or until Appellant so informed OPERS and sought reinstatement with Appellee's successor in interest.

Appellant would then need documentation demonstrating her ability to resume her position or like position with Appellee's successor in interest and, if such were presented, presumably Appellant would then be reinstated. At that time, Appellant

could determine if any cause of action appeared to present itself and Appellant could then take the appropriate course of action, if needed.

At the current time, however, it does not appear that there is any subject matter before this Board that OPERS' granting of Appellant's DRB has not subsumed. Accordingly, Appellant's instant appeals and requests for investigations should be dismissed for lack of jurisdiction over their respective subject matter.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeals and requests for investigations, pursuant to R.C. Chapters 145. and 124., and O.A.C. Chapters 145 and 123.



James R. Sprague
*Administrative Law Judge*

RE: Case Nos. 12-TFR-06-0136
12-RED-06-0137
12-MIS-06-0138
12-RED-06-0139
12-INV-06-0140
12-MIS-06-0141
12-MIS-06-0142
12-REC-06-0145
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12-INV-06-0147
13-INV-06-0133