

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

WILLIAM BOST,

Appellant,

v.

Case No. 12-REM-03-0048

DEPARTMENT OF REHABILITATION & CORRECTION,
WARREN CORRECTIONAL INSTITUTION,

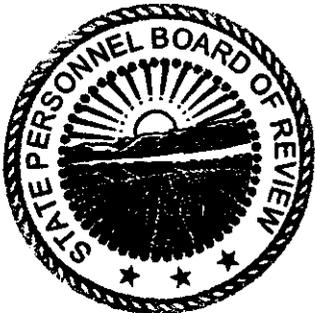
Appellee

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 appeal is **DISMISSED** as Moot, based upon the action of OPERS in setting the effective date of Appellant's Disability Retirement Benefit retroactively to March 1, 2012, which is also the effective date of Appellant's removal, pursuant to Ohio Revised Code Sections 124.03, 124.32 and 124.34.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, Chairman

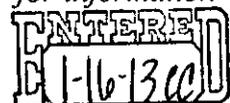
CERTIFICATION

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, January 16, 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**

WILLIAM BOST,

Case No. 12-REM-03-0048

Appellant

v.

November 26, 2012

DEPARTMENT OF REHABILITATION AND CORRECTION,
WARREN CORRECTIONAL INSTITUTION,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's timely filing of an appeal from his removal from the position of Correctional Captain with Appellee, Department of Rehabilitation and Correction (DR and C), Warren Correctional Institution (WCI). **The pertinent R.C. 124.34 Order of Removal concerning this action was effective March 1, 2012.**

The record in this matter was developed both through the issuance of Procedural Orders and through the October 10, 2012 occurrence of a Status Conference, held before Administrative Law Judge Marcie M. Scholl. At the Status Conference, it was determined that **the Ohio Public Employees Retirement System (OPERS) had granted Appellant's application for a Disability Retirement Benefit retroactive to March 1, 2012.** Appellee provided written confirmation of that fact through its November 15, 2012 submission of an April 18, 2012 dated letter from OPERS to WCI.

OPERS' setting the Disability Retirement Benefit date commensurate with the effective date of Appellant's removal has essentially mooted out the instant matter. This is because, by virtue of OPERS' action and by operation of law, Appellant was no longer an employee of DR and C as of the effective date of Appellant's removal, namely March 1, 2012. Accordingly, it became legally impossible for DR and C to remove Appellant utilizing a March 1, 2012 effective date.

Should Appellant become able, Appellant may apply for and attempt to qualify for reinstatement to DR and C within the requisite five-year period from the effective date of Disability Retirement, as applicable and as set forth in R.C. 124.32 and R.C. 145.362. Should DR and C accept Appellant's application for reinstatement, DR and C may at that time contemplate whether it wishes to, again, discipline Appellant. (Please recall that OPERS has *at this point in time* essentially taken away DR and C's opportunity to discipline Appellant, through OPERS' setting the effective date of Appellant's Disability Retirement Benefit retroactive to the effective date of Appellant's instant removal.)

It is also noted that DR and C would not be time barred from disciplining a reinstated Appellant at some future point for acts or omissions allegedly committed during his pre-March 1, 2012 tenure at DR and C, because DR and C has been legally deprived of that opportunity at the present time.

Further, should DR and C so discipline Appellant, then Appellant may correspondingly, at that future time, timely file an appeal from that discipline. This Board could then determine whether that theoretical discipline would fall within the subject matter for FLSA-overtime exempt employees set forth in R.C. 124.03 and R.C. 124.34.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this appeal as **MOOT**, based upon the action of OPERS in setting the effective date of Appellant's Disability Retirement Benefit retroactively to March 1, 2012, which is also the effective date of Appellant's removal, pursuant to R.C. 124.03, 124.32, and 124.34.


JAMES R. SPRAGUE
Administrative Law Judge

JRS: