

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Genia Sexton,

Appellant,

v.

Case No. 2013-IDS-01-0033

Department of Rehabilitation & Correction, Ross Correctional Institution,

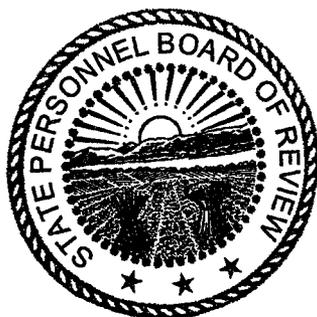
Appellee.

ORDER

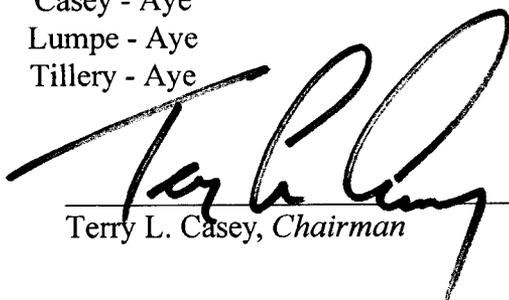
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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**.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

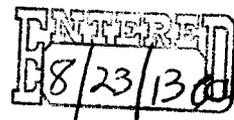
CERTIFICATION

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, August 23, 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**

Genia Sexton,

Case No. 2013-IDS-01-0033

Appellant

v.

July 11, 2013

Department of Rehabilitation
& Correction, Ross Correctional
Institution

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

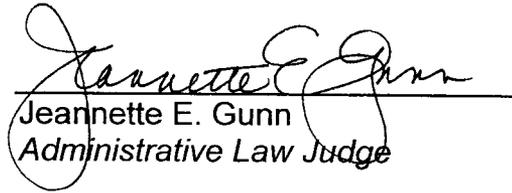
This cause comes on for consideration pursuant to Appellee's Response to this Board's June 10, 2013, Procedural Order, filed with this Board on June 28, 2013. Appellee asserted, and Appellant did not dispute the information provided, that Appellant made an application for disability retirement benefits through the Ohio Public Employees Retirement System prior to December 27, 2012. As part of such application, an employee is required to provide a sworn statement describing his or her disability and indicating why he or she believes that he or she is incapacitated and unable to perform his or her job duties.

Information contained in the record indicates that Appellant was involuntary disability separated from her position as a Correction Officer, effective January 11, 2013. In order to prevail at a record hearing in this matter, Appellant would be required to present evidence that she was able to perform the essential duties of her position as of January 11, 2013. It would be fraudulent and inconsistent for Appellant to argue to this Board that she could perform her duties as of that date, but at the same time represent to the Ohio Public Employees' Retirement System that she could not perform those same duties. Appellant's application for disability retirement benefits was approved effective March 1, 2013.

Therefore, because Appellant represented to the Ohio Public Employees' Retirement System that she was unable to perform her essential job duties, she may not now claim in good faith that she was capable of performing the essential

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duties of her position as Corrections Officer as of January 11, 2013. I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge

JEG: