

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

BRET MILLER,

*Appellant,*

v.

Case No. 13-IDS-02-0055

DEPARTMENT OF YOUTH SERVICES,  
SCIOTO JUVENILE CORRECTIONAL FACILITY,

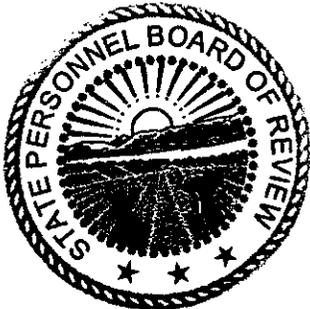
*Appellee*

**ORDER**

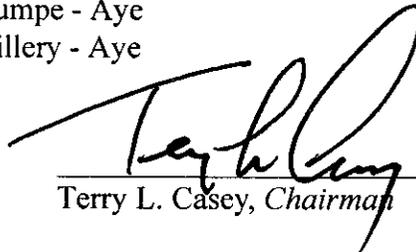
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's motion is **GRANTED** and the appeal is **DISMISSED**.



Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, *Chairman*

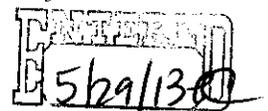
**CERTIFICATION**

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, May 29, 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**

Bret Miller,

Case No. 13-IDS-02-0055

*Appellant*

v.

April 1, 2013

Department of Youth Services,  
Scioto Juvenile Correctional Facility

*Appellee*

James R. Sprague  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellee's Motion to Dismiss, filed on March 14, 2013. To date, Appellant Bret Miller has not filed a memorandum *contra*.

Appellant Bret Miller timely filed an appeal of his involuntary disability separation which was effective February 10, 2013. A Procedural Order and Questionnaire was mailed to the Appellee. Appellee timely filed its response to the Questionnaire on March 7, 2013. Appellant Miller then had ten (10) days to file an optional reply but no such reply was filed. The filings in this case reflect that Appellant Miller had been off work for approximately four months at the time his pre-separation hearing was scheduled, which was approximately January 11, 2013. Appellant Bret Miller attended the pre-separation hearing. Appellee issued an involuntary disability separation order to Appellant Miller, which was effective February 10, 2013.

Appellee argues that this case should be dismissed because as of the effective date of the involuntary disability separation, Appellant Miller was receiving workers compensation benefits in the form of temporary total compensation. Attached to Appellee's Response to the Questionnaire, marked as Exhibit A, is a computer printout from the Ohio Bureau of Workers' Compensation showing the payment method, the compensation type and the period covered of the benefits received from that agency by Appellant Miller. That printout evidences that Appellant Miller received temporary total benefits from the Bureau of Workers' Compensation for the time period of January 22, 2013, up to and including February

23, 2013. Included in that time period is the effective date of the involuntary disability separation, which was February 10, 2013.

Also attached to Appellee's Motion to Dismiss is an affidavit from Marlea Arledge, Human Capital Management Senior Analyst with Appellee. In her affidavit, Ms. Arledge states the medical documentation in the possession of Appellee demonstrated that Appellant Miller was not capable of performing the essential duties of his position as of the date of the pre-separation hearing. She also confirms that Appellant Miller began receiving Temporary Total compensation from the Bureau of Workers' Compensation on January 22, 2013 and continuing. It is also important to note that Appellant Miller also stated in his notice of appeal letter that he is not able to work at that time. A letter from Appellant Miller's attorney, dated January 30, 2013, addressed to the Appellee, also states "Although all of the medical evidence currently states that he [Appellant Miller] is unable to return to his job duties .....

If this case were to proceed to a record hearing, the question on appeal would be if Appellant Miller was able to perform the essential job duties of his position as of the effective date of the involuntary disability separation, or February 10, 2013. Since the evidence is clear that Appellant Miller was receiving compensation for being temporarily totally disabled as of that date, he cannot come before this Board and argue in good faith that he was able to perform his duties as of February 10, 2013, while at the same time collect compensation from the Bureau of Workers' Compensation for being temporarily totally disabled. Since Appellant Miller did not respond nor dispute Appellee's Motion to Dismiss, it can be inferred that he did not disagree with the facts as stated in the Motion and the accompanying affidavit and exhibits.

In the case of *Sammie C. Cordial v. Dept. of Rehab & Corr., SE Corr. Inst.*, (2006) Tenth Appellate District, No. 05AP-473, the court dealt with facts very similar to the instant case. The employee in that case was receiving temporary total benefits from the Bureau of Workers' Compensation and was placed on involuntary disability separation. The employee appealed to this Board and this Board dismissed the appeal based on the fact that the employee was receiving workers' compensation benefits at the time of being placed on involuntary disability separation. The court found that the imposition of an involuntary disability separation in those circumstances was proper and upheld this Board's dismissal of the case.

Bret Miller  
Case No. 13-IDS-02-0055  
Page 3

At the point in time Appellant Miller has medical documentation that he can return to work and perform the essential duties of his position, he can apply for reinstatement to his position. If he would be denied reinstatement, Appellant Miller could then file an appeal, within thirty calendar days of his written denial of reinstatement, to this Board.

Therefore, since Appellant Miller was receiving temporary total benefits from the Bureau of Workers' Compensation at the time he was placed on involuntary disability separation, the receipt of those benefits negates any argument that he could perform his essential job duties on the effective date of his involuntary disability separation. Thus, it is my **RECOMMENDATION** that this appeal be **DISMISSED** and Appellee's Motion to Dismiss be **GRANTED**.

  
James R. Sprague  
Administrative Law Judge

MMS: