

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Leslie Leonard,

Appellant,

v.

Case No. 2013-IDS-02-0078

Department of Transportation,

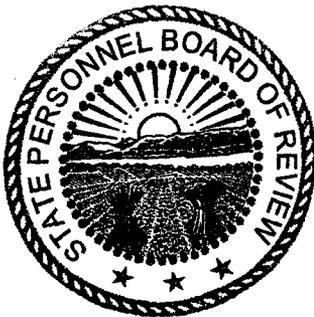
Appellee.

ORDER

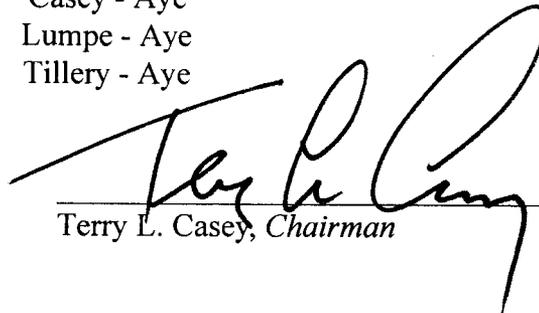
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's Motion is **GRANTED** and the instant appeal is **DISMISSED**, as there is no justiciable issue present.



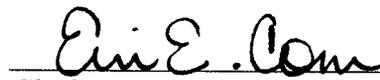
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, October 23, 2013.


Erin E. Com
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

10/23/13ec

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

Leslie Leonard,

Case No. 2013-IDS-02-0078

Appellant

v.

August 28, 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 August 15, 2013. Appellant filed no memorandum *contra*.

Appellant was involuntarily disability separated from her position as a Highway Technician 1, effective February 25, 2013. Uncontroverted information contained in the record indicates that Appellant was last in active work status on April 30, 2012. Information contained in the record further indicates that Appellant applied for Temporary Total Disability (TTD) compensation benefits from the Bureau of Workers Compensation and has received those benefits for the period of May 16, 2012, and May 5, 2013.

In order to receive TTD benefits from the Bureau of Workers Compensation, an individual is required to demonstrate that he or she was totally disabled and unable to work. If this Board were to hold a hearing pursuant to Appellant's appeal, Appellant would be required to present evidence that she was ready, willing and able to perform the essential duties of her position as of the date of her involuntary disability separation hearing, January 15, 2013. Since Appellant has already represented to the Bureau of Workers Compensation that she was totally disabled on that date and has received money from workers' compensation due to her inability to work, it would be contradictory and tantamount to fraud for Appellant to argue before this Board that she actually could have worked as of that date.

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Therefore, because Appellant has previously represented to the Bureau of Workers Compensation that she was unable to work as of the date she was disability separated and has received benefits through that time and beyond, she may not now claim in good faith that she was capable of performing the essential duties of her position as Highway Technician 1 as of the effective date of her involuntary disability separation. I respectfully **RECOMMEND** that Appellee's Motion be **GRANTED** and the instant appeal be **DISMISSED**, as there is no justiciable issue present.


Jeannette E. Gunn
Administrative Law Judge

JEG: