

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

Julie Hartley,

Appellant,

v.

Case No. 2013-IDS-03-0096

Department of Mental Health, Northwest Psychiatric Hospital,

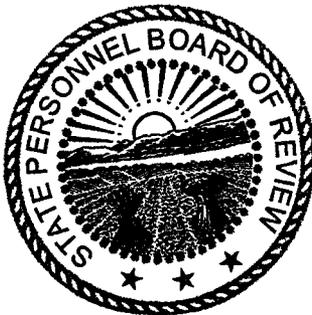
Appellee.

ORDER

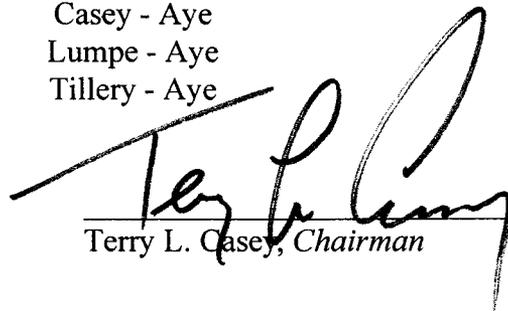
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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

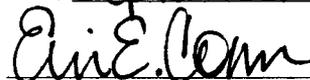


Terry L. Casey, *Chairman*

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, September 04, 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**

Julie Hartley

Case No. 2013-IDS-03-0096

Appellant

v.

August 1, 2013

Department of Mental Health
Northwest Psychiatric Hospital

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant Hartley's response to this Board's Procedural Order of June 5, 2013. Appellant Hartley filed a timely appeal of her involuntary disability separation, effective April 1, 2013. In her June 20, 2013, response to the June 5, 2013, Procedural Order, Appellant Hartley states "No" in response to the question of if she was able to perform the essential duties of her Psychiatrist position as of April 1, 2013, the effective date of the involuntary disability separation.

Appellant Hartley also answered "Yes" to the question of if she was contending that the Appellee should have waited to make a decision about placing her on involuntary disability separation until after her scheduled doctor appointment in June, 2013. She states later in her response to another question that due to cancellations, her doctor appointment was postponed until July 10, 2013.

If this case were to proceed to a record hearing, the question on appeal would be if Appellant Hartley was able to perform the essential job duties of her position as of the effective date of the involuntary disability separation, or April 1, 2013. Since the evidence is clear that Appellant Hartley could not perform the essential duties of her position as of that date by her own admission, the need for a hearing is moot. The evidence presented by Appellant Hartley herself establishes that an involuntary disability separation was proper as she could not perform the essential duties of her position as of the effective date of the separation.

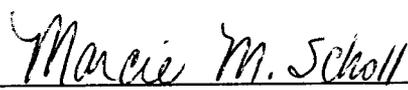
Appellant Hartley's argument is that while she agrees she could not perform the essential duties of her position, she is of the opinion that Appellee should have waited to make their decision until after her doctor appointment. The fallacy in Appellant Hartley's argument is that there is no requirement placed upon the Appellee to wait. Appellee did not abuse its discretion to proceed with an involuntary disability separation given the fact that Appellant Hartley had been off work since October 26, 2012. The Appellee has a right to place an employee on involuntary disability separation when it has been established that the employee can no longer perform the essential duties of the position. Perhaps the Appellee has a need to fill the position on an interim basis or a need to remove an employee from a leave of absence. Had the Appellee waited, Appellant Hartley's doctor's appointment of June 3, 2013 was re-scheduled to July 10, 2013, so that Appellee would have had to wait an additional approximate three month period from April 1, 2013 in order to determine if Appellant Hartley would be released without restriction to return to work. The law does not impose such a time delay on Appellee, especially when it has been established that as of April 1, 2013, Appellant Hartley could not perform the essential duties of her position.

Appellant Hartley also argued that if she had not been placed on involuntary disability separation, her health insurance and other benefits would have continued as long as she was receiving disability benefits from the department of Administrative Services. While that is true, the law still does not place an obligation on the Appellee to postpone placing an employee on an involuntary disability separation for the sole purpose of allowing an employee to remain on disability leave and to continue the employee's benefits. While it is unfortunate that Appellant Hartley's disability benefits and her other benefits ended with her involuntary disability separation, the Appellee did not abuse its discretion or violate any laws or administrative rules by effectuating the involuntary disability separation at the time that it did. It appears Appellant Hartley did receive disability benefits from the department of Administrative Services for an approximate five month period, during which her benefits should have been continued.

This Board has no jurisdiction to review Appellant Hartley's allegation that during the time she received disability leave benefits, she was not permitted to supplement her benefits with her accrued sick leave to bring her pay to the one hundred percent level. Ohio Administrative Code 123:1-33-05 does provide that an employee has the option to utilize sick leave in that manner, so that would be a matter best resolved by Appellee and the department of Administrative Services.

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Since it has been established that as of the effective date of Appellant Hartley's involuntary disability separation, April 1, 2013, she could not perform the essential duties of her position, there is no justiciable issue before this Board. Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.



Marcie M. Scholl
Administrative Law Judge

:mms