

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Barbara A. Holmes,

*Appellant,*

v.

Case No. 2013-IDS-07-0190

Department of Rehabilitation & Correction,  
Ross Correctional Institution,

*Appellee.*

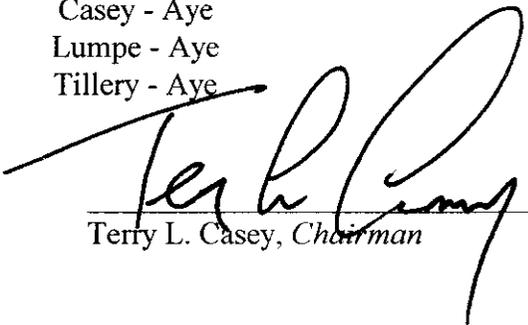
**ORDER**

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. *The Board wishes to reiterate the Administrative Law Judge's statement in the Report and Recommendation that Appellant may file a further appeal with this Board; if Appellant receives a release from a physician to return to work and then applies for reinstatement and if Appellee then denies Appellant's properly filed and supported reinstatement request.*

Wherefore, it is hereby **ORDERED** that the appeal is **DISMISSED** due to a lack of a justiciable issue.

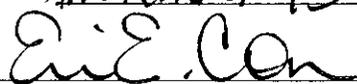
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, November 13, 2013.

  
Clerk

11-15-13

**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**

Barbara A. Holmes,

Case No. 2013-IDS-07-0190

*Appellant*

v.

September 25, 2013

Department of Rehabilitation & Correction,  
Ross Correctional Institution

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on September 25, 2013, upon Appellee's Response to this Board's questionnaire, filed on September 12, 2013. Appellant Holmes had ten days to file an optional reply and to date, no reply has been received from Appellant Holmes.

Appellee's response to the questionnaire indicates Appellant Holmes was placed on involuntary disability separation effective July 20, 2013. Attached to the response to the questionnaire is a printout showing Compensation Payment History from the Bureau of Workers Compensation. That document evidences that as of July 20, 2013, Appellant Holmes was receiving Temporary Total benefits from Workers Compensation. The document also evidences that Appellant Holmes has been receiving Temporary Total benefits covering the period of May 22, 2013 through August 24, 2013.

If this Board were to conduct a hearing on Appellant Holmes' appeal of being placed on involuntary disability separation, the evidence that this Board would be looking at is if Appellant Holmes could perform the essential duties of her position as of the effective date of the involuntary disability separation, or July 20, 2013. The answer to that question has to be "NO" as she was receiving Temporary Total benefits from the Bureau of Workers Compensation as of that date. For Appellant Holmes to come before this Board and argue that she could perform the essential duties of her position while at the same time collecting benefits from the Bureau of Workers Compensation would be tantamount to fraud.

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At such time as Appellant Holmes is released from a doctor to return to work, she can apply for reinstatement with Appellee and if she is denied reinstatement, then she can appeal such denial of reinstatement to this Board.

Inasmuch as Appellant Holmes was receiving Temporary Total workers compensation benefits as the effective date of her involuntary disability separation, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of a justiciable issue.



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Marcie M. Scholl  
*Administrative Law Judge*

:mms