

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

Christopher Rice,

Appellant,

v.

Case No. 2013-IDS-08-0214

Department of Natural Resources,

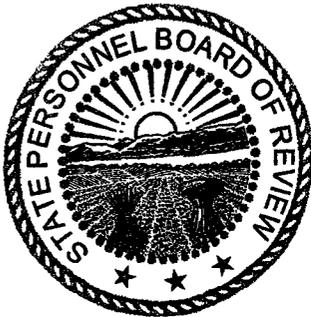
Appellee,

ORDER

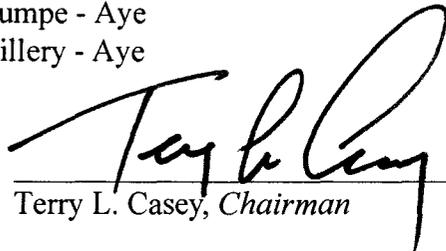
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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** for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03.



Casey - Aye
Lumpe - Aye
Tillery - Aye

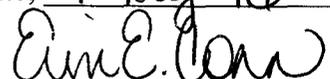


Terry L. Casey, *Chairman*

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 16, 2014.



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**

Christopher Rice

Case No. 2013-IDS-08-0214

Appellant

v.

April 7, 2014

Department of Natural Resources

James R. Sprague

Appellee

Administrative Law Judge

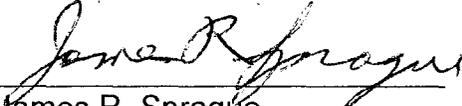
REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellant's filing of an appeal with this Board from Appellee's Involuntary Disability Separation (IDS) of Appellant from his Wildlife Officer position, effective August 10, 2013. Following Appellant's filing of his appeal, this Board conducted a Pre-hearing on March 3, 2014. By agreement of the parties, a schedule was established for Appellee to file Appellee's motion to dismiss and for Appellant to file a memorandum *contra* to Appellee's motion to dismiss. Thereafter, on March 24, 2014, Appellee timely filed Appellee's motion to dismiss, memorandum in support, and the Affidavit of Steven Bates, Appellee's Assistant Chief of Human Resources. Appellant was provided with the requisite time to file a memorandum *contra* but, to date, has not done so.

The record reflects that Appellant was off work and was receiving a Temporary Total Disability (TTD) award and benefits through at least August 10, 2013, the effective date of Appellant's instant IDS. *Further, Appellant retains the right to apply for reinstatement through July 24, 2014.* This Board has consistently held (and consistently been affirmed on appeal) that an employee's receipt of TTD effectively constitutes an admission by that employee that he or she is incapable of performing the essential duties of his or her position during the time of receipt of those same TTD benefits. Accordingly, Appellee's motion should be granted and this matter should be dismissed.

Therefore, I respectfully **RECOMMEND** this the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03.


James R. Sprague
Administrative Law Judge