

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jeffrey Carnes,

Appellant,

v.

Case No. 2013-IDS-08-0225

Department of Taxation,

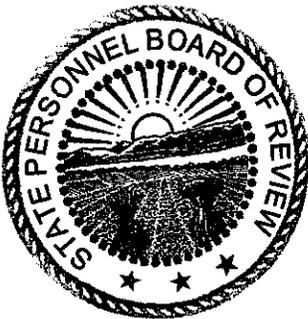
Appellee,

ORDER

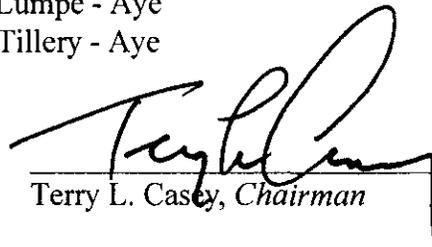
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's involuntary disability separation is **AFFIRMED**, pursuant to R.C. 124.03 and O.A.C. 123:1-30-01, *et seq.*



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 01, 2015.


Erin E. Conroy
Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE May 8, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2013-IDS-08-0225

Transcript Costs: \$198.00 Administrative Costs: \$25.00

Total Deposit Required: * \$223.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: May 18, 2015

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

Jeffrey Carnes

Case No. 13-IDS-08-0225

Appellant

v.

March 5, 2015

Department of Taxation

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of his involuntary disability separation, effective August 26, 2013. A record hearing was held in the instant matter on June 11, 2014. Appellant was present at record hearing and was represented by Marc E. Myers, attorney at law. Appellee was present at record hearing through its designee, Labor Relations Administrator Charles Kumpar, and was represented by Timothy Miller, Assistant Attorney General.

**CONSOLIDATED STATEMENT OF THE CASE
AND FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

At the time of his involuntary disability separation, Appellant Jeffrey Carnes was employed by Appellee in a position classified as Information Technologist 2. His essential job duties included programming databases, developing web pages, and various IT troubleshooting duties.

In July 2013, Appellee requested that Appellant submit to an independent medical examination. A psychological fitness for duty examination of Appellant was conducted by Dr. J. Nick Marzella; Appellee paid the cost of the examination and provided Dr. Marzella with information regarding Appellant's perceived disabling

condition, as well as a position description outlining the general job duties performed by Appellant.

Dr. Marzella ultimately determined that Appellant was not fit for full and unrestricted duty and issued a written report of his conclusions. Both Appellee and Appellant received a copy of Dr. Marzella's August 6, 2013, report.

Appellant was subsequently notified of Appellee's intent to implement a disability separation. On or about August 15, 2013, Appellant received notice of a pre-separation hearing to be held on August 20, 2013. Appellant attended the hearing and had an opportunity to examine the medical evidence supporting Appellee's decision to involuntarily disability separate him. Appellant did not present any medical evidence at the pre-separation hearing to rebut Appellee's evidence but did have an opportunity to speak on his own behalf. Appellant's request to have legal counsel and/or union representation present at the pre-separation hearing was denied.

Appellee subsequently concluded that Appellant was unable to perform the essential job duties of his position and, on August 23, 2013, notified Appellant that his involuntary disability separation would be effective on August 26, 2013. He was advised that his reinstatement rights would expire on August 26, 2015, and was provided with information explaining how to submit a request for reinstatement.

Following his involuntary disability separation, Appellant was evaluated by Dr. George Schulz, a clinical psychologist. In his December 2013 report, Dr. Schulz concluded that Appellant was mentally capable of full and unrestricted duty in the position of Information Technologist 2 for Appellee. Appellant was reinstated to his Information Technologist 2 position in December 2013.

CONCLUSIONS OF LAW

In an appeal of an involuntary disability separation action, Appellee bears the burden to establish, by a preponderance of the evidence, its compliance with the procedural and substantive requirements set forth in R.C. sections 124.03 and 124.32, and in O.A.C. 123:1-30-01, *et seq.*

A review of the record in the instant matter indicates that Appellee relied upon the substantial, credible medical evidence contained in the report provided by an independent medical examiner, Dr. J. Nick Marzella, in concluding that Appellant was not capable of performing the essential job duties of his position. Appellant provided Appellee with no additional medical evidence in contravention of Dr. Marzella's report at the pre-separation hearing on August 20, 2013.

In order to prevail in the instant appeal, Appellant would be required to present evidence that he was able to perform the essential duties of his position as of the effective date of his involuntary disability separation, August 26, 2013, and that Appellee's reliance on Dr. Marzella's report was improper. Although Appellant subsequently obtained medical evidence from Dr. George Schulz, who concluded in his December 2013 report that Appellant was fully capable of performing the duties of his position, Appellant did not present medical evidence to demonstrate that he was capable of performing his essential job duties in August 2013.

Based upon all of the information contained in the record, I find that Appellee's reliance upon the substantial, credible medical evidence in its possession in August 2013 was proper, and Appellee has demonstrated by a preponderance of the evidence its compliance with the procedural and substantive requirements of the Ohio Revised Code and Ohio Administrative Code.

Therefore, I respectfully **RECOMMEND** that Appellant's involuntary disability separation be **AFFIRMED**, pursuant to R.C. 124.03 and O.A.C. 123:1-30-01, *et seq.*


Jeannette E. Gumm
Administrative Law Judge