

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

Vera Johnson,

Appellant,

v.

Case No. 2013-IDS-09-0234

Department of Transportation,

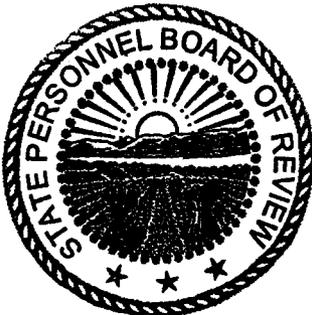
Appellee.

ORDER

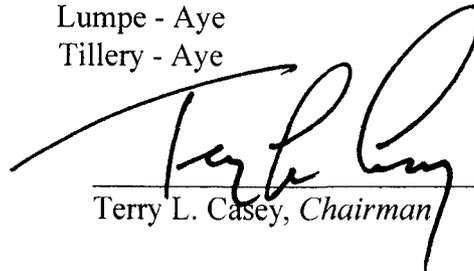
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the appeal is **DISMISSED** for Appellant's failure to comply with the requirements set forth in O.A.C. 124-11-07 (A) (2) and (C) and for lack of jurisdiction since there is no justiciable issue presently before this Board.



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, February 13, 2014.



Clerk

2/13/14

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**

Vera Johnson,

Case No. 2013-IDS-09-0234

Appellant

v.

December 16, 2013

Department of Transportation

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration due to the Appellee's November 29, 2013, filing of motion to dismiss regarding the above-captioned case. The motion to dismiss contained: a memorandum in support and the affidavit of Ms. Marlene Cheery, an Administrative Professional 4 at the Ohio Department of Transportation. Appellant was provided with the requisite amount of time to file a memorandum contra to Appellee's motion to dismiss, but, to date has not done so.

O.A.C. 124-11-07 sets forth the motions practice before this Board. O.A.C. 124-11-07 (A)(2) indicates that when a party files a dispositive motion, then an adverse party must respond affirmatively and show that there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a ten-day time frame to respond to dispositive motions, such as the instant motion to dismiss. Appellant has failed to file the required response to Appellee's motion to dismiss and thus, has failed to comply with O.A.C. 124-11-07.

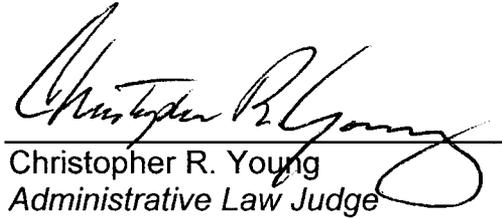
Furthermore, Appellee's argument that the key question to be decided at a record hearing would be whether the Appellant was capable of performing the essential job functions of her position as of the date of her pre-separation hearing, which was held on August 1, 2013. Further, a status conference was held regarding this matter on October 11, 2013, and the Appellant admitted during the status conference that she was not released to return to work as of August 1, 2013, the date of her pre-separation hearing. Moreover, medical evidence contained in the file indicates that the Appellant had a return to work date after August 1, 2013, as well. The aforementioned was explained to the Appellant, at the status conference, as

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well as the Appellant understanding that she could file a return to work or file for a reinstatement once every three months, and to do that after a doctor returns her to work, wherein she could file another appeal if the Appellee does not voluntarily returned her work.

Because there is no justiciable issue presently before this Board, I conclude that the State Personnel Board of Review does not have subject matter jurisdiction.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above captioned appeal for Appellant's failure to comply with the requirements set forth in O.A.C. 124-11-07 (A) (2) and (C). Further, I would also **RECOMMEND** that the State Personnel Board of Review **DISMISS** the above captioned appeal for lack of jurisdiction since there is no justiciable issue presently before this Board.


Christopher R. Young
Administrative Law Judge

CRY: