

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Richard Jasper,

*Appellant,*

v.

Case No. 2013-IDS-09-0251

Department of Natural Resources,

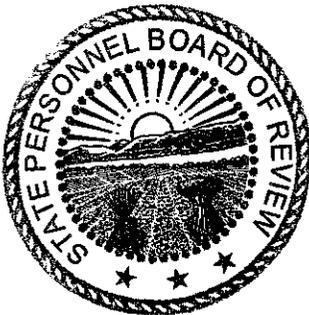
*Appellee,*

**ORDER**

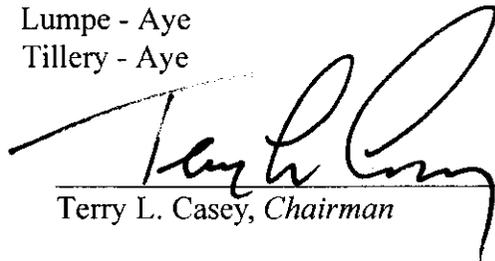
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the Appellee's involuntary disability separation of Appellant Jasper is **AFFIRMED** and the appeal is **DISMISSED**.



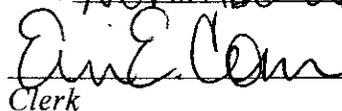
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, November 06, 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**

Richard Jasper

Case No. 2013-IDS-09-0251

*Appellant*

v.

October 1, 2014

Department of Natural Resources

Christopher R. Young  
*Administrative Law Judge*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on July 25, 2014 at 10:00 a.m. and concluded the same day. Present at the hearing were the Appellant, Mr. Richard Jasper, an Assistant Wildlife Management Supervisor, who appeared *pro se*. The Appellee, the Ohio Department of Natural Resources (ODNR), was present through its designee Mr. Steven Bates, an ODNR Human Resources Administrator, who was represented by E. Joseph Dandrea and Ryan D. Walters, both Assistant Attorneys General.

The subject matter jurisdiction of this Board was established pursuant to section 124.03 of the Ohio Revised Code from an involuntary disability separation that had been issued to the Appellant, Mr. Richard Jasper, on September 13, 2013, effective September 14, 2013, which he timely appealed to this board on September 23, 2013, which was stipulated.

The issue involved in the instant matter, as in most involuntary disability separations, is whether the Appellee after reviewing all the medical evidence submitted at the pre-separation hearing had sufficient evidence, by a preponderance thereof, that the Appellant could not perform the essential duties of his position as of the effective date of the pre-separation hearing, the issue which the Appellant contends at this instant hearing.

**STATEMENT OF THE CASE**

Appellee's first witness was Mr. Richard Jasper, as called on cross-examination. When questioned, the witness explained that he has worked for the Ohio Department Natural Resources for approximately last 35 years, spending the last 34 years in the position of Assistant Wildlife Management Supervisor. When

questioned, the witness identified Appellee's Exhibit 1 as a position description of his position of Assistant Wildlife Management Supervisor, and agreed that he performed the duties associated with the position during his tenure. However, the witness explained that under the 20% of the duties that includes implementing biological sampling techniques, supervision of wildlife management personnel and wildlife officers in the collection of survey and research data, trapping, banding, sexing and aging of wildlife; hunter harvest checks; nest structure maintenance and utilization; deer aging stations; interpret survey and research data, completes reports and oversees implementation of wildlife management practices from research results; assist with other wildlife research as assigned, he had not done for quite a while. Further, with respect to 5% on the position description which calls for assisting personnel of other governmental agencies in the performance of various wildlife management practices such as control burning, he explained that he had not done this activity recently, as well. On the other hand, the witness testified that the other 75% of his job duties listed on the position description were fairly accurate, along with his providing supervision to two Wildlife Area Supervisors.

Mr. Jasper then testified that in April 2012 Mr. Brett Beatty, a Wildlife Management Supervisor, became his new supervisor and that he'd only held the position of Assistant Wildlife Management Supervisor for approximately one year prior to his new position. The witness then identified Appellee's Exhibit 5 as a document outlining the goals and objectives dated May 7, 2012, from his supervisor, Mr. Brett Beatty. The outline, among other things, had him being sent away to take an Outlook, Excel and Word tutorials, as he agreed he was basically computer illiterate, as part of his performance review plan. The witness explained he was to work on his computer and to contact the Area Wildlife Supervisors, via his computer, which he was having trouble doing. When questioned, the witness testified that he was never asked to do a controlled burn, nor had ONDR ever sent him out the school to get certified, nor had he been issued any flame retardant clothing, in 20 years, but agree that it was part of his job duties.

When questioned, the witness testified that both of his Wildlife Area Supervisors were stationed either in the Fallsview area and/or the RushRun area. The witness explained that most of the time he did not have to go on uneven terrain, and that he would usually drive a truck. However, with when questioned, the witness testified that he did get out of the truck from time to time, as part of his job duties.

The witness identified Appellee's Exhibit 9, as a memorandum dated June 14, 2013, informing him that the Division of Wildlife had made a request for him to attend an Independent Medical Examination (IME) for purposes of determining his ability to perform his job. The witness explained that this occurred after he had an incident when he was on his way to the RushRun area. The witness explained that he had just completed a quail run count, and he was running late and that he

stopped at a state park to relieve himself and his knees buckled. The witness described that they fell down and just sat there until someone came along and helped him into his truck. Further, the witness testified that he didn't come in the next day and that is when he received the above noted exhibit.

The witness identified Appellee's Exhibit 10, as the independent medical examination conducted by Dr. Eric Schaub, which he received at his separation hearing, although he had not requested to receive this before the hearing, which revealed that he was unable to perform the essential job functions of his position, due to lower extremity weakness and balance issues which would represent a significant barrier in his work environment. The witness also identified Appellee's Exhibit 11 as a pre-involuntary disability separation hearing check-list that identified that the notice had been mailed to him on or about August 20, 2013. Specifically, in reference to the fifth question on the above noted document, "were you provided an opportunity to present testimony and/or substantial, credible medical or psychological on your behalf?", revealed that he was given an additional three days to present any other evidence or documents on his own behalf, until August 30, 2013. The witness then identified Appellee's Exhibit 13, as a document, known as a work capacity form, which he may have submitted at the pre-separation hearing or after the hearing, by Dr. Matthew Moore, which had not been dated. When questioned, the witness testified that on the work capacity form is not noted what his job duties were at that time, but agree that Dr. Moore knew that he worked for the Ohio Department Natural Resources. The witness then identified Appellee's Exhibit 14, as of April 4, 2012, letter from Dr. Mary Chellis, a wound care doctor, from Ohio Wound Care and Hyperbarics, which stated among other things that the wounds on his legs were completely healed by February 17, 2012, and that he could return to work without restrictions, a document which he submitted at his pre-involuntary disability separation on August 27, 2013. The witness also identified Appellee's Exhibit 15, as a letter dated August 26, 2013, from his family physician Dr. Matthew Moore, which stated among other things stated that he had previously prescribed medication which it caused Mr. Jasper to have weakness, which attributed to his falling, and that currently is off that medication, documentation which he also submitted after the August 27, 2013 pre-involuntary disability separation, but prior to the deadline extension on August 30, 2013. Additionally, the witness identified Appellee's Exhibit 16 as an e-mail dated August 30, 2013 from him to Ms. Leita Cook, which among other things finds faults with Dr. Schaub's evaluation.

Mr. Jasper identified Appellee's Exhibits 17 and 18 as the letter of involuntary disability separation that was given to him on September 13, 2013 and the 124.34 order of involuntary disability separation, respectively. The witness then identified Appellee's Exhibit 19, as a service of that order witnessed Mr. Jasper receiving the order of involuntary disability separation on September 13, 2013. The witness also, when questioned, identified Appellee's Exhibit 20 as an application for disability

leave benefits received on or about October 2, 2013, and agreed when questioned that his own personal physician, Dr. Moore on September 27, 2013, submitted the above documentation. It was noted on said exhibit that Dr. Moore when answering the question what restrictions are placed on the patient's work activities, answered that the patient is totally disabled at this time. Additionally, the witness identified Appellee's Exhibit 21, as a letter dated October 30, 2013, notifying him that his disability leave benefits have been approved from September 27, 2013 through January 1, 2014.

Appellee's next witness to testify was Ms. Leita Cook, an Absence Management Coordinator at ODNR within the Human Resources office, a position she's held for little over one year. Further, the witness explained that prior to holding her present position she spent two years in the Division of Watercraft as a Payroll Officer. When questioned, the witness testified that she is familiar with Mr. Richard Jasper, as questions came up regarding an IME with Mr. Jasper, wherein she processed the documentation. The witness identified Appellee's Exhibit 11 as a check list she prepared with respect to Mr. Jasper's pre-involuntary disability separation hearing. When questioned, the witness testified that she did not send the IME to Mr. Jasper prior to the hearing, but that she gave him an opportunity to review the IME, as well as granting him additional three days, as noted on question five of said document. Further, the witness identified Appellee's Exhibit 12 as Ms. Ann Van Scoy's hand written notes that she wrote out for her when she was conducting Mr. Jasper's pre-involuntary disability separation hearing. The witness noted that the Appellee, ODNR presented Appellee's Exhibit 10, Dr. Eric Schaub's independent medical examination and report in support of separating Mr. Jasper. Additionally, the witness noted that the Appellant, presented Appellee's Exhibit 14, a letter dated April 4, 2012 from Dr. Mary Chellis his wound care specialist; a Work Capacity Form previously identified as Appellee's Exhibit 13, a form that was undated, and most likely submitted at a prior hearing, and was the basis of leaving the hearing open so he can attain additional documentation; Appellee's Exhibit 15, as a letter from Dr. Moore after the initial hearing, although dated August 26, 2013, which basically only stated that Mr. Jasper is now off his medication and Appellee's Exhibit 16 as an e-mail which he had sent to me second-guessing Dr. Schaub's evaluation. The witness explained that then after the hearing was conducted she sent all the information to Mr. Bates.

Additionally, the witness identified Appellee's Exhibits 20 and 21, as an application for disability leave and DAS's disability approval, respectively from September 28, 2013 through January 1, 2014.

No cross-examination of the witness was elicited.

Appellee's third witness to testify was Ms. Sue Howard, an employee of ODNR Division of Wildlife in the position of Assistant Chief over Business Operations, Human Resources and Federal Aid, a position she's held for three years. When questioned if she knows Mr. Richard Jasper, the witness explained that in October 2011 she was made aware of Mr. Jasper having some mobility issues of getting up and down the stairs at the district office. Further, the witness testified she also was made aware by Mr. Todd Haines, the District Manager that Mr. Jasper wasn't performing all of his job duties, as he was mostly working at his desk at the district office. The witness then identified Appellee's Exhibit 1, as Mr. Jasper's position description of an Assistant Management Wildlife Supervisor. The witness explained that for one to be performing one's duties as an Assistant Management Wildlife Supervisor one cannot simply sit behind a desk 100% of the time. In administering wildlife programs, as an Assistant Management Wildlife Supervisor one has to trap, band, sex, determine the age of the wildlife, have hunter harvest checks and perform biological sampling. Again, the witness testified one would have to actually go out to the wildlife areas, sometimes in the even terrain riding an ATV, not just a truck, as well as to perform controlled burns. Ms. Howard testified that in early 2012 there've been discussions to try to transition Mr. Jasper into his full set of duties, and in April 2012 the agency sought an involuntary disability separation of Mr. Jasper, as he wasn't performing all those essential job duties and functions. Ms. Howard testified that at that time Mr. Brett Beatty became his new supervisor, and identified Appellee's Exhibit 6 as an e-mail she received from Mr. Brett Beatty, Mr. Jasper supervisor on or about January 23, 2013, advising Mr. Jasper that he is to assume full supervisory duties over his to work units in Fallsville and RushRun, along with informing her that he had seen any improvement over the past several months with regard to Mr. Jasper's mobility issues. Further, when questioned, the witness testified that she upon review of all the involuntary disability separation paperwork and documentation she made a recommendation to Chief Scott Zody to have Mr. Jasper separated.

On cross-examination, the witness when questioned testified she has done previous surveys.

Appellee's last witness to testify was Mr. Stephen Bates, an employee of ODNR in the office of Human Resources holding the position of Assistant Chief/Human Resources Administrator, a position he has held since 2006. When questioned if he knows Mr. Richard Jasper, the witness explained that in October 2011 he became aware of Mr. Jasper having some mobility issues. The witness explained that in early 2012, Mr. Jasper was sent out for an IME, submitted the Work Capacity Form, previously identified as Appellee's Exhibit 13, as part of an involuntary disability separation, which began to determine whether or not Mr. Jasper had short term issues or longer term issues. The witness testified that Mr. Jasper stated that since he had been working mainly in the office, putting him out in

the field without a transition period, would not have been fair, to which all that were involved agreed, and the first involuntary disability process ceased.

The witness then identified Appellee's Exhibit 9, as a memorandum he wrote to Mr. Jasper on or about June 14, 2013, after being notified of Mr. Jasper's knee buckling incident, wherein he had to be helped back into his truck while in the field, by a complete stranger. The witness explained there'd been a number of incidents prior to the knee buckling incident, but none as dramatic. Thereafter, Mr. Jasper was requested to go to another IME, by Dr. Eric Schaub, as he had already conducted an IME with Mr. Jasper the previous year. The witness testified that they sent all the information to Dr. Schaub, along with Mr. Jasper's position description, received the results, informing us that Mr. Jasper could not perform the essential functions of his job. Afterwards, the witness testified that he contacted Ms. Leita Cook to notify Mr. Jasper of an upcoming involuntary disability separation hearing and to collect all the information, which she eventually forwarded to Ms. Sue Howard. After Ms. Howard had reviewed the information, she made a recommendation to separate, and as a central office employee I made a recommendation to my boss to separate Mr. Jasper. The witness identified Appellee's Exhibit 10 as Dr. Schaub's IME report and recommendation, which he relied on to have Mr. Jasper, separated. The witness identified Appellee's Exhibit 12, as Ms. Ann Van Scoy's notes from the hearing, which he had in his possession and read over, in making his determination. Additionally, the witness identified Appellee's Exhibit 13, as a Work Capacity Form which was submitted by Mr. Jasper at the involuntary disability separation hearing, but was undated and not reliable. The witness identified Appellee's Exhibit 2, as a memorandum written on or about October 7, 2011, regarding Mr. Rick Jasper's work capacity along with the form previously identified from his previous involuntary disability separation hearing. The witness then identified Appellee's Exhibit 14, as a letter from Dr. Mary Chellis dated April 4, 2012, which was submitted at the involuntary disability separation hearing by Mr. Richard Jasper, which also was not considered relevant as it referred to wounds that have been healed over a year ago.

The witness then identified Appellee's Exhibit 15 as a letter dated August 26, 2013, from Dr. Moore simply stating that Mr. Jasper is now off his medication, which he deemed relevant, but not totally credible as it did talk about him returning to work. Additionally, the witness identified Appellee's Exhibit 16, as Ms. Cook's response to Mr. Jasper's e-mail about Dr. Schaub's evaluation, and noted that there was nothing in that letter to refute by any medical certainty of Dr. Schaub's finding. Moreover, the witness testified that Dr. Schaub's IME was the only credible medical evidence submitted and that there was nothing to the contrary. Lastly, the witness identified Appellee's Exhibit 18 as the instant 124.34 order of involuntary disability separation signed by Mr. James Zehringer, the Director of ODNR.

On cross-examination, the witness testified that he did not personally witness the incident that occurred in the parking lot in June 2013, nor has he seen anyone actually performing Assistant Wildlife Management Supervisor duties. Moreover, when questioned, the witness explained that Mr. Jasper's mobility issues were of concern, as the reason for seeking the separation.

The Appellant, Mr. Richard Jasper, began his case-in-chief by calling himself to the witness stand. The witness submitted Appellant's Exhibit A, for this Board to consider, as well as stating that he continued to work after the hearing up until the time he was actually separated.

### **FINDINGS OF FACT**

After thoroughly reviewing all of the testimony and documentary evidence which were admitted into evidence, I find the following facts:

1. Appellee met all of the procedural requirements effectuating an involuntary disability separation. Appellee possessed medical evidence that the Appellant, Mr. Richard Jasper, could not perform his essential job duties as of the date of his separation hearing August 27, 2013 through August 30, 2013. Further, the Appellee timely notified Mr. Jasper of his pre-separation hearing; the Appellant, Mr. Richard Jasper, attended the pre-separation hearing and was given an opportunity to view the medical evidence and an opportunity present his own evidence; and the Appellee notified the Appellant, Mr. Richard Jasper, in writing of his involuntary disability separation.
2. Appellee's Exhibit 9 was identified as a memorandum that Mr. Bates wrote to Mr. Jasper on or about June 14, 2013, after being notified of Mr. Jasper's knee buckling incident, wherein Mr. Jasper had to be helped back into his truck while in the field, by a complete stranger. Thereafter, Mr. Jasper was requested to go to another IME, by Dr. Eric Schaub, as he had already conducted an IME with Mr. Jasper the previous year. Mr. Bates testified that they sent all the information to Dr. Schaub, along with Mr. Jasper's position description, received the results, which informed the agency that Mr. Jasper could not perform the essential functions of his job.
3. Mr. Bates Appellee's Exhibit 10 as Dr. Schaub's IME report and recommendation, which he relied on to have Mr. Jasper, separated. Additionally, Mr. Bates identified Appellee's Exhibit 12, as Ms. Ann Van Scoy's notes from the pre-separation hearing, which he had in his possession, which he read and relied upon, in making his determination.

4. The Appellant, Mr. Richard Jasper, submitted at the involuntary disability separation hearing, a Work Capacity Form which was undated and not reliable, as a document which he had submitted at his previous pre-separation hearing in 2012. (See Appellee's Exhibit 13)
5. Additionally, the Appellant submitted Appellee's Exhibit 14, as a letter from Dr. Mary Chellis dated April 4, 2012, at the involuntary disability separation hearing, which also was not considered relevant as it referred to wounds that have been healed over a year ago, and didn't address the current issue of being able to maintain his balance and footing.
6. Furthermore, the Appellant submitted Appellee's Exhibit 15 at the involuntary disability separation hearing, a letter dated August 26, 2013, from Dr. Moore simply stating that Mr. Jasper was now off his medication, which was deemed relevant, but not credible, as it did talk about him returning to work.
7. Moreover, the Appellant submitted Appellee's Exhibit 16, as Ms. Cook's response to Mr. Jasper's e-mail about Dr. Schaub's evaluation, and noted that there was nothing in that letter to refute by any medical certainty Dr. Schaub's finding.
8. Thus, the only evidence that was submitted which was reliable and credible was Dr. Schaub's IME, finding that the Appellant, Mr. Richard Jasper, had an inability to perform tasks in a field environment, and that his lower extremity weakness and balance issues represented a significant barrier to the Appellant's continuation in the work environment, and that there was nothing submitted at the pre-separation hearing to the contrary.
9. It should be also noted that Mr. Jasper, identified Appellee's Exhibit 20 as an application for disability leave benefits received on or about October 2, 2013, and agreed that his own personal physician, Dr. Moore on September 27, 2013, submitted the above documentation. It was noted on said exhibit that Dr. Moore when answering the question what restrictions are placed on the patient's work activities, answered that the patient is totally disabled at this time, only one month after having been at his pre-separation hearing. Additionally, the witness identified Appellee's Exhibit 21, as a letter dated October 30, 2013, notifying him that his disability leave benefits have been approved from September 27, 2013 through January 1, 2014.

## CONCLUSIONS OF LAW

In order for Appellee's involuntary disability separation of the Appellant Jasper to be upheld, Appellee had the burden of proving by a preponderance of the evidence that substantial credible medical evidence exists showing that Appellant Jasper was unable to perform the essential duties of his position due to a disabling condition as of the effective date of his pre-separation hearing held on August 27, 2013, extended to August 30, 2013. In the case at bar, Appellee has met its burden, in that the Appellant was not capable to perform the essential duties of his position due to a disabling condition as of the effective date of his pre-separation.

In the case at hand, the only issue to consider in rendering a decision, "Was there substantial credible medical evidence existing that shows that the Appellant was unable to perform the essential duties of his position due to a disabling condition at the time of his separation?"

Administrative rule 123:1-30-01 of the Ohio Administrative Code outlines the procedures of an Involuntary Disability Separation. The pertinent part of that rule states as follows:

**123:1-30-01 Involuntary disability separation.**

(A) An employee who is unable to perform the essential job duties of the position due to a disabling illness, injury or condition may be involuntarily disability separated. An involuntary disability separation occurs when an appointing authority has received substantial credible medical evidence of the employee's disability and determines that the employee is incapable of performing the essential job duties of the employee's assigned position due to the disabling illness, injury or condition.

(B) An appointing authority shall request that an employee submit to a medical or psychological examination, conducted in accordance with rule 123:1-30-03 of the Administrative Code, prior to the involuntary disability separating the employee unless:

- (1) The employee is hospitalized at the time such action is taken,
- (2) The employee has exhausted his or her disability leave benefits, or

(3) Substantial credible medical evidence already exists that documents the employee's inability to perform the essential job duties.

(C) Pre-separation hearing. An appointing authority shall institute a hearing prior to involuntarily disability separating an employee. The employee shall be provided written notice at least seventy-two hours in advance of the hearing. If the employee does not waive the right to the hearing, then at the hearing the employee has the right to examine the appointing authority's evidence of disability, to rebut that evidence, and to present testimony and evidence on the employee's own behalf.

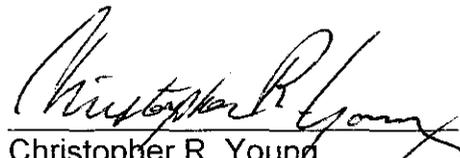
(D) If the appointing authority determines, after weighing the testimony presented and evidence admitted at the pre-separation hearing, that the employee is capable of performing his or her essential job duties, then the involuntary disability process shall cease and the employee shall be considered fit to perform his or her essential job duties. If the appointing authority determines, after weighing the testimony presented and the evidence admitted at the pre-separation hearing, that the employee is unable to perform his or her essential job duties, then the appointing authority shall issue an involuntary disability separation order.

In the instant case, the Appellee at the pre-separation hearing basically relied upon Dr. Eric Schaub's IME report stating that the Appellant was not fit for duty due his lower extremity weakness and balance issues that represented a significant barrier to the Appellant's continuation in the work environment. The evidence that Appellant Jasper submitted at the pre-separation hearing was outdated and/or undated, unreliable and/or not credible as it did not pertain to the issues at hand. Coupled with the fact, one month after the pre-separation hearing, Appellant Jasper applied for disability leave benefits, and was granted disability leave benefits from September 27, 2013 through January 1, 2014. When the Appellee possesses information that the employee can no longer perform the essential duties of the position, then the Appellee can begin to institute involuntary disability separation proceedings.

Appellant Jasper did not provide Appellee with any medical evidence that he could perform the essential duties of his position as of August 27, 2013 through August 30, 2013. Therefore, Appellee correctly relied on the medical information it had and Appellee did not abuse its discretion in involuntarily disability separating the Appellant, Mr. Richard Jasper.

**RECOMMENDATION**

The evidence, by a preponderance thereof, presented at the record hearing established that Appellant Jasper could not perform the essential duties of his position as of the effective date of his involuntary disability separation on September 14, 2013, therefore is my **RECOMMENDATION** that the Appellee's involuntary disability separation of Appellant Jasper be **AFFIRMED** and his appeal be **DISMISSED**.

  
Christopher R. Young  
Administrative Law Judge