

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

Daniel Gurish,

Appellant,

v.

Case No. 2013-MIS-06-0153

Department of Developmental Disabilities,
Warrensville Developmental Center,

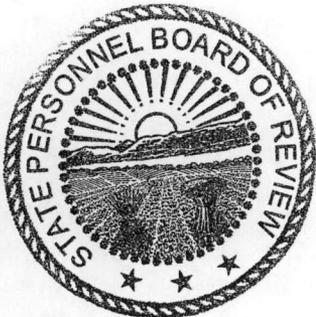
Appellee.

ORDER

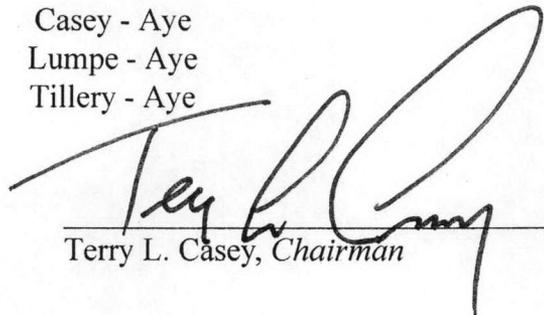
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 instant appeal is **DISMISSED** for lack of a justiciable issue.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

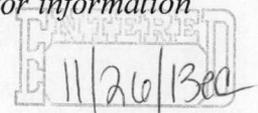
CERTIFICATION

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 26, 2013.


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**

Daniel Gurish,

Case No. 2013-MIS-06-0153

Appellant

v.

September 6, 2013

Department of Developmental
Disabilities, Warrensville Developmental
Center,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on pursuant to an appeal filed with this Board on June 19, 2013. Appellant requested that this Board conduct a hearing to review Appellee's failure to permit him to exercise reinstatement rights arising from his involuntary disability separation. A Procedural Order was issued requiring both parties to respond to questions propounded by the Board; Appellant filed his response on August 22, 2013, and Appellee filed its response on August 23, 2013.

Based upon the information contained in the record, I make the following findings of fact:

Appellant was involuntarily disability separated effective March 28, 2010. His last day in active work status was October 2, 2009. Appellant appealed his involuntary disability separation to this Board (SPBR Case No. 10-IDS-04-0092) and a hearing was held before Administrative Law Judge Marcie Scholl; the involuntary disability separation was subsequently affirmed by this Board.

Appellant filed for reinstatement on February 18, 2013. Appellee denied Appellant's request for reinstatement due to his failure to apply prior to the expiration of his reinstatement rights on October 2, 2011.

CONCLUSIONS OF LAW

In his June 2013 letter of appeal to this Board, Appellant restates facts previously asserted and addressed in SPBR Case No. 10-IDS-04-0092 and argues that the pre- and post-termination appeal and hearing process violated his civil rights, his right to due process, R.C. 4123.34 and the Americans with Disabilities Act. Appellant also restated his 2010 argument that Appellee improperly failed to refer him to a physician for an independent medical examination prior to his initial involuntary disability separation. In her Report and Recommendation, which was subsequently adopted by this Board in its Final Order in SPBR Case No. 10-IDS-04-0092, ALJ Scholl found that Appellee had complied with the applicable procedural requirements in effectuating Appellant's involuntary disability separation. She further explained that this Board does not have jurisdiction over Appellee's internal transitional work program. This Board also lacks jurisdiction to consider claims relating to the Americans with Disabilities Act or Workers Compensation.

Appellant asserts that he retained reinstatement rights to his Maintenance Repair Worker II position until March 18, 2013. O.A.C. 123:1-30-04(J), which addresses employee reinstatement rights, provides that an employee who fails to apply for reinstatement within two years from the date that the employee was no longer in active work status shall be deemed permanently separated from service. As previously established in SPBR Case No. 10-IDS-04-0092, Appellant's last day in active work status was October 2, 2009; Appellant did not file for reinstatement until February 18, 2013, more than two years after the last date he was in active work status. Accordingly, Appellant was permanently separated from service and Appellee had no obligation to consider his request for reinstatement.

Therefore, I find that there is no employment action over which this Board may exercise jurisdiction, and I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of a justiciable issue.


Jeannette E. Gunn
Administrative Law Judge

JEG: