

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

Steven Forbes,

*Appellant,*

v.

Case No. 2014-IDS-12-0300

Department of Youth Services,

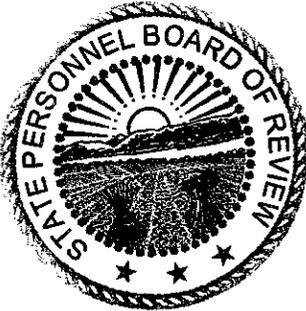
*Appellee,*

**ORDER**

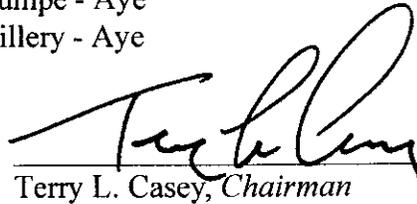
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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**, based on Appellant's receipt of Occupational Injury Leave for the period at issue in the instant appeal and based on the provisions of Appellant's collective bargaining agreement covering the subject matter of cashing out Appellant's leave balances, pursuant to R.C. 124.03, O.A.C. 123:1-30-01, O.A.C. 123:1-33-17, and R.C. 4117.10 (A).



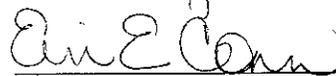
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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.

  
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: 2014-IDS-12-0300

Transcript Costs: N/A Administrative Costs: \$25.00

Total Deposit Required: \* \$25.00

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

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

Steven Forbes

Case No. 2014-IDS-12-0300

*Appellant*

v.

March 26, 2015

Department of Youth Services,  
Circleville Juvenile Correctional Facility  
and Central office,

*Appellee*

James R. Sprague  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's December 19, 2014 timely filing of an appeal from an Involuntary Disability Separation (IDS) from his position of Social Worker 1 with Appellee. Appellant's Order of IDS was served on Appellant on December 12, 2014 and was effective on December 14, 2014.

A pre-hearing was held in this matter on January 22, 2015. On February 18, 2015, Appellee filed Appellee's Supplementation of the Record with Optional Narrative. On February 27, 2015, Appellee filed Appellee's Motion to Dismiss; Memorandum in Support; the Affidavit of Cathy Large, a Human Capital Management Senior Analyst with Appellee; and several pertinent exhibits. On March 3, 2015, Appellant filed Appellant's Response to Appellee's Supplementation to the Record and Optional Narrative. On March 10, 2015, Appellee filed Appellee's Motion to Strike Appellant's Response to Appellee's Supplementation of the Record with Optional Narrative, which is herein DENIED. On March 16, 2015, Appellant filed Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss.

Based on an examination of the extant record, I find that Appellant received a work related injury to his back on or about June 2, 2014 and that, on or about October 20, 2014, Appellant reinjured his back. His last date of work at that time was October 21, 2014.

**Appellant applied for and received Occupational Injury Leave (OIL) covering the time period of October 22, 2014 through December 12, 2014.** Appellant's pre-separation conference was held on November 17, 2014. As noted, above, Appellant was served with an IDS Order on December 12, 2014, which was effective December 14, 2014.

On or about December 31, 2014, Appellee was notified that Appellant was released to return to work as of that date. Appellee reinstated Appellant to his position effective January 18, 2015 and he remains there today. Thus, Appellant's IDS spanned approximately five weeks.

O.A.C. 123:1-33-17 is entitled "Occupational injury leave and salary continuation benefits". For the purposes of O.A.C. 123:1-33-17, "Disabled" – Means the employee is unable to perform the essential functions of their job due to an injury while on-duty". (O.A.C.: 1-33-17 (A) (5)) Appellant applied for and received OIL. The time period covered by that OIL includes the date of Appellant's pre-separation conference. Thus, Appellant was legally precluded from claiming that he was eligible for OIL but could still perform the essential duties of his position. Accordingly, Appellee was authorized to Involuntarily Disability Separate Appellant following the conclusion of his pre-separation conference.

Appellant takes issue with the fact that Appellee separated him at all, given his years of service and his possible return date. Appellant also takes issue with the fact that Appellee did not immediately reinstate him, once Appellee received notice that Appellant could return to work. Finally, Appellant takes issue with Appellee cashing out Appellant's leave balances upon Appellant's IDS.

As found, above, Appellee was permitted to IDS Appellant, given that he had applied for and received OIL for the period at issue. Although Appellee did not reinstate Appellant immediately following Appellee's receipt of notice of Appellant's ability to return to work, Appellant was returned to work a little over two weeks thereafter. Finally, it appears Appellant's concerns regarding Appellee cashing out his leave balances are governed, not by R.C. Chapter 124., but by the collective bargaining agreement covering Appellant's position.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal, based on Appellant's receipt of Occupational Injury Leave for the period at issue in the instant appeal and based on the provisions of Appellant's collective bargaining agreement covering the subject matter of cashing out Appellant's leave balances, pursuant to R.C. 124.03, O.A.C. 123:1-30-01, O.A.C. 123:1-33-17, and R.C. 4117.10 (A).

  
James R. Sprague  
Administrative Law Judge