

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

David McGee,

Appellant,

v.

Case No. 2015-IDS-01-0010

Department of Youth Services,

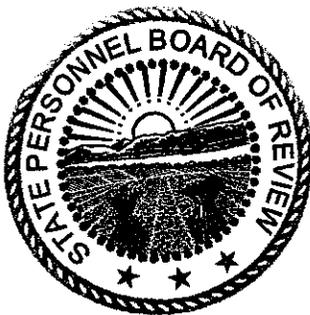
Appellee,

ORDER

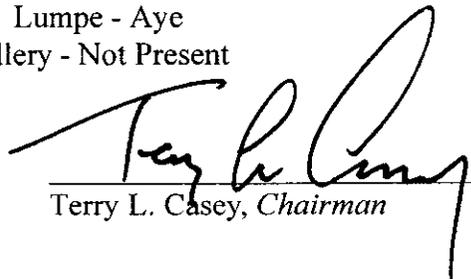
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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, pursuant to R.C. 124.03, O.A.C. 124: 1-30-01, and O.A.C. 123: 1-33-17.



Casey - Aye
Lumpe - Aye
Tillery - Not Present


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 20, 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 27, 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: 2015-IDS-01-0010

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: June 4, 2015

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

David McGee

Case No. 2015-IDS-01-0010

Appellant

v.

April 7, 2015

Department of Youth Services,
Circleville Juvenile Correctional Facility,

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 January 15, 2015 timely filing of an appeal from his Involuntary Disability Separation (IDS) from his position of Juvenile Correction Officer at the Department of Youth Services' Circleville Juvenile Correctional Facility. Appellant received notice of his IDS on January 7, 2015 and the IDS was effective January 11, 2015.

On February 20, 2015, this Board issued a Procedural Order and Questionnaire. On March 18, 2015, Appellee filed its Response thereto. Appellant did not file his optional Reply to Appellant's Response.

On March 23, 2015, Appellee filed: Appellee's motion to dismiss; a memorandum in support; the affidavit of Cathy Large, a Human Capital Management Senior Analyst with DYS; and several pertinent exhibits. Appellant was provided with the requisite time in which to file a memorandum *contra* but, to date, has not done so.

In Appellee's March 15, 2015 Response and in its motion to dismiss, Appellee asserts that Appellant received Occupational Injury Leave (OIL) for the time period of November 1, 2014 through January 10, 2015. Further, in its Response, Appellee asserts that Appellant was, as of March 15, 2015, receiving Temporary Total Disability (TTD) compensation from the Bureau of Workers Compensation.

ENTERED

Based on an examination of the extant record, I find that, on or about August 7, 2014, Appellant received a work-related injury to his right thumb. Appellant's last date of work at that time was August 7, 2014.

Appellant's OIL essentially covers the period at issue in his Order of IDS. This includes December 9, 2014, the date of Appellant's pre-separation conference. (I also note, parenthetically, that it appears that Appellant began receiving TTD and was still on TTD on or about March 15, 2015.)

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.

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, pursuant to R.C. 124.03, O.A.C. 123: 1-30-01, and O.A.C. 123: 1-33-17.


James R. Sprague
Administrative Law Judge