

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

Alice Eichhorn,

*Appellant,*

v.

Case No. 2015-IDS-09-0180

Department of Rehabilitation & Correction,

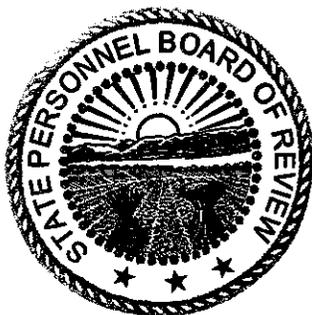
*Appellee,*

**ORDER**

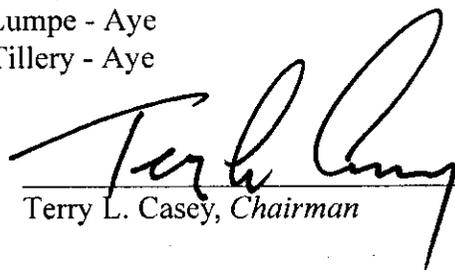
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 this appeal is **DISMISSED** as there is no justiciable issue present.



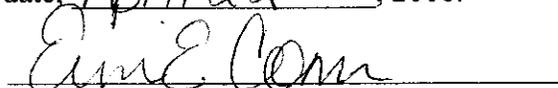
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, April 22, 2016.

  
Erin E. Com  
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 April 29, 2016.** 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-09-0180

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 9, 2016

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

Alice Eichhorn

Case No. 2015-IDS-09-0180

*Appellant*

v.

March 11, 2016

Marion Correctional Institution  
Department of Rehabilitation & Correction

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellee's Motion to Dismiss, filed on November 20, 2015 and Appellant's Response to Appellee's Motion to Dismiss, filed on December 10, 2015 and Appellant's Additional Information, filed on January 20, 2016.

Appellant Eichhorn was involuntarily disability separated effective September 18, 2015. Attached to Appellee's Motion to Dismiss was Exhibit 3, Supplemental Report Disability Leave Benefits form, signed by Appellant Eichhorn on September 15, 2015. In the box which states "Have you returned to work?", Appellant Eichhorn answered "No". In the next box, the question is "If no, what date do you expect to return?" Appellant Eichhorn wrote in "October 1, 2015".

Appellant Eichhorn argues that she was able to perform her duties with an accommodation, but Appellee refused to implement the accommodations. She filed an action with the Ohio Civil Rights Commission regarding her allegations of hostile work environment and allegedly being forced in April, 2015 to exhaust all of her leave time.

This Board does not have jurisdiction to determine if an employer did or did not offer accommodations under the Americans with Disability Act. Unlike a court of general jurisdiction, this Board has only the jurisdiction given to it by statute, and

pursuant to section 124.03 of the Ohio Revised Code, this Board's jurisdiction is limited to determining if an involuntary disability separation was proper or not. As stated above, Appellant Eichhorn argued about actions which took place in April, 2015, but she was not involuntarily disability separated until September, 2015. Therefore, whatever actions took place in April, 2015, they are not relevant to this Board's determination as to the propriety of her separation in September, 2015.

If this appeal were to go to a hearing, the evidence that this Board would look at would be if on the effective date of the involuntary disability separation, September 18, 2015, was Appellant Eichhorn able to perform the essential duties of her position? Since she completed a form on September 15, 2015, which stated that she had not returned to work and was not expected to return to work until October 1, 2015, it is clear that as of September 18, 2015, she could not perform the essential duties of her position. Even though Appellant Eichhorn argued that she could perform her duties if she had been given an accommodation, this Board does not have the jurisdiction to determine whether or not that argument has merit. It is up to the appointing authority to determine what is or is not a proper accommodation for an employee and if the employee disagrees, another forum other than this Board would have to address that question.

Appellant Eichhorn also stated in her response that she had requested her reinstatement rights by appealing to this Board. Filing an appeal of an involuntary disability separation is not a request for reinstatement. Such request must be made to the Appellee with proper medical documentation to substantiate that she can return to work. If Appellant Eichhorn submits such reinstatement request to Appellee and is denied reinstatement, then she can file an appeal of that denial with this Board.

Inasmuch as the record is clear that Appellant Eichhorn could not perform the essential duties of her position as of the effective date of her involuntary disability separation, there is no justiciable issue present. Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED**.

  
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Marcie M. Scholl  
Administrative Law Judge