

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

Dante Gray,

Appellant,

v.

Case No. 2016-IDS-02-0018

Department of Youth Services,

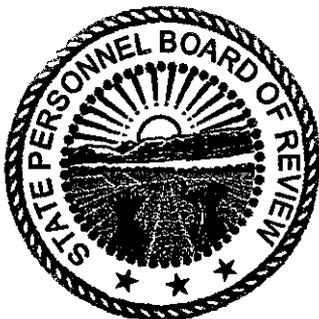
Appellee,

ORDER

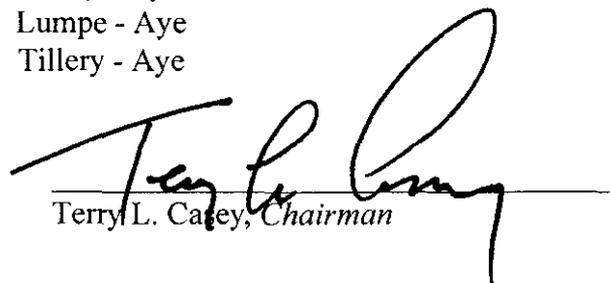
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 to dismiss is **GRANTED** and the appeal is **DISMISSED** due to the lack of a justiciable issue.



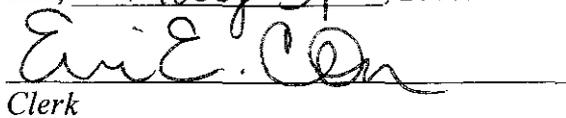
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, May 31, 2016.


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 June 7, 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: 2016-IDS-02-0018

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 15, 2016

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

Dante Gray,

Case No. 2016-IDS-02-0018

Appellant

v.

May 10, 2016

Department of Youth Services,
Cuyahoga Hills Juvenile Correctional Facility,

Appellee

Elaine K. Stevenson
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's February 2, 2016 filing of an appeal of his Involuntary Disability Separation from his position of Juvenile Correctional Officer with the Department of Youth Services, Cuyahoga Hills Juvenile Correctional Facility (Appellee).

On February 11, 2016, this Board issued a Procedural Order and Questionnaire. On February 23, 2016, Appellee filed its response thereto. On March 1, 2016, Appellant filed his reply. This matter was then set for hearing. On March 31, 2016, Appellee filed a motion to dismiss, memorandum in support; the affidavit of Darlene Schmidt, Human Capital Management Senior Analyst; and several documents. In order to allow sufficient time to consider Appellee's motion and any response filed by Appellant, the hearing date of April 27, 2016 was vacated via a Procedural Order issued on April 14, 2016. As May 9, 2016, Appellant has not filed a reply to Appellee's Motion to Dismiss.

The uncontroverted information contained in the record establishes that, on or about October 16, 2015, Appellant suffered a work-related injury to his Achilles tendon. Appellant's last day of work was October 16, 2015. Appellant was involuntarily disability separated from his position as a Juvenile Correctional Officer, effective February 7, 2016. Appellant received proper notice of his pre-separation hearing, which was held on January 11, 2016. Appellant was given an opportunity to review Appellee's evidence, and present his own evidence. Appellant received his Order of Involuntary Disability Separation on January 29, 2016. Appellee provided Appellant with a copy of Ohio Administrative Code (O.A.C.) 123:1-30-04 regarding reinstatement rights and appeal rights. (Appellee's Exhibit 4 and 6).

The medical evidence presented at Appellant's pre-separation hearing included two completed and signed "Physician's Report of Work Ability" forms. Both reports indicate that Appellant's medical condition prevents a full duty release to the job of

Juvenile Correctional Officer. The report dated January 8, 2016 indicates that the period of Appellant's restricted duty extended through at least March 13, 2016. The report dated January 11, 2016 contains conflicting information with regard to the extent of Appellant's restricted duty. Although both physician reports indicate that Appellant could return to work with restrictions, neither report attests that Appellant was able to perform the essential job duties of his position as a Juvenile Correctional Officer.

The information in the record further establishes that Appellant applied for and received Occupational Injury Leave pursuant to O.A.C. 123:1-33-17 for the time period of January 31, 2016, through February 6, 2016. In order for Appellant to receive Occupational Injury Leave under O.A.C. 123:1-33-17, he must assert that he is unable to perform the essential functions of his position as a result of an injury obtained while on duty.¹

Ohio law permits a state employer to impose an involuntary disability separation on an employee if the employee is not capable of performing his or her essential job duties due to a disabling illness, injury, or condition. An employee so separated shall have the right to appeal to this Board. (See *Sammie C. Cordial v. Dept. of Rehab & Corr., SE Corr. Inst.*, (2006) Tenth Appellate District, No. 05AP-473.). In a hearing regarding an involuntary disability separation, this Board considers (1) whether the Appellee has complied with the procedural requirements for the implementation of an involuntary disability separation as set forth in O.A.C. 123:1-33-01 and (2) whether the employee was able to perform the essential job duties of his position as of the date of his or her involuntary disability separation.

Since the uncontroverted evidence in this case establishes that Appellee involuntarily disability separated Appellant in accordance with the procedural requirements in O.A.C. 123:1-30-01, the sole remaining issue is whether Appellant was able to perform the essential job duties of his position as of the date of his involuntary disability separation on February 6, 2016. Appellant's receipt of Occupational Injury Leave during the time period covered by Appellant's award of Occupational Injury Leave includes the date of Appellant's pre-separation hearing, through his last day of work. Therefore, Appellant has constructively conceded that he could not perform the essential job duties of his position as of the date of his involuntary disability separation. Moreover, the medical evidence submitted at Appellant's pre-separation hearing demonstrates that Appellant was unable to perform the essential job duties of his position at the time of his pre-separation hearing and at the time of his involuntary disability separation.

Appellant's response to this Board's February 11, 2016 Procedural Order suggests that Appellant may desire to return to work through a transitional work program under O.A.C. 123:1-33-07. Although a determination as to whether Appellant is

¹ No information was submitted to indicate that Appellant has applied for other compensation or for reinstatement pursuant to O.A.C. 123:1-30-01(E) after his Occupational Injury Leave benefits were exhausted on February 7, 2016.

eligible for a transitional work program is not within the scope of this Board's jurisdiction, Appellant may want to contact Appellee regarding whether such a program is available and, if so, how he may apply.

Therefore, since Appellant was receiving Occupational Injury Leave at the time of his pre-separation hearing on January 11, 2016 and his involuntary disability separation on February 6, 2016, and since the medical evidence presented indicates that Appellant was unable to perform the essential job duties of his position from the date of his injury on October 16, 2015, through at least March 13, 2016, I respectfully RECOMMEND that the State Personnel Board of Review GRANT Appellee's motion to dismiss and DISMISS this appeal due to the lack of a justiciable issue.


Elaine K. Stevenson
Administrative Law Judge