

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

Mark A. Strickland,

Appellant,

v.

Case No. 2016-IDS-06-0107

Department of Youth Services,

Appellee,

ORDER

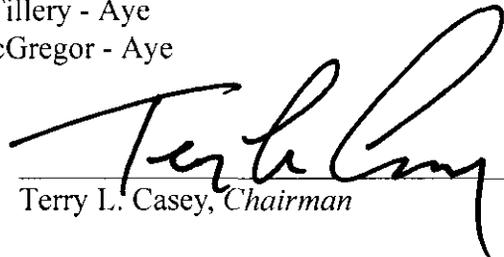
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the instant appeal is **DISMISSED**.



Casey - Aye
Tillery - Aye
McGregor - Aye

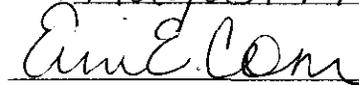


Terry L. Casey, *Chairman*

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, August 19, 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 August 26, 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-06-0107

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: September 6, 2016

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

Mark A. Strickland

Case No. 16-IDS-06-0107

Appellant

v.

July 26, 2016

Department of Youth Services,
Circleville Juvenile Correctional Facility

And

Department of Youth Services,
Central Office

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on July 11, 2016. Appellant filed no memorandum *contra*.

Uncontroverted evidence contained in the record indicates that Appellant's last day of work was February 22, 2016. Appellant applied for disability leave benefits from the Department of Administrative Services (DAS) and was granted Occupational Injury Leave (OIL) for the period of February 23, 2016, through June 3, 2016.

The record indicates that Appellant was notified of and participated in a pre-separation hearing on May 11, 2016, but presented no credible medical evidence to support his ability to return to work and/or his ability to perform the essential functions of his position. Appellant was involuntary disability separated from his position as a Youth Services Unit Administrator, effective May 29, 2016.

CONCLUSIONS OF LAW

Appellant filed no information with this Board to dispute Appellee's assertion that he was receiving disability leave benefits from DAS as of the effective date of his involuntary disability separation, May 29, 2016. In order to receive OIL benefits, O.A.C. 123:1-33-17 requires that an employee be evaluated by an approved physician to determine if his or her injury will keep the employee from performing the essential functions of his or her position; the employee must, at the same time, apply for workers' compensation benefits.

In order to prevail in a record hearing before this Board, Appellant would be required to present evidence that he was ready, willing and able to perform the essential duties of his position as of the date of his involuntary disability separation. Because Appellant had previously asserted to DAS that he was unable to perform those duties and was receiving benefits due to his inability to work, it would be fraudulent for him to now argue to this Board that he actually could have worked as of that date. I find that Appellant may not claim in good faith that he was capable of performing the essential duties of his position as Youth Services Unit Administrator as of May 29, 2016.

Appellant was receiving disability leave benefits as of the effective date of his involuntary disability separation, therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.


Jeannette E. Gunn
Administrative Law Judge