

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

David Arnold,

Appellant,

v.

Case No. 2016-IDS-08-0166

Department of Rehabilitation & Correction,

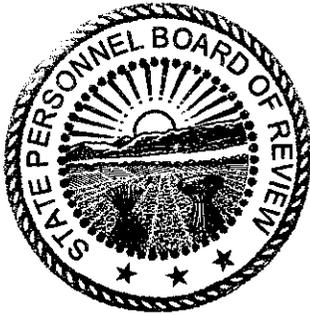
Appellee,

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 Appellee's motion is **GRANTED** and the instant appeal is **DISMISSED** because Appellant cannot claim that he could perform his essential duties either on or about the time of his Involuntary Disability Separation, pursuant to R.C. 124.03.



Casey - Aye
Tillery - Aye
McGregor - Aye

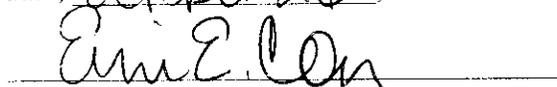


Terry L. Casey, *Chairman*

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, October 26, 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 November 2, 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-08-0166

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: November 10, 2016

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

David Arnold

Case No. 2016-IDS-08-0166

Appellant

v.

September 19, 2016

Department of Rehabilitation and Correction,
Allen Correctional Institution

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 August 19, 2016 timely filing of an appeal from an Involuntary Disability Separation (IDS) from the position of Correctional Program Specialist (Case Manager) at Allen Correctional Institution. Appellant's IDS was effective August 19, 2016.

On August 24, 2016, this Board issued a Procedural Order and accompanying Questionnaire to Appellee. On September 2, 2016, Appellee filed its motion to dismiss and accompanying affidavit and pertinent documents in lieu of responding to the Questionnaire. Appellee's motion and accompanying materials serve to satisfactorily and fully respond to that Questionnaire.

On September 13, 2016, this Board issued a Procedural Order extending Appellant's time to file his memorandum *contra* to Appellee's motion to dismiss. However, Appellant was able to file his memorandum *contra* on that same date of September 13, 2016. Additionally, on September 15, 2016, Appellant filed his motion for discovery.

The record reflects that Appellant had a left total hip replacement in May 2016. However, during recovery from that surgery, the right hip became increasingly painful. This, in turn, required right total hip replacement surgery. That surgery was scheduled for September 16, 2016 with an estimated return to work date of December 9, 2016.

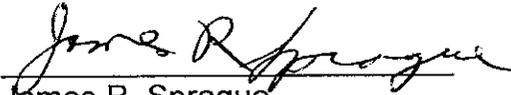
Appellant filed an Application for DAS Disability Leave Benefits. That request was initially granted and was later expanded to include the period covering at least May 24, 2016 through September 6, 2016. Thus, the approved Disability Benefits coverage period includes the August 19, 2016 effective date of Appellant's IDS.

This Board is permitted to consider an employee's filing of an Application for DAS Disability Benefits to be an admission that the employee is incapable of performing the employee's duties for the period of time covered by the Application.

To summarize, there is no credible information in the record suggesting that Appellant can currently perform the essential duties of his position. Nor is there any credible information in the record suggesting that Appellant could perform the essential duties of his position at the time of his IDS. Indeed, if his surgery occurred as scheduled, Appellant underwent right total hip replacement surgery on September 16, 2016.

It is noted that an IDS has nothing to do with the level of skill and level of dedication with which an employee performs his or her duties. It is simply an assessment of the specific condition of the employee at a fixed point in time.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal because Appellant cannot claim that he could perform his essential duties either on or about the time of his Involuntary Disability Separation, pursuant to R.C. 124.03.


James R. Sprague
Administrative Law Judge