

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

HANK L. CORNLEY JR,

Appellant,

v.

Case No. 05-IDS-03-0093

DEPARTMENT OF YOUTH SERVICES CENTRAL OFFICE,

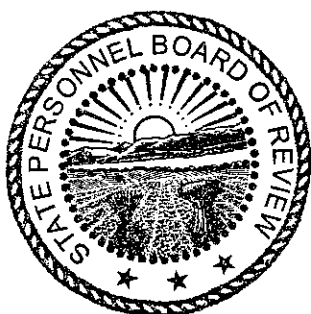
Appellee.

ORDER

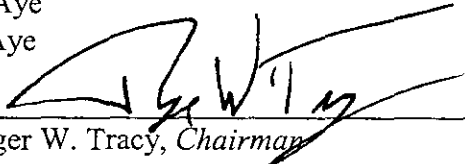
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and 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 denial of Appellant's request to be reinstated from his disability separation be **DISAFFIRMED**. As a result of such disaffirmance, Appellant shall be **REINSTATED** as a Unit Manager with the Marion Juvenile Correctional Facility, with all pertinent back pay and benefits due, subject to any and all monetary setoffs, including, but not limited to, any unemployment compensation benefits Appellant received from February 7, 2005 (Appellant's release date to return to work) to November 21, 2005 (Appellant's reinstatement date), pursuant to O.R.C. Chapter 124. and O.A.C. §§ 123:1-33-01 through 123:1-33-04.



Tracy – Aye
Lumpe – Aye
Booth – Aye

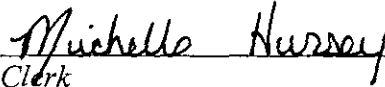


Roger W. Tracy, *Chairman*

CERTIFICATION

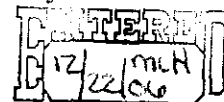
The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that the foregoing is ~~(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, DECEMBER 22, 2006.



Michelle Hurray
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.



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

Hank L. Cornley, Jr.,

Case No. 05-IDS-03-0093

Appellant

v.

November 8, 2006

Ohio Department of Youth Services,
Central Office,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on November 8, 2006, upon the Appellant's filing of an appeal on March 18, 2005, as a denial of his reinstatement to his position as a Unit Manager with the Department of Youth Services, Marion Juvenile Correctional Facility.

The record hearing in this case was held on August 7, 2006, at 12:30 p.m. The Appellant, Hank L. Cornley, Jr., was represented by Kenneth Boggs, Attorney at Law. The Appellee, the Ohio Department of Youth Services, Central Office, was present through its designee, Amy Grover, a Personnel Officer 3 and Acting Personnel Administrator and was represented by Joseph N. Rosenthal and Monica L. Rausch, Assistant Attorneys General. The hearing was conducted by the State Personnel Board of Review in accordance with Ohio Administrative Code Section 123:1-33-04(A) Right to Reinstatement; Rights of Appeal, as an employee may make a written request to the appointing authority for reinstatement from a disability separation. It was noted that the employee's request shall be accompanied by substantial, credible medical evidence that the employee is once again capable of performing the essential portions of the employee's job duties, and shall be not made more than once every three months and no later than three years from the date that the employee was no longer in active work status due to the disabling illness, injury or condition. Further, it was noted under Ohio Administrative Code Section 123:1-33-04(I) an employee who has refused reinstatement as provided in this rule shall be notified in writing of the refusal to reinstate and the right to appeal in writing to the State Personnel Board of Review within thirty days of receiving

notice of that refusal to reinstate. It was agreed, as well as stipulated, that the instant appeal was filed on March 10, 2005, and was deemed timely by all the parties concerned as the Appellant did receive the notice of his denial of his reinstatement on or about February 9, 2005.

Further, it should be noted that the Appellant did apply for reinstatement on January 21, 2005, and that he attached two medical documents to his request for reinstatement, that being Dr. Kramer's letter dated January 31, 2005, and Dr. Demas' return to work slip faxed to the Appellee on or about February 3, 2005. Moreover, and thereafter, on February 9, 2005, a denial letter was sent from Mr. Norm Hills, the Superintendent of the Marion Juvenile Correctional Facility to the Appellant, which he received which specifically stated that the agency relied on both Dr. Rutherford's and Dr. Garcia's medical reports for the denial of his reinstatement, although the agency did consider both Dr. Kramer's and Dr. Demas' medical documents, as well.

Moreover, it should be noted that the Appellant herein did subsequently apply for reinstatement that was granted and that he has been back to work since November 21, 2005, in his position as a Unit Manager with the Marion Juvenile Correctional Facility. Thus, the only time period for consideration of this denial of reinstatement would in fact be from the date which the Appellant applied for reinstatement on January 21, 2005 up to November 21, 2005.

Moreover, it should be noted that in this instant case the Appellant had been out on a previous disability separation on October 15, 2001, up until the time he was reinstated on October 14, 2003, for events surrounding an injury he received to his back and shoulder area by struggling with a youth at the department. Further, it must be noted, the Appellant again went out on a voluntary disability separation on June 21, 2004, specifically for the following conditions of high blood pressure, anxiety, depression and sleep apnea, and not for any injuries relating to his back or shoulder or knee.

STATEMENT OF THE CASE

As in all cases of a denial of reinstatement the burden of proof remained upon the Appellant that he timely applied for reinstatement and provided the appointing authority, at that time, substantial credible medical or psychological evidence

indicating that he was capable of performing the essential duties of his position to establish his *prima facie* case. After which, the appointing authority and/or the Appellee, would then have at that opportunity to rebut the testimony presented in the Appellant's case-in-chief by either directly attacking the weight or sufficiency of the Appellant's testimony and/or evidence, presenting on the appointing authority's behalf contravening testimony and/or evidence or attempt to demonstrate that the Appellant failed to substantially comply with the pertinent procedural requirements for reinstatement. Thereafter, the Appellant will then be provided with an opportunity to rebut any of the Appellee's testimony.

The Appellant's first witness to testify was, the Appellant, Hank L. Cornley, Jr. When questioned, Mr. Cornley testified he has been an employee of the Department of Youth Services, Marion Juvenile Correctional Facility for approximately the last twelve years and that when he went out on disability leave in June 2004 he was employed in the position of a Unit Manager. The witness, for background purposes, explained he had previously been out on disability leave from October 2001 to October 2003 for a back and shoulder injury he received while struggling with a youth in the performance of his job. The witness explained he had been seeing Dr. Demas, his family doctor, for approximately the last fifteen to twenty years and that Dr. Demas is familiar with his job he holds as a Unit Manager with the Department of Youth Services as he has discussed this with Dr. Demas from time to time. Further, Mr. Cornley testified it was Dr. Demas who gave him a return to work slip and identified the same as Appellee's Exhibit C which stated that he could return to work with no restrictions on February 7, 2005. The witness then identified Appellant's Exhibit 2 as another return to work slip from Dr. Demas that he received on or about October 23, 2003, and that was the document he used to return to work back then, as well. However, upon further questioning by the undersigned, the witness explained that Appellant's Exhibit 2 was a return to work slip from him being off work only one week and it was not related in any way, shape or fashion to his reinstatement to employment on October 14, 2003 from his previous disability separation.

Next, Mr. Cornley explained it was approximately on June 4, 2004, that he had contacted Jan Tripp, a Personnel Officer 3 and Personnel Administrator of the Marion Juvenile Correctional Facility about his desire to go off on a voluntary disability separation. Mr. Cornley testified he received Appellee's Exhibit F, a letter dated June 4, 2004, authored by Ms. Jan Tripp, advising him that she had received and reviewed the medical documentation for a disability separation, which was

eventually granted on June 21, 2004. Additionally, Mr. Cornley identified Appellee's Exhibit G as his signature attached to a voluntary disability separation request which he signed on or about June 15, 2004, as well. Furthermore, Mr. Cornley testified the doctor's letter or the request that he turned in on or about June 4, 2004 was not in his personnel file and that he had talked to Ms. Grover about this and it could not be located to substantiate to what exactly he had requested in this voluntary disability separation.

However, Mr. Cornley identified Appellant's Exhibit 1 as an October 3, 2005, letter that he received prior to his reinstatement on November 21, 2005, which showed he was to provide credible medical evidence relating to his hypertension, sleep apnea and depression and/or was the reason for his disability separation back in June of 2004. The witness then explained Dr. Demas had requested that he go off on voluntary disability as he was having these problems and needed treatment. Further, Mr. Cornley testified Dr. Demas was also familiar with his job duties and responsibilities as he had discussed it with Dr. Demas, and that Dr. Demas was comfortable in returning him back to work when he filed for reinstatement in January of 2005. However, Mr. Cornley testified Ms. Jan Tripp, when he turned in Dr. Demas' return to work slip, had told him that they could not accept Dr. Demas' rubber stamped mark, but needed an actual signature to which he averred that the doctor's office later faxed in his signature.

Mr. Cornley reidentified Appellee's Exhibit C along with Appellant's Exhibit 2 and explained that both of these were return to work with no restrictions from Dr. Demas' office and that appeared to be the way the agency wanted to have information in their file, or at least he thought. Mr. Cornley then identified Appellant's Exhibit 3 as a cover letter from Dr. Demas' office which shows that there was a fax sent in to the Marion Juvenile Correctional Facility to Mr. Norm Hills' office on February 3, 2005 at 4:46 p.m. Again, the witness re-identified Appellee's Exhibit C as the return to work slip dated February 3, 2005, and noted that there appeared to be a marking marked fax 2-3-5 at 11:40 a.m. and averred that this was his initial slip that he had taken in when he applied for reinstatement. When questioned with respect to if when he reviewed his personnel file if he found any information on the previous disability leave, explained that Ms. Grover stated there was none in his personnel file. Additionally, Mr. Cornley testified that once his denial of reinstatement came through he filed for unemployment compensation, which was approved and was paid for approximately six months totaling \$7,944. Further, Mr. Cornley testified when he was initially disability separated in June 2004, he was

being paid \$22.43 per hour. Mr. Cornley testified after he received the agency's February 9, 2005, letter to himself denying him reinstatement, also identified as Appellee's Exhibit E, he called the Marion Juvenile Correctional Facility and talked to Ms. Tripp. The witness explained to Ms. Tripp at that time that both Dr. Rutherford and Dr. Garcia's statements and/or medical documentations were from his prior Bureau of Workers' Compensation case, and/or his previous injury, and did not address the reason why he went out on disability leave in June 2004. It should be noted that while Ms. Tripp was had various conversations with the Appellant and was involved in his case, suddenly two months ago passed away in a motorcycle accident and therefore she is not present to testify.

Mr. Cornley identified Appellant's Exhibit D as Dr. Kramer's letter he sent in with his reinstatement letter and that he had been providing outpatient psychological treatments to himself and that in his opinion he could return to full duty as a Corrections Officer without limitation. Mr. Cornley testified he had talked to Dr. Kramer about his job duties and responsibilities and that he was familiar with the same.

On cross-examination, Mr. Cornley testified he was requesting to be reinstated to a Unit Manager's position, not a Correction Officer's position. The witness identified Appellee's Exhibit H as his position description and explained that it was accurate to the best of his knowledge. Furthermore, Mr. Cornley explained that Dr. Demas has been his family doctor for approximately fifteen to twenty years and that he knows his job and what he does do on his job, as well as he has treated other correctional officers and personnel and is familiar with the employees of the Marion Juvenile Correctional Facility. Further, when questioned with regard to Appellee's Exhibit C and Appellant's Exhibit 3, the faxed information on February 3, 2005, at 11:40 a.m., the witness agreed that none of the times match and that it is confusing at best. Furthermore, Mr. Cornley testified, after identifying Appellee's Exhibit G, that was his signature affixed to the voluntary disability separation agreement, which was dated on June 15, 2004. When asked if he had received Appellee's Exhibit I, the June 22, 2004, letter addressed to himself from Norm Hills, the Superintendent, could not answer with specificity, but agreed that was his address at that time. When asked in the second paragraph wherein it states "Per the Ohio Civil Service Law 123:1-33-04, you are eligible to reinstate by sending a written request to reinstate along with substantial credible medical evidence that you are capable of performing the essential portions of your job duties", the witness explained he never inquired and/or asked what that exactly meant. Lastly, when questioned, the

witness testified he did not know when Ms. Tripp began her employment with the Marion Juvenile Correctional Facility, as well.

The Appellant's next witness to testify was Ms. Amy Grover, a Personnel Officer 3 and Acting Personnel Administrator for the Human Resources Department at the Marion Juvenile Correctional Facility. Ms. Grover explained that she has held her present position for a little over the last two months, but had been in the Personnel Office for approximately the last six years. The witness explained that Mr. Cornley came to her recently about looking into his personnel file, but that he did not ask about his prior disability papers, which is in a separate file, and not in his personnel file. Furthermore, Ms. Grover could not recall whether Mr. Cornley asked about the Workers' Compensation file, but recalled that she did give him a copy of his most recent one. With respect to Appellant's Exhibit 3, Ms. Grover testified that that paper may have been in his personnel file, but did not know if there actually was a second page to it, as that could not be located. Ms. Grover explained there are separate files regarding disability in Ms. Tripp's office, along with an SPBR file and explained that Ms. Tripp passed away in June 2006 and that there had been some confusion about getting certain documents to the Appellant when requested.

There was no cross-examination elicited from the above witness.

The Appellee began its case-in-chief by recalling Ms. Amy Grover to the witness stand. Ms. Grover further explained that she had held her position of Personnel Officer 2 for approximately four years and she handled the risk management side of things and worked under Jan Tripp, as Ms. Tripp was her supervisor. Further, Ms. Grover explained she was more involved in ordering independent medical examinations for employees that were coming in for disability separations and/or workers' compensation claims. The witness then identified Appellee's Exhibit A, as Dr. Garcia's September 4, 2004, medical workup and/or documentation which she provided to Ms. Tripp to use in the reinstatement issue at hand. Additionally, the witness identified Appellee's Exhibit B as Dr. Rutherford's October 26, 2004, patient workup of Mr. Cornley and medical documentation, which again she provided to Ms. Tripp to use in the reinstatement issue at hand. After review of the above documents, Ms. Grover testified at the time the doctors had reviewed Mr. Cornley's medical condition, that he could not hardly even walk and that he was under a permanent partial disability on his workers' compensation claim. When asked if she had seen Appellee's Exhibit C, Dr. Demas' return to work slip, Ms. Grover testified she had. Furthermore, she explained she had also seen

Appellee's Exhibit D as Dr. Kramer's statement advising the agency that he had been providing outpatient psychological treatment to Mr. Cornley and was able to return to full duty as a correction officer without limitation. After reidentifying Appellee's Exhibit C, Dr. Demas' return to work slip, the witness testified that in her opinion, that did not adhere to any credible medical evidence as it did not even address any of the conditions which he had been treating the Appellant for. However, the witness testified the agency at that time should have asked for further medical documentation as a follow-up. When questioned about the statement from Dr. Kramer, also known as Appellee's Exhibit D, the witness testified that the appointing authority still should not have relied on it as credible medical evidence, not only had he provided outpatient psychological treatment to the Appellant, he had other problems which were not addressed that should have been. Ms. Grover testified as a standard practice even though Dr. Kramer would be happy to file any additional form, testified the agency does not call the doctors and/or request this as a matter of course.

On cross-examination, Ms. Grover testified that disability claims and workers' compensation claims are basically what she does at the agency. After identifying Appellee's Exhibit B, Dr. Rutherford's medical analysis she performed on October 26, 2004, the witness testified she was unsure whether he approved it or not and that it was for a very limited purpose for his sprained knee and leg and that he did not provide patient care for Mr. Cornley. When identifying Appellee's Exhibit A, Dr. Garcia's medical evaluation and statement, Ms. Grover agreed that this report, as well as the previous report, were not written to see if an employee can go back to work or not, but is simply an evaluation of a workers' compensation claim. Furthermore, the witness agreed that both of these statements were obtained from Dr. Garcia and Dr. Rutherford in September 2004 and October 2004, respectively, and that the Appellant could have improved his condition between that time and the time that he applied for reinstatement in the end of January 2005. Again, the witness testified both of these doctor statements are not for any disability claims, but were for the workers' compensation claims he had had previously which relate back to the prior disability separation from October 2001 through October 2003.

The Appellee called as its second witness, Mr. Norm Hills, the prior Superintendent of the Marion Juvenile Correctional Facility. Mr. Hills testified that he is currently employed as a Release Authority Board Member and that his prior position was as the Superintendent of the Marion Juvenile Correctional Facility from April 2002 through 2005. Mr. Hills explained he was in fact the Superintendent

when Mr. Hank Cornley requested reinstatement to his position. However, Mr. Hills testified as Superintendent he delegated the responsibility of reviewing reinstatements to the Personnel Officer Administrator, at that time, Ms. Jan Tripp. However, the witness did state he signed off on the disability separations, although the Director has the final say so. Mr. Hills testified the Personnel Officer Administrator at that time, when Mr. Cornley requested reinstatement, was Ms. Jan Tripp and that he signed off on a letter drafted by her which was previously identified as Appellee's Exhibit E and/or the letter dated February 9, 2005, denying Mr. Cornley of his reinstatement to his position as Unit Manager.

On cross-examination, Mr. Hills testified it is true that he delegated the responsibility on disability separations and reinstatements to the Personnel Administrator, Ms. Jan Tripp, and that he relied on her solely. Mr. Hills testified he did not know specifically all of the specific guidelines for disability separations and/or reinstatements and that he relied on Ms. Tripp to do this and inform him of these matters as appropriate. Mr. Hills then testified that Ms. Tripp did in fact draft Appellee's Exhibit E, a letter dated February 9, 2005, which he signed as Superintendent denying Mr. Cornley reinstatement to his position. Furthermore, the witness testified he did not read Dr. Garcia's or Dr. Rutherford's medical examinations and/or statements and agreed that both of these statements were for a limited purpose and related back to a workers' compensation claim. Furthermore, when asked specifically about Dr. Garcia's medical examination and statement, the witness explained when someone is only nine percent impaired that that person could probably work. When asked why Mr. Cornley was out on voluntary disability separation in June of 2004, Mr. Hills testified he specifically did not know, but thought it was related to back problems that occurred due to a use of force he had with a youth at the agency. Furthermore, Mr. Hills testified the letter he signed on February 9, 2005, did not list why he was out on disability or that it was for back or knee problems. When asked if he reviewed Dr. Demas' return to work slip or Dr. Kramer's return to work paperwork without any limitations after his outpatient treatment for psychological services, testified he had not read those reports prior to signing off on the February 9, 2005, letter denying Mr. Cornley of his reinstatement. Further, Mr. Hills testified he has not even looked in Mr. Cornley's personnel file and/or did not review the same prior to signing off on the denial of reinstatement.

On re-direct examination, the witness testified Dr. Demas' return to work slip was probably not enough substantial credible medical evidence for his

reinstatement, but that Ms. Tripp should have contacted Dr. Demas for further information at that point.

On re-cross examination, Mr. Hills testified based on the two reports and/or medical examinations by Dr. Rutherford and Dr. Garcia, knowing that his disability was for his hypertension, sleep apnea and depression, Mr. Cornley should have not been denied his reinstatement.

FINDINGS OF FACT

1. The Appellant, Hank L. Cornley, Jr., received notice on February 9, 2005, of his denial of reinstatement to his position as a Unit Manager with the Ohio Department of Youth Services, Marion Juvenile Correctional Facility.

2. The Appellant, Hank L. Cornley, Jr., applied for reinstatement to his position as a Unit Manager with the Marion Juvenile Correctional Facility on or about January 26, 2005, after he had been out on voluntary disability separation since June 21, 2004, for hypertension, sleep apnea, and depression the conditions which Dr. Demas lists on his May 10, 2004, application for disability benefits.

3. The Appellee, in its February 9, 2005, letter from Norm Hills, the Superintendent of the Marion Juvenile Correctional Facility denied Mr. Cornley his reinstatement to his position based on Dr. Rutherford and Dr. Garcia's medical examinations of September 4 and October 26, 2004, respectively.

4. The Appellant, Hank L. Cornley, Jr., submitted to the appointing authority in his letter for reinstatement to his position as Unit Manager a letter from Dr. Kramer and a return to work slip from Dr. Demas, his family treating physician for approximately the last fifteen to twenty years, releasing the Appellant back to work for February 7, 2005.

5. The appointing authority, while it relied on the medical documentation from Dr. Garcia and Dr. Rutherford, those reports were done and/or completed in connection to a bureau workers' compensation claim regarding the permanent partial impairments relating to his back, shoulder and knee, and not in any way related to the Appellant's June 21, 2004, voluntary disability separation for hypertension, sleep apnea and depression.

6. Further, the appointing authority in its reports from Dr. Rutherford and Dr. Garcia, attested that both of these doctors did not provide patient care and that those reports were prepared only for the evaluation of a medical impairment in regards to the Appellant's Bureau of Workers' Compensation claim.

7. The Appellant, Hank L. Cornley, Jr., in his medical documentation which he submitted from Dr. Kramer did list that he had responded well to outpatient psychological treatment and could return to full duty as a Corrections Officer without limitations.

8. The Appellant, Hank L. Cornley, Jr., in the medical documentation which he attached outlining Dr. Demas' return to work slip stated that he was able to return to work on or about February 7, 2005, with no restrictions. However, the evidence revealed in Dr. Demas' return to work slip there were no mention of what he had treated the Appellant for and/or any express language with respect to whether he could perform the essential job portions of his duties.

9. However, the appointing authority did not provide any evidence, and/or send the Appellant out for a subsequent independent medical examination pursuant to Ohio Administrative Code Section 123:1-33-01(A) after they had received the Appellant's request for reinstatement, that contained two medical statements allowing him to return to work without limitations, with respect to the disabling condition of hypertension, sleep apnea and depression which were the reasons why the Appellant had been off on disability leave.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether the Appellant should be reinstated to his position of a Unit Manager with the Department of Youth Services, Marion Juvenile Correctional Facility, after he received notification that he was denied reinstatement on his voluntary disability separation. Based on the findings above and for the reasons set forth below, we must answer this question in the affirmative.

As in all cases of a denial of reinstatement the burden of proof remained upon the Appellant that he timely applied for reinstatement and provided the appointing

authority, at that time, substantial credible medical or psychological evidence indicating that he was capable of performing the essential duties of his position to establish his *prima facie* case. After which, the appointing authority and/or the Appellee, would then have at that opportunity to rebut the testimony presented in the Appellant's case-in-chief by either directly attacking the weight or sufficiency of the Appellant's testimony and/or evidence, presenting on the appointing authority's behalf contravening testimony and/or evidence or attempt to demonstrate that the Appellant failed to substantially comply with the pertinent procedural requirements for reinstatement. Thereafter, the Appellant will then be provided with an opportunity to rebut any of the Appellee's testimony.

Ohio Administrative Code Section 123:1-33-04(A) Right to Reinstatement; Rights of Appeal, states in pertinent part that an employee may make a written request to the appointing authority for reinstatement from a disability separation. It was noted that the employee's request shall be accompanied by substantial, credible medical evidence that the employee is once again capable of performing the essential portions of the employee's job duties, and shall be not made more than once every three months and no later than three years from the date that the employee was no longer in active work status due to the disabling illness, injury or condition. Further, it was noted under Ohio Administrative Code Section 123:1-33-04(l) an employee who has refused reinstatement as provided in this rule shall be notified in writing of the refusal to reinstate and the right to appeal in writing to the State Personnel Board of Review within thirty days of receiving notice of that refusal to reinstate. It was agreed, as well as stipulated, that the instant appeal was filed on March 10, 2005, and was deemed timely by all the parties concerned as the Appellant did receive the notice of his denial of his reinstatement on or about February 9, 2005.

Further, it should be noted that the Appellant did apply for reinstatement on January 21, 2005, and that he attached two medical documents to his request for reinstatement, that being Dr. Kramer's letter dated January 31, 2005, and Dr. Demas' return to work slip faxed to the Appellee on or about February 3, 2005. Moreover, and thereafter, on February 9, 2005, a denial letter was sent from Mr. Norm Hills, the Superintendent of the Marion Juvenile Correctional Facility to the Appellant, which he received which specifically stated that the agency relied on both Dr. Rutherford's and Dr. Garcia's medical reports for the denial of his reinstatement, although the agency did consider both Dr. Kramer's and Dr. Demas' medical documents, as well.

Moreover, it should be noted that the Appellant herein did subsequently apply for reinstatement that was granted and that he has been back to work since November 21, 2005, in his position as a Unit Manager with the Marion Juvenile Correctional Facility. Thus, the only time period for consideration of this denial of reinstatement would be from the date which the Appellant applied for reinstatement on January 21, 2005 up to November 21, 2005.

Additionally, it should be noted that in this instant case the Appellant had been out on a previous disability separation on October 15, 2001, up until the time he was reinstated on October 14, 2003, for events surrounding an injury he received to his back and shoulder area by struggling with a youth at the department. Further, it must be noted, the Appellant again went out on a voluntary disability separation on June 21, 2004, specifically for the following conditions of high blood pressure, anxiety, depression and sleep apnea, and not for any injuries relating to his back or shoulder or knee, which the Appellee knew of or should of known, which apparently caused confusion for all of those involved in the processing of this matter.

The Appellant in this case went out on a voluntary disability separation on June 21, 2004, specifically for the following conditions of high blood pressure, anxiety, depression and sleep apnea, and not for any injuries relating to his previous back, shoulder or knee. Under Ohio Administrative Code Section 123:1-33-03(C) states in pertinent part that an employee granted a voluntary disability separation shall retain the right to be reinstated to his or her position for three years from the date that the employee is no longer in active work status due to a disabling illness, injury, or condition, and that an employee may submit a written request for reinstatement from a voluntary disability separation in accordance with the procedures established in rule 123:1-33-04 of the Administrative Code. The evidence revealed, by a preponderance, that the Appellant timely filed his denial of reinstatement to this Board in conjunction with the above referenced Administrative Code Sections.

Under Ohio Administrative Code Section 123:1-33-04(B) when a disability separated employee presents to the appointing authority substantial, credible medical evidence which states that the employee is once again capable of performing the essential job duties of the employee's assigned position, the appointing authority shall either reinstate the employee or require the employee to

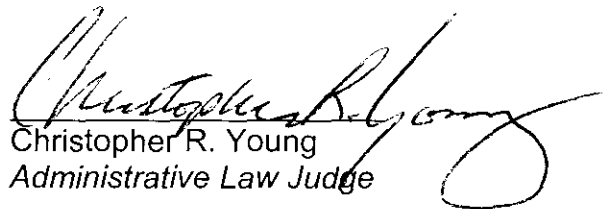
submit to a medical or psychological examination in accordance with rule 123:1-33-01 of the Administrative Code.

In this instant matter the Appellant submitted substantial, credible medical evidence that he could return to work from Dr. Kramer and a return to work slip from Dr. Demas, his family treating physician for approximately the last fifteen to twenty years. However, the evidence revealed in Dr. Demas' return to work slip there were no mention of what he had treated the Appellant for and/or any express language with respect to whether he could perform the essential job portions of his duties. In Dr. Kramer's documentation he did list that the Appellant had responded well to outpatient psychological treatment and could return to full duty as a Corrections Officer without limitations. On the other hand, the Appellee only relied on the medical documentation from Dr. Garcia and Dr. Rutherford, reports that were compiled and/or completed in connection to a bureau workers' compensation claim regarding the permanent partial impairments relating to his back, shoulder and knee in October 2001 through October 2003, and not in any way related to the Appellant's June 21, 2004, voluntary disability separation for hypertension, sleep apnea and depression. Additionally, the evidence revealed that the Appellee's own witness, Mr. Norm Hills testified that based on the two reports and/or medical examinations by Dr. Rutherford and Dr. Garcia, knowing that Mr. Cornley's disability was for his hypertension, sleep apnea and depression, should not have denied Mr. Cornley's reinstatement, if he were to have read these prior to signing off on denying the Appellant's reinstatement.

Thus, the Appellee did not have any substantial credible medical evidence supportive of its position not to reinstate the Appellant before it, when it made its decision not to reinstate the Appellant. The Appellee should have either reinstated the Appellant and/or sent the Appellant out for a medical or psychological examination in accordance with rule 123:1-33-01 of the Administrative Code, which they did not do. Therefore, the Appellee in the presentation of this case failed to successfully rebut the Appellant's *prima facie* case. For this reason the Appellant should not have been denied reinstatement to his position as a Unit Manager with the Marion Juvenile Correctional Facility.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISAFFIRM** the Appellee's denial of the Appellant's reinstatement to his position as a Unit Manager with the Marion Juvenile Correctional Facility. As was previously mentioned the only time period for consideration of this denial of reinstatement would be from the date which the Appellant applied for reinstatement on January 21, 2005 up to November 21, 2005, the date the Appellant has since been reinstated to his position. However, the evidence revealed that one of the Appellant's doctors would not release him until February 7, 2005. As such, the Appellant should have been reinstated to his position as a Unit Manager with the Marion Juvenile Correctional Facility, with all pertinent back pay and benefits due him, subject to any and all monetary setoffs, including, but not limited too, any unemployment compensation benefits received, from the date of February 7, 2005, the Appellant's release date to work, to his subsequent reinstatement date of November 21, 2005 to his position, pursuant to O.R.C. Chapter 124. and O.A.C sections 123:1-33-01 through 123:1-33-04


Christopher R. Young
Administrative Law Judge