

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

ROBERT WYNIESKI,

*Appellant,*

v.

Case No. 06-IDS-02-0025

DEPARTMENT OF REHABILITATION AND CORRECTION,  
LORAIN CORRECTIONAL INSTITUTION,

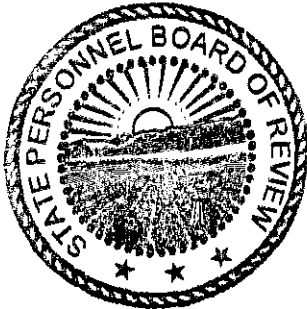
*Appellee.*

**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 the instant appeal be **DISMISSED** since there is no justiciable issue present.



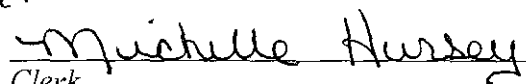
Lumpe – Aye  
Booth – Aye  
Tracy – Aye

  
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J. Richard Lumpe, *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, May 22, 2007.

  
\_\_\_\_\_  
Michelle Hursey  
*Clerk*

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

5-22-07 

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

Robert Wynieski

Case No. 06-IDS-02-0025

*Appellant*

v.

April 24, 2007

Department of Rehabilitation & Correction,  
Lorain Correctional Institution

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on April 24, 2007, upon Appellant Wynieski's filing of an appeal on February 8, 2006 of his involuntary disability separation, effective February 5, 2006. A Procedural Order was issued by this Board on February 7, 2007 and a response to that Procedural Order was filed on February 21 and March 7, 2007 by Appellee. Appellant Wynieski did not file an optional reply.

Appellee states in its response to the Procedural Order that Appellant Wynieski was served with the Involuntary Disability Separation Order by certified and regular U.S. mail on January 28, 2006. The certified mail was returned as unclaimed, but since the regular U.S. mail notification was not returned, pursuant to administrative rule 124-3-02 of the Ohio Administrative Code, it shall be deemed served on the third calendar day after the order was mailed, or in the instant case, on January 31, 2006. Appellant Wynieski then had ten calendar days to file a timely appeal, or until February 10, 2006. His appeal was filed with this Board on February 8, 2006 and therefore, Appellant Wynieski's appeal was timely filed.

Appellant Wynieski's involuntary disability separation was effective February 5, 2006. If this Board were to hold a hearing of Appellant Wynieski's appeal, then he would have to present evidence that he was ready, willing and able to work as of the effective date of his involuntary disability separation, February 5, 2006. Appellee provided proof in its response to the Procedural Order that Appellant Wynieski applied for workers compensation benefits on July 29, 2005 and such benefits were approved retroactive to July 29, 2005 and ran continuously through June 29, 2006.


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On July 1, 2006, Appellant Wynieski was approved for disability retirement benefits through PERS.

Since Appellant Wynieski was receiving workers compensation benefits for the time period covering February 5, 2006, he could not appear before this Board and state that he was able to perform his essential job duties as of that date. To do so would be tantamount to fraud since he was collecting benefits from the Bureau of Workers Compensation based on the fact that he was temporarily totally disabled as of that time period.

If Appellant Wynieski applies for reinstatement during his reinstatement period and is denied reinstatement by Appellee, then at that time, he can file an appeal of the denial of reinstatement to this Board.

Therefore, since Appellant Wynieski was receiving workers compensation benefits at the same time he was placed on involuntary disability separation, there appears to be no justiciable issue before this Board, thus it is my **RECOMMENDATION** that this appeal be **DISMISSED**.

  
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Marcie M. Scholl  
Administrative Law Judge

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