

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DARLENA S. MC CALL,

Appellant,

v.

Case No. 06-IDS-03-0050

DEPARTMENT OF REHABILITATION AND CORRECTION,
FRANKLIN PRE-RELEASE CENTER,

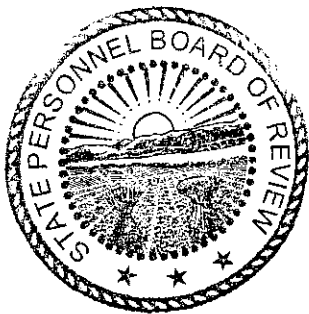
Appellee.

ORDER

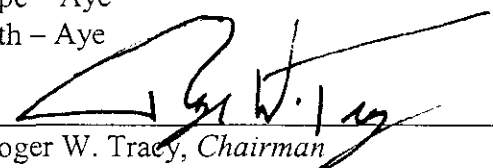
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 this 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**, pursuant to O.A.C. 123:1-33 *et seq.*



Tracy – Aye
Lumpe – Aye
Booth – Aye



Roger W. Tracy, *Chairman*

CERTIFICATION

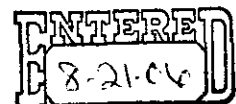
The State of Ohio, State Personnel Board of Review, ss:

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, August 21, 2006.



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**

Darlana S. Mc Call,

Case No. 06-IDS-03-0050

Appellant

v.

July 11, 2006

Department of Rehabilitation & Correction,
Franklin Pre-Release Center,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

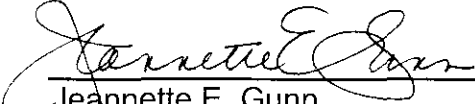
To the Honorable State Personnel Board of Review:

This cause came on for consideration on July 11, 2006, upon Appellee's response to this Board's June 19, 2006, Procedural Order, filed with this Board on June 29, 2006. To date, Appellant has not filed a memorandum *contra*.

Appellant filed a timely notice of appeal from her involuntary disability separation, effective February 28, 2006. In Appellee's response, Appellee asserts that Appellant has received disability benefits from the Department of Administrative Services for the time period of December 10, 2005, to July 11, 2006.

The question to be answered at record hearing in the instant appeal would be whether or not Appellant was capable of performing the essential duties of her position as of February 28, 2006, the effective date of her involuntary disability separation. It would be fraudulent for Appellant to argue that she was capable of performing her job duties as of that date, and at the same time, collect disability leave benefits. Appellant cannot argue to this Board that she was capable of performing her job duties and at the same time argue to the Department of Administrative Services that she was not capable of performing those duties.

Therefore, based on the above rationale, it is my **RECOMMENDATION** that this appeal be **DISMISSED**.



Jeannette E. Gunn
Administrative Law Judge

:jeg