

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

Linda L. Monday,

*Appellant,*

v.

Case No. 07-IDS-02-0066

Department of Rehabilitation and Correction,  
Trumbull Correctional Institution,

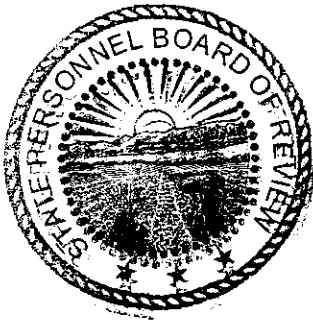
*Appellee.*

**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** due to Appellant's inability to perform her essential duties, pursuant to O.R.C. § 124.03.



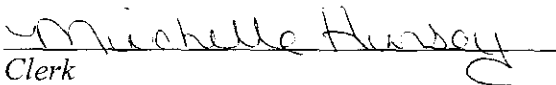
Lumpe – Aye  
Booth – Aye

  
\_\_\_\_\_  
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, October 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.

10/22/07

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

LINDA L. MONDAY,

Case No. 07-IDS-02-0066

*Appellant*

v.

September 18, 2007

DEPARTMENT OF REHABILITATION AND CORRECTION,  
TRUMBULL CORRECTIONAL INSTITUTION,

JAMES R. SPRAGUE  
*Administrative Law Judge*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

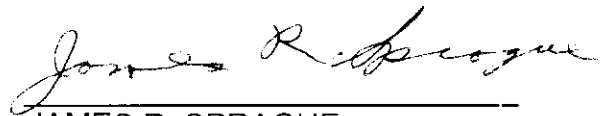
This cause comes on due to Appellee's September 6, 2007 filing of a motion to dismiss, memorandum in support, and pertinent attachments, including the affidavit of Linda Woods, Personnel Officer 3 at Trumbull Correctional Institution. Appellant was provided with the requisite time to file a memorandum contra but, to date, has not done so.

O.A.C. 124-11-07 governs the motions practice before this Board. O.A.C. 124-11-07 (A)(2) indicates that, when a motion to dismiss is properly filed and supported, as in this case, the opposing party must respond affirmatively and show that there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a 10-day time frame to file a response to a dispositive motion such as a motion to dismiss. Appellant has failed to comply with the requirements set forth in O.A.C. 124-11-07 (A)(2) and (C). More importantly, it appears beyond reasonable debate that Appellant was awarded temporary total disability as early as the day after the effective date of the instant involuntary disability separation. Additionally, it appears that on or about August 15, 2007, OPERS approved Appellant's application for a disability retirement benefit.

These awards, taken together, clearly demonstrate that Appellant would have been incapable of performing the essential duties of her position with Appellee for the time period at issue in this appeal. Conversely, Appellant should understand that a dismissal of the instant appeal for this reason should not be construed in any way to constitute a reflection of the quality of Appellant's work when she was capable of performing same.

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Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal due to Appellant's inability to perform her essential duties, pursuant to R.C. 124.03.



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JAMES R. SPRAGUE  
*Administrative Law Judge*

JRS: