

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

Keith M. Leonard,

Appellant,

v.

Case No. 07-IDS-02-0074

Department of Rehabilitation and Correction,
Corrections Medical Center,

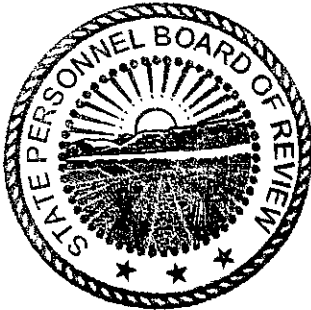
Appellee.

ORDER

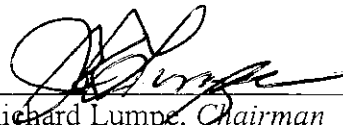
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 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 involuntary disability separation of Appellant be **AFFIRMED**, pursuant to O.R.C. § 124.03.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye



J. Richard Lumpe, *Chairman*

CERTIFICATION

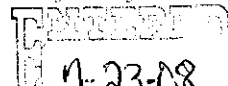
The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(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, July 23, 2008.



Michelle Hunsey
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**

Keith M. Leonard

Case No. 07-IDS-02-0074

Appellant

v.

June 19, 2008

Department of Rehabilitation & Correction,
Corrections Medical Center

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on September 19, 2007. Present at the hearing were the Appellant, Keith M. Leonard, represented by Henry A. Arnett, Attorney at Law and Appellee Department of Rehabilitation and Correction, Corrections Medical Center (CMC) designee Dorothy Terry, Human Resources Director, represented by Joseph N. Rosenthal, Assistant Attorney General.

The subject matter jurisdiction was established pursuant to section 124.03 of the Ohio Revised Code.

Appellant Leonard was involuntarily disability separated from his position of Nurse 1, effective February 23, 2007 and filed a timely appeal with this Board on February 27, 2007.

STATEMENT OF THE CASE

Appellant Leonard was called as if on cross examination. He testified he had been employed as a Nurse 1 with Appellee from July 11, 2005 until his involuntary disability separation on February 23, 2007. As a Registered Nurse, Appellant Leonard worked the third shift when he began his employ, then switched to the first shift.

Appellant Leonard identified Appellee's Exhibit 13 as a letter he received from the Appellee informing him of a medical evaluation scheduled for him. The letter was dated January 19, 2007. He stated he passed out at work on November

30 and December 18, 2006. Appellee's Exhibit 3 was identified by Appellant Leonard as his position description. He testified that the majority of his duties involved patient care, making rounds, administering IV therapy, and responding to "code blue", which meant that a patient had lost a pulse and respirations, so that he had to be ready to administer CPR. Appellant Leonard stated he may be required to run during the times of "code blue" or at other emergency times. He was, at times, required to climb stairs and the job could be physically exerting. Appellant Leonard testified he has been told by people that he was audibly short of breath, but he stated he never noticed, as it was just a way of life for him.

Appellee's Exhibit 15 was identified as the report from the medical evaluation, which Appellant Leonard testified that he received during his pre-separation hearing. Appellant Leonard testified he has pulmonary hypertension, which causes shortness of breath. He stated that the condition is well under control and that his doctors keep checking on the condition. He also testified that he has a history of congestive heart failure, since the 1990's, and has a pacemaker/cardiac defibrillator. Appellant Leonard testified he has not had a run of v-tach since he passed out at work. He confirmed that he missed 115 days of work from July 11, 2005 to January 20, 2007, but stated that not all of those days were related to his heart problems.

Appellee's Exhibit 4 was identified as an incident report of April 26, 2006 when he was complaining of shortness of breath and chest pains. The emergency squad was called and he was taken from work to the hospital. Appellee's Exhibits 5 and 6 were identified as incident reports from May 6, 2006 when he fell down, tried to get up, stumbled again and had to call his girlfriend to come and take him home. He stated this was when his pacemaker was not working properly. Appellee's Exhibit 7 describes a November 30, 2006 incident when he became dizzy and passed out and the emergency squad had to be called. He was out of work from September 17 through November 2, 2006, due to his ex-wife's husband stabbing him and puncturing a lung. He then contracted pneumonia and congestive heart failure. He was transferred to the Cleveland Clinic and was put on many diuretics, leading to low blood sugar, causing him to pass out on November 30 and December 18, 2006.

Appellee's Exhibit 8 was identified as the incident report from when he passed out on December 18, 2006. Appellee's Exhibit 18 was identified as the call-off form relating to his absence from work for the time period of January 31 to February 7, 2006. Appellee's Exhibit 14 was identified by Appellant Leonard as the pre-separation notice he received, dated February 12, 2007. He attended the meeting and was given the opportunity to present a letter from his cardiologist, which was identified as Appellee's Exhibit 16. Appellee's Exhibits 1 and 17 were identified by Appellant Leonard as the order of involuntary disability separation and cover letter which he received.

Appellee's next witness was Darlene Smith, an employee of Appellee for approximately seventeen years. She is currently the Clinical Operations Manager at CMC and explained that CMC is an acute care medical facility for inmates. They provide both long and short term care. For long term care there are approximately sixty inmates and for short term care, there are 100 beds. It is a twenty-four hour operation with three shifts and 152 medical staff.

Ms. Smith testified she knows Appellant Leonard, as he worked on 3 South in the short term unit. Appellee's Exhibit 4 was identified as a copy of an incident report she received regarding a medical emergency involving Appellant Leonard on April 6, 2006. The emergency squad had to be called for him. Ms. Smith testified she had concerns for Appellant Leonard's safety, as this incident happened when he was working third shift. There are only three nurses on third shift. When the nurses were looking after Appellant Leonard, they were taken away from their patient care and she was afraid the Appellee may be held liable for Appellant Leonard and for the inmate patients. When Appellant Leonard had to leave in the ambulance, there was no one to cover for him.

Appellant Leonard passed out at work on November 30, 2006 and again on December 18, 2006. Ms. Smith talked to Appellant Leonard and to the Warden regarding those two incidents and Appellant Leonard discussed his medications with her. She testified she was concerned as Appellant Leonard was responsible for approximately twenty-five or more patients and also carried a set of keys to the nurses' station and to the supply and treatment rooms. Appellant Leonard was transferred to first shift in April or May 2006.

Appellee's next witness was Dorothy Terry, Human Resource Director at CMC since approximately 1995 and an employee of Appellee for approximately twenty-one years. She is the custodian of records at CMC and identified Appellee's Exhibit 19, which shows that Appellant Leonard missed 115 days work.

Appellee's next witness was Madeline Kay Northrup, Warden of CMC since December 2004 and an employee of Appellee since 1989. Warden Northrup is also a Registered Nurse. She explained that CMC has four housing units and is a maximum security level facility, housing inmates that are the highest security risk. She identified Appellee's Exhibits 9, 10, 11, and 13 as the documents requesting and scheduling the independent medical evaluation of Appellant Leonard. Appellee's Exhibit 15 was identified as the doctor's report, which she received and reviewed. Warden Northrup testified she agreed with the doctor about the safety issues and the job environment combining to not be appropriate for Appellant Leonard.

Warden Northrup testified she spoke with Appellant Leonard about her concerns for him and others after the incidents of April 26, May 6 and November 30, 2006. He indicated his medications were going to be changed and that he felt he could still work. After the December 28, 2006 incident, Warden Northrup determined that Appellant Leonard's situation was not resolved with the medication changes and that an independent medical evaluation was needed. Appellant Northrup testified that the major factor in her decision to place Appellant Leonard on an involuntary disability separation was safety. The employees have to be aware at all times of their surroundings and their keys, etc., considering they work in a maximum security level facility. She stated she was concerned for Appellant Leonard's safety, as being a nurse is a physically demanding job. Warden Northrup also testified she was concerned that Appellant Leonard could not perform his job on a consistent basis, as vigilance is a big factor. There is also a significant concern when the staff cannot fulfill their duties and others have to fill in. The quality of care is then put in jeopardy and the staff is stretched thin. In some cases, overtime has to be mandated.

In looking at Appellee's Exhibit 16, Appellant Leonard's doctor's report, Warden Northrup stated the doctor did not address the collapsing and could not provide assurance that it would not happen again while on duty. The letter does not address the surroundings at CMC, nor Appellant Leonard's specific job duties and risks associated with him passing out on duty.

Appellant Leonard testified his medications were last tweaked in March 2007 and that was when his last loss of consciousness occurred. He testified that his abdominal hernia and bouts of v-tach caused some of his problems, but he has not had any further bouts of v-tach since his hospitalization in May 2006. He also stated that he used to take his medications one half-hour before going to work and that also contributed to the incidents. Appellant Leonard testified he felt that he was able to perform his job duties in February 2007.

FINDINGS OF FACT

After reviewing the testimony of the witnesses and the documents entered into evidence, I find the following facts:

1. Appellant Leonard had been employed as a Nurse 1 for approximately one and one-half years at the time of his involuntary disability separation, effective February 23, 2007.
2. As a Nurse 1, Appellant Leonard was responsible for patient care, making rounds with the doctors, administering IV therapy, responding to emergencies and being cognizant of the fact that he was taking care of inmates in a maximum security facility.
3. Appellant Leonard also was responsible for carrying a set of keys on his person to the nurses' station, the supply rooms and the treatment rooms.
4. Appellant Leonard has a history of congestive heart failure, pulmonary hypertension and has a pacemaker and cardiac defibrillator implanted in his chest.
5. On April 20, 2006, Appellant Leonard complained of chest pain and shortness of breath. The emergency squad was called and he was taken to a hospital.
6. On May 6, 2006, Appellant Leonard passed out twice within a few minutes, while he was on duty.

7. On November 30, 2006, Appellant Leonard became dizzy and passed out while on duty. The emergency squad was called and he was transported to a hospital.
8. On December 18, 2006, Appellant Leonard collapsed while on duty. The emergency squad was called and he was transported to a hospital.
9. Appellee then scheduled Appellant Leonard for an independent medical examination, at Appellee's cost.
10. Appellant Leonard attended the examination and was given a copy of the report at the pre-separation hearing. He was given proper notice of the pre-separation hearing, attended it and was permitted to submit documentation on his behalf subsequent to the hearing.
11. Appellee considered both the independent medical examination and the report of Appellant Leonard's doctor and then made the determination that he could not perform the essential functions of his job and placed him on involuntary disability separation, effective February 23, 2007.

CONCLUSIONS OF LAW

In order for Appellee's involuntary disability separation of Appellant Leonard to be affirmed, Appellee had the burden of proving by a preponderance of the evidence that all procedural elements were met in effectuating the involuntary disability separation and that as of February 23, 2007, Appellant Leonard could not perform the essential functions of his position. Appellee has met its burden.

After reviewing the procedural elements for effectuating an involuntary disability separation, it is clear that Appellee has met all of the requirements. Appellee scheduled and timely notified Appellant Leonard of an independent medical examination, which Appellee paid for. Appellant Leonard attended the examination and was given a copy of the evaluation. He was timely provided notice of a pre-separation hearing, attended it and was permitted to submit his own

medical documentation. Warden Northrup then reviewed the medical evidence submitted to her and made the decision to involuntarily disability separate Appellant Leonard. He was provided timely notice of his separation and filed a timely appeal with this Board.

It then becomes incumbent upon this Board to review the medical evidence in the record to determine, if on the effective date of the involuntary disability separation, Appellant Leonard could or could not perform the essential job duties of his position. Appellee has met its burden in proving that Appellant Leonard could not perform the essential duties of his position as of February 23, 2007.

Appellant Northrup testified that in making her decision, she was most concerned with the safety of Appellant Leonard and that of his co-workers and the inmates. The facility that Appellant Leonard worked in is a maximum security facility. The patients are inmates who are in need of long or short-term medical care. The concern of safety for not only Appellant Leonard, but that of his co-workers and the inmates is well placed.

Over a period of approximately eight months, Appellant Leonard had five episodes of passing out at work and having to leave the facility either by emergency squad or by a friend. The independent medical doctor that Appellee sent Appellant Leonard to, Dr. Schaub, basically stated that because of the surroundings Appellant Leonard works in, given his breathing/respiratory problems and the suddenness of his incapacitation, he felt that Appellant Leonard could not perform the essential functions of his position. Appellee agreed with Dr. Schaub's assessment.


The medical evidence presented by Appellant Leonard did not address the type of facility that Appellant Leonard worked in and how his sudden incapacitation affected the safety of his co-workers and the inmates. Given Appellant Leonard's breathing problems and the propensity for passing out without warning, the Appellee did not abuse its discretion in placing Appellant Leonard on an involuntary disability separation.

Appellant Leonard testified his medications were still being "tweaked" in February 2007, that they were last adjusted in March 2007 and that he has not passed out since March 2007. This Board cannot consider any evidence after the effective date of the involuntary disability separation, which was February 23, 2007. Anything that has or has not happened after that date is not relevant to the

determination of if Appellant Leonard could or could not perform the essential duties of his position prior to and on February 23, 2007. Given Appellant Leonard's medical history, his frequent medical problems on the job resulting in him having to leave the facility, thereby leaving the facility short-staffed, the security level of the facility and the physical requirements of Appellant Leonard's position, the appointing authority did not abuse its discretion in placing him on an involuntary disability separation.

If Appellant Leonard feels that his medications are now to the point where they consistently control or have alleviated his symptoms, then he has the opportunity to apply for reinstatement. After applying for reinstatement to his position, if the Appellee denies such reinstatement, Appellant Leonard would have the right to appeal such denial to this Board.

Therefore, it is my **RECOMMENDATION** that Appellee's involuntary disability separation of Appellant Leonard be **AFFIRMED**.



Marcie M. Scholl
Administrative Law Judge

:mms