

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

Mark Ayers,

Appellant,

v.

Case No. 08-IDS-01-0004

Department of Administrative Services,
Office of Employee Services,

Appellee.

ORDER

This matter came on for consideration on Appellant's January 4, 2008 filing of an appeal from Appellee's involuntary disability separation of Appellant from his position with Appellee. In Appellant's notice of appeal, Appellant's counsel indicates that Appellant is currently receiving temporary total disability compensation (from the Bureau of Workers' Compensation). Further, therein, Appellant's counsel indicates that Appellant is scheduled for surgery in January 2008 and that Appellant's physician estimates that Appellant will be able to perform the essential job duties of Appellant's position within three to six months after that surgery is completed.

The ability to perform one's essential job duties is the lynchpin of an involuntary disability separation appeal. If an Appellant has no credible basis for being able to assert that he or she could perform the essential duties of the pertinent position at the time the agency effectuated an Appellant's involuntary disability separation, then R.C. 124.03 provides this Board with no jurisdictional basis to proceed to consider the merits of the appeal. Accordingly, such an appeal should be dismissed.

In the instant appeal, it is not only un rebutted that Appellant is receiving temporary total disability compensation (receipt of which is itself an admission of the inability to perform one's essential job duties), it is also un rebutted that Appellant cannot currently perform his essential job duties and will not be able to do so for at least three months hence. Based on these facts, this Board lacks jurisdiction to proceed on the merits of this appeal and it should be dismissed. Such a dismissal does not bar Appellant from timely and properly filing for reinstatement, once Appellant is, again, able to perform his essential job duties. Thereafter, if Appellant is dissatisfied with Appellee's determination following a timely and properly filed request for reinstatement, then Appellant could timely file an appeal with this Board from such a determination.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to O.R.C. § 124.03.

Lumpe – Aye
Booth – Aye

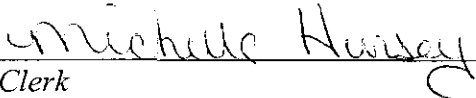


J. Richard Lumpe, *Chairman*

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 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, January 9, 2008.



Michelle Hursey
Clerk

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