

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Dianne L. Lane,

*Appellant,*

v.

Case No. 08-IDS-03-0080

Department of Rehabilitation and Correction,  
Lorain Correctional Institution,

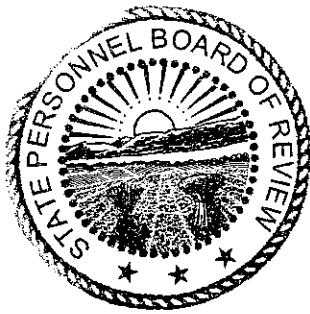
*Appellee.*

**ORDER**

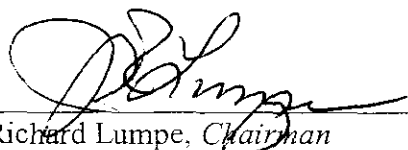
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the evidence contained in the record established that Appellant was unable to perform the essential job duties of her position due to her application for and receipt of disability leave benefits at the time she was placed on involuntary disability separation, pursuant to O.A.C. § 123:1-30-01(A). Should Appellant once again become capable of performing the essential job duties of her position, Appellant may file a request for reinstatement in accordance with the provisions set forth in O.A.C. § 123:1-30 *et seq.*



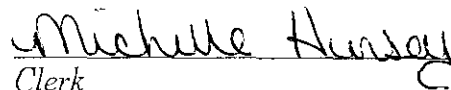
Lumpe - Aye  
Booth - Aye  
Sfalcin - Aye

  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

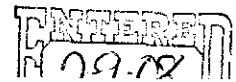
**CERTIFICATION**

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 constitutes ~~(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 9, 2008.

  
\_\_\_\_\_  
*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**

Dianne L. Lane,

Case No. 08-IDS-03-0080

*Appellant*

v.

May 28, 2008

Dept Of Rehab. & Corr.,  
Lorain Corr. Institution ,

*Appellee*

Christopher R. Young  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on May 28, 2008, upon the Appellee's Motion to Dismiss filed on May 13, 2008, along with accompanying affidavit, and upon the Appellee's response to this Board's April 16, 2008 Procedural Order and Questionnaire, filed with this Board on April 24, 2008, and upon the Appellant's response to the Board's April 16, 2008 Procedural Order and Questionnaire, filed with this Board on April 28, 2008. To date, the Appellant has not responded to the Appellee's motion, nor has she requested an extension of time to do so, as well.

The evidence contained in the case file reveals that the Appellant timely filed an appeal from her involuntary disability separation, effective April 1, 2008. In Appellee's Response, as well as in its motion, asserts that the Appellant was receiving disability benefits since August 3, 2007 up until the present. The Appellant does not contest that she has not been receiving disability benefits since August 3, 2007, as evidenced by her response.

The question to be answered at a record hearing in the instant appeal would be whether or not the Appellant was capable of performing the essential duties of her position as of April 1, 2008.

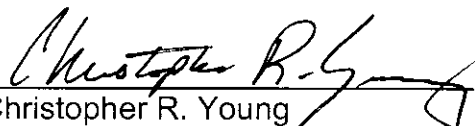
The Appellant cannot now argue to this Board that she, as of April 1, 2008, could perform her duties, but at the same time argue to the Department of Administrative Services that she cannot perform her duties, when she was collecting disability benefits. Thus, it is the finding and conclusion of the undersigned, that the Appellant cannot now argue that she could perform her duties as of April 1, 2008,

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when at the same time, she was collecting disability benefits, without being fraudulent.

However, it should be noted the Appellant, once she is capable of returning to work having had a physician examined the duties of her position, and agrees that the Appellant can return to work, she should file a request for reinstatement pursuant to Ohio Administrative Code Chapter 123:1-30.

Therefore, based upon the above stated rationale, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.

  
Christopher R. Young  
Administrative Law Judge

CRY: