

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Derek Mallow,

*Appellant,*

v.

Case No. 08-IDS-08-0478

Department of Rehabilitation and Correction, Pickaway 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** for lack of a justiciable issue, pursuant to R.C. 124.03.

Lumpe - Aye  
Booth - Aye  
Sfalcin - Aye

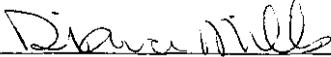


  
J. Richard Lumpe, *Chairman*

**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 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, December 31, 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**

Derek Mallow

Case No. 08-IDS-08-0478

*Appellant*

v.

November 20, 2008

Department of Rehabilitation & Correction,  
Pickaway Correctional Institution

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on November 20, 2008. Appellant Mallow filed an appeal of his involuntary disability separation on August 15, 2008. On October 16, 2008, this Board issued a Procedural Order and Questionnaire to the Appellee. Appellee filed its response to the Questionnaire on October 30, 2008. Appellant Mallow filed his optional response to the Questionnaire also on that date.

According to the answers to the Questionnaire, Appellant Mallow was involuntarily disability separated effective August 17, 2008. Appellant Mallow states in his response that he has received workers compensation benefits and Appellee indicated in its response that Appellant Mallow has been receiving workers compensation benefits since February 20, 2008.

If this Board were to hold a hearing pursuant to Appellant Mallow's appeal, then Appellant Mallow would have to present evidence that he was ready, willing and able to perform the essential job duties of his position as of the effective date of the involuntary disability separation, August 17, 2008. Since Appellant Mallow has been receiving workers compensation benefits since February 20, 2008, it is highly unlikely that Appellant Mallow could present evidence to this Board that he was able to work as of August 17, 2008. To do so, he would be telling this Board that he was able to perform the essential duties of his position at the same time that he was receiving workers compensation benefits based on his inability to work during that time period. See *Cordial v. Ohio Dept. of Rehab & Corr, SE Corr Inst.*, (2006) unreported, Tenth Appellate Dist. Ct. No. 05AP-473.

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Appellant Mallow has until February 21, 2011 to request reinstatement to his position. Therefore, at the time that his physician does release him to work, Appellant Mallow should apply for reinstatement to his position. If he is denied reinstatement, he would, at that point, have a right to appeal the denial of reinstatement to this Board.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for a lack of a justiciable issue.



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Marcie M. Scholl  
*Administrative Law Judge*

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