

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

Wendell Miller,

Appellant,

v.

Case No. 09-IDS-05-0252

Department of Rehabilitation and Corrections,
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** for Appellant's demonstrated inability to perform the essential duties of his position.

Lumpe - Aye

Sfalcin - Aye

Tillery - 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, November 6, 2009.



Michelle Hursey
Clerk

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

11-6-09

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

WENDELL MILLER,

Case No. 09-IDS-05-0252

Appellant

v.

September 23, 2009

DEPARTMENT OF REHABILITATION AND CORRECTION,
LORAIN CORRECTIONAL INSTITUTION,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's filing of an appeal from an Involuntary Disability Separation (IDS) from his position of Plumber with Appellee, Lorain Correctional Institution, effective May 14, 2009.

In Appellant's notice of appeal, Appellant's counsel notes that Appellant was injured "... in the course of and arising out of employment ...", that [h]e is temporarily and totally disabled as a result of this injury "...", that Appellant's BWC claim has been granted, and that Appellant's physician has certified that Appellant is unable to return to his position and has been given Appellant an estimated return to work date of June 14, 2009 [a date that is subsequent to the effective date of the instant IDS]. (See notice of appeal letter at paragraph 2).

Appellant's counsel premises the instant appeal on language in R.C. 4123.90 that prohibits discharge, demotion, reassignment, or any punitive action against an employee because, among other things, the employee has filed a claim under the Workers' Compensation Act for a specified injury.

It is noted that the extant record contains no evidence that Appellee has demoted, reassigned or taken any punitive action against Appellant as a causal result of Appellant's filing of the above-referenced BWC claim. Neither has Appellant been discharged. This is because an IDS (except perhaps in its final stage apparently not applicable here), does not constitute a discharge. Indeed, an IDS provides the employee with an extended period to demonstrate that the

employee is, again, capable of performing the employee's essential job duties, so that the employee may be reinstated to his or her position.

In summary, it appears from the record that Appellant's injury, while "total", is also "temporary" and that Appellant is not, therefore, in the final stage of the IDS process. Further, the fact that Appellant could not perform the essential duties of his position as of the effective date of the instant IDS is beyond fair debate. Additionally, there is nothing in the extant record to suggest that Appellee has violated the restrictions contained within R.C. 4123.90. Finally, it is noted that an administrative forum may not necessarily be the most efficacious forum to raise issues regarding R.C. 4123.90 and it is questionable as to whether this Board possesses authority to find a violation of same.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for Appellant's demonstrated inability to perform the essential duties of his position.


JAMES R. SPRAGUE
Administrative Law Judge

JRS: