

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

Jesse J. Halldin,

Appellant.

v.

Case No. 09-IDS-08-0380

Department of Youth Services Central Office,

Appellee.

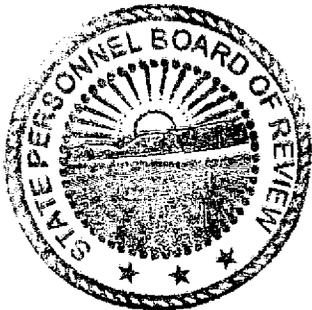
ORDER

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**, as moot, as there is no justiciable issue present.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



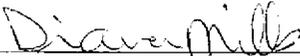


J. Richard Lumpe, *Chairman*

CERTIFICATION

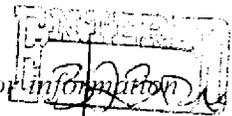
The State of Ohio, State Personnel Board of Review, ss:

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, March 23, 2010.



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**

Jesse J. Halldin,

Case No. 09-IDS-08-0380

Appellant

v.

March 2, 2010

Department of Youth Services, Central Office,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a Motion to Dismiss filed with this Board by Appellee on February 17, 2010. Appellant filed no memorandum *contra*.

Based upon the uncontroverted information contained in the record, I make the following findings of fact:

Appellant was employed by Appellee as a Juvenile Correctional Officer at the Cuyahoga Hills Juvenile Correctional Facility. On December 21, 2008, Appellant began to receive Occupational Injury Leave (OIL) benefits for an injury sustained while at work; he continued to receive OIL benefits through June 4, 2009. On June 5, 2009, Appellant began receiving benefits from the Bureau of Workers' Compensation. Appellant's doctor provided a report on July 13, 2009, indicating that Appellant was going to undergo surgical stabilization of his knee, and that the anticipated recovery time would be approximately six to nine months.

A pre-separation hearing was held on August 10, 2009, in order to provide Appellant with the opportunity to present substantial credible medical evidence that he could perform the essential functions of his position. Appellant did not attend the hearing and was involuntary disability separated on August 31, 2009. At the time of his involuntary disability separation, Appellant was still receiving Workers' Compensation benefits.

CONCLUSIONS OF LAW

In order to prevail in an appeal before this Board, Appellant would be required to demonstrate by a preponderance of the evidence that he was able to perform the duties of his position as a Juvenile Correctional Officer as of the effective date of his involuntary disability separation. Evidence contained in the record, however, indicates that as of that date Appellant was receiving benefits from Workers' Compensation based upon his stated inability to work. It would be contradictory and tantamount to fraud for Appellant to argue to this Board that he could have performed his job duties as of August 31, 2009, when he has already represented to the Bureau of Workers' Compensation that he was unable to do so, in order to collect workers compensation benefits.

Accordingly, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** as moot, as there is no justiciable issue present.

Parenthetically, I note that the Order of Involuntary Disability Separation form provided to Appellant indicates that his right to reinstatement runs until December 20, 2010. Appellant has until that time to submit to his employer medical evidence that he is able to return to work and apply to be reinstated. Should he apply for reinstatement and be denied, Appellant could then appeal the denial of reinstatement to this Board.


Jeannette E. Gunn
Administrative Law Judge

JEG: