

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Deborah S. Tacchio,

Case Nos. 09-ABL-06-0280
09-LAY-06-0281

Appellant,

v.

Department of Mental Health,
Heartland Behavioral Healthcare,

Appellee.

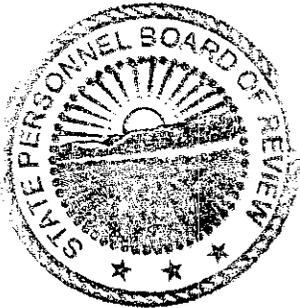
ORDER

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

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 appeals be **DISMISSED** as moot, since there is no justiciable issue present.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

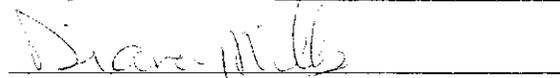



J. Richard Lumpe, *Chairman*

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, Feb 24, 2010.


Clerk

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

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STATE PERSONNEL BOARD OF REVIEW**

Deborah S. Tacchio,

Appellant

v.

Department of Mental Health,
Heartland Behavioral Healthcare,

Appellee

Case Nos. 09-ABL-06-0280
09-LAY-06-0281

January 20, 2010

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on January 4, 2010. Appellee asserts that the above-captioned actions should be dismissed because the claims raised by Appellant cannot, as a matter of law, be decided in her favor. Appellant filed no memorandum *contra*.

The uncontroverted information contained in the record indicates that the single argument intended to be made by Appellant at record hearing was that she should be permitted to count prior state service toward her retention point total. Appellant was employed by Appellee from October 26, 1998, until April 9, 2004, when she resigned her position. Appellant returned to employment with Appellee on July 12, 2004. On July 4, 2009, Appellant's position of Psych/MR Nurse Manager was abolished and Appellant displaced into a Registered Nurse Supervisor position on July 6, 2009.

Ohio Revised Code Section 124.325 and Ohio Administrative Code Section 123:1-41-09 provide that an employee will maintain his or her retention points so long as there is no break in service. A "break in service" is defined as separation from service for thirty-one days or more. As noted above, Appellant had a break in service from April 9, 2004, to July 12, 2004. This time period is greater than thirty-one days. Accordingly, by operation of law, Appellant may not maintain her retention points for the time period of October 1998 through April 2004.

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Because the sole issue to be raised by Appellant at record hearing is a question of law that cannot be decided in her favor given the facts contained in the record, I find that there is no justiciable issue present in the above-captioned case. Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**.



Jeannette E. Gunn
Administrative Law Judge

JEG: