

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

Alandus D. Brown,

Appellant,

v.

Case No. 09-MIS-06-0286

Department of Youth Services Central Office,

Appellee.

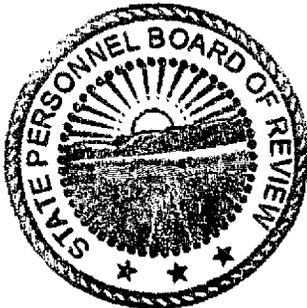
ORDER

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*

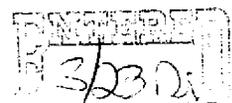
CERTIFICATION

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**

Alandus D. Brown,

Appellant

v.

Department of Youth Services,
Central Office,

Appellee

Case Nos. 09-IDS-06-0285
09-MIS-06-0286

January 4, 2010

Jeannette E. Gunn
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 December 21, 2009. 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. Appellant's last day worked was October 28, 2008. He received Occupational Injury Leave benefits from October 29, 2008, through April 14, 2009. On April 15, 2009, Appellant began receiving benefits from the Bureau of Workers' Compensation; he continued to receive such benefits through December 5, 2009.

A pre-separation hearing was held on May 12, 2009, at which time Appellant had the opportunity to present Appellee with substantial credible medical evidence that he could perform the essential functions of his position. Appellant was involuntary disability separated with an effective date of June 8, 2009; notice of the separation was mailed to Appellant on May 27, 2009, and Appellant filed his appeal of the separation with this Board on June 5, 2009. Appellant is eligible for reinstatement to his position until October 28, 2010.

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 June 8, 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.

Since Appellant's right to reinstatement runs until October 28, 2010, he 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: