

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Lynne A. Thomas,

Appellant,

v.

Case No. 10-IDS-04-0090

Department of Mental Health 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** since there is no justiciable issue before this Board.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



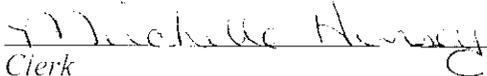


J. Richard Lumpe, *Chairman*

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, July 15, 2010.



Michelle Hursey
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**

Lynne A. Thomas

Case No. 10-IDS-04-0090

Appellant

v.

May 28, 2010

Department of Mental Health,
Central Office

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant Thomas' filing of a notice of appeal on March 31, 2010 of her involuntary disability separation effective April 12, 2010. This Board issued a Procedural Order and Questionnaire to the Appellee on April 30, 2010. Appellee responded on May 11, 2010 and to date, Appellant Thomas has not filed an optional response. Appellee filed a Motion to Dismiss on May 14, 2010 and to date, there has been no response filed by Appellant Thomas.

Appellee argues this appeal should be dismissed as Appellant Thomas received disability leave benefits from the Department of Administrative Services (DAS) from March 27, 2009 through December 6, 2009 and then again beginning March 1, 2010 and is expected to continue to receive those benefits through June 6, 2010. (See Affidavit of Kelly D. Gray, Human Capital Management Administrator 1 for Appellee, attached to Appellee's Motion to Dismiss). Also attached to the Motion to Dismiss is Exhibit A, a letter dated April 1, 2010, from Gretchen J. White, Benefits Manager, with DAS, stating Appellant Thomas' disability leave benefits have been approved from March 31, 2009 through June 6, 2010. Attached to that letter are printouts showing the time periods for which Appellant Thomas received those benefits.

The evidence in the record clearly establishes that as of the effective date of Appellant Thomas' involuntary disability separation, April 12, 2010, she was receiving disability leave benefits from DAS. If this matter were to go to a hearing before this Board, Appellant Thomas would have to show that as of April 12, 2010,

she was capable of performing the essential duties of her position. Since she was receiving disability benefits from DAS on that date due to a disabling condition, it is highly unlikely that she could come before this Board and testify that she could perform her duties at the same time she was receiving disability leave payments from DAS because she was considered disabled. Those two statements are contradictory and could amount to fraud.

In her notice of appeal, Appellant Thomas states she believes she has been discriminated against and that Appellee will not allow her to apply for accommodations. Unlike a court of general jurisdiction, this Board has only the jurisdiction granted to it by statute. (See section 124.03 of the Ohio Revised Code). This Board does not possess jurisdiction over claims of discrimination or of accommodation issues. Both of those issues are under the jurisdiction of another forum, but are not properly brought before this Board.

If at some point in time Appellant Thomas applies for reinstatement to her position with Appellee, and if she is denied reinstatement, then she can appeal such denial of reinstatement to this Board.

Therefore, since Appellant Thomas was receiving disability leave benefits as of the effective date of her involuntary disability leave separation, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED**, as there is no justiciable issue before this Board.



Marcie M. Scholl
Administrative Law Judge

:mms