

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

Brian Williams,

Appellant.

v.

Case No. 10-IDS-08-0212

Department of Rehabilitation and Correction,
Grafton Correctional Institution,

Appellee.

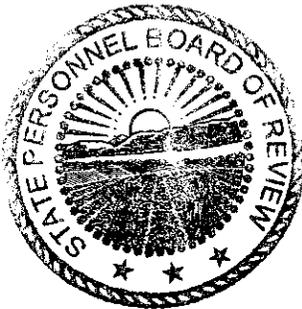
ORDER

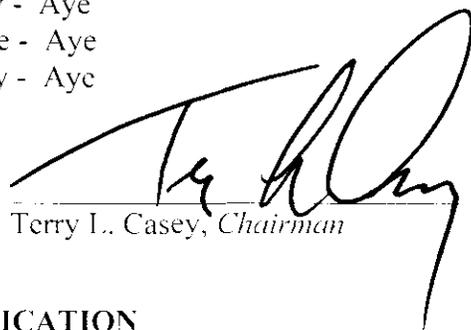
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's involuntary disability separation of Appellant be **AFFIRMED**, as the evidence has established that as of August 15, 2010, Appellant was receiving compensation from the Bureau of Workers Compensation for being temporarily and totally disabled from performing the essential duties of his position.

Casey - Aye
Lumpe - Aye
Tillery - Aye





Terry L. Casey, *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 10, 2011.



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**

Brian Williams

Case No. 10-IDS-08-0212

Appellant

v.

February 1, 2011

Department of Rehabilitation & Correction,
Grafton Correctional Institution

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 the filing of an appeal by Appellant Williams on August 11, 2010 regarding an appeal from his involuntary disability separation, effective August 15, 2010. This Board issued a questionnaire to Appellee on August 19, 2010 and Appellee responded on September 1 and 9, 2010. This Board then issued a Procedural Order on November 1, 2010 requesting additional information. The Appellee responded on November 9, 2010. Appellant Williams had the option of filing a response to Appellee's reply to the Procedural Order. To date, Appellant Williams has not filed such optional response.

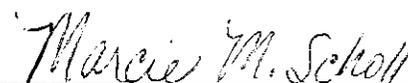
Appellee indicated in its response that Appellant Williams had been receiving workers compensation benefits, but the questionnaire response did not provide information as to when Appellant Williams received such benefits. In order to determine when those benefits were received, a Procedural Order was issued asking for documentation showing the dates of receipt of workers compensation benefits by Appellant Williams.

In response to the Procedural Order, Appellee provided documentation evidencing that Appellant Williams was receiving workers compensation benefits on the effective date of his involuntary disability separation, August 15, 2010. The documentation included Appellant Williams' Request for Temporary Total Compensation from the Bureau of Workers' Compensation, signed by Appellant Williams on September 16, 2010. The back page of that Request was completed by Appellant Williams' physician, signed on September 16, 2010, and indicating that

an estimated return to work date for Appellant Williams would December 20, 2010. Appellee also attached a Compensation History report from the Bureau of Workers Compensation showing Appellant Williams received workers compensation benefits covering the time period from July 21, 2010 through November 6, 2010. Such time period covers the effective date of Appellant Williams' involuntary disability separation on August 15, 2010. Appellant Williams did not file any information disputing these dates.

If this appeal were to go to a hearing, the question before this Board would be if Appellant Williams could perform the essential duties of his position as of the effective date of his involuntary disability separation, August 15, 2010. The answer to that question has to be "NO", as the documentation clearly establishes that Appellant Williams received monetary benefits from the Bureau of Workers Compensation covering the time period of August 15, 2010. Appellant Williams could not come before this Board and argue that he could perform the essential duties of his position as of August 15, 2010 when he was at the same time receiving benefits from the Bureau of Workers Compensation for being temporarily totally disabled. To do so would be tantamount to fraud.

Therefore, it is my **RECOMMENDATION** that Appellee's involuntary disability separation of Appellant Williams be **AFFIRMED** as the evidence has established that as of August 15, 2010, Appellant Williams was receiving compensation from the Bureau of Workers Compensation for being temporarily and totally disabled from performing the essential duties of his position.



Marcie M. Scholl
Administrative Law Judge