

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

Melvin Stretchbery,

*Appellant.*

v.

Case No. 10-IDS-12-0337

Department of Rehabilitation and Correction,  
Toledo 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.

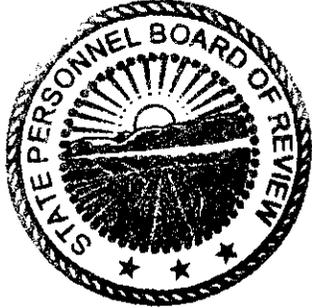
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge and any objections to that report which have been timely and properly filed, the Board hereby adopts the Findings of the Administrative Law Judge but must modify the Recommendation of the Administrative Law Judge, for the reasons that follow.

In this case, Appellant, a Corrections Officer, was injured subduing a combative inmate who had attacked Appellant's supervisor. Thereafter, Appellant underwent extensive rehabilitation that included surgery and physical therapy.

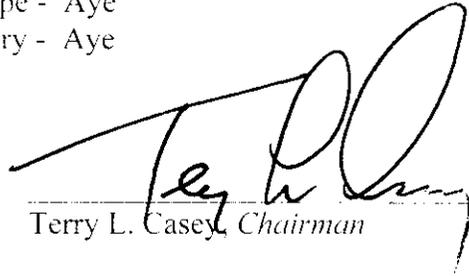
The record reflects that Appellant was delayed in obtaining this surgery because of the unexpected retirement of the surgeon whom the Bureau of Workers' Compensation (BWC) had authorized to perform Appellant's surgery and because BWC had to then re-authorize surgery with an alternate surgeon. Further, during the course of Appellant's recovery period, an agent of Appellee, on whose guidance Appellant could reasonably rely, provided Appellant with information that, we find, constructively extended the cutoff time for Appellant to file his request for reinstatement.

Additionally, it appears that Appellant's reinstatement request contained medical information that, at a minimum, would have required the initiation of pre-reinstatement proceedings. Accordingly, Appellee is hereby ORDERED either to 1) reinstate Appellant to a Corrections Officer position at Toledo Correctional Institution or 2) initiate the pre-reinstatement process by sending Appellant for an Independent Medical Examination, the cost of which is to be borne by Appellee.

Wherefore, it is hereby **ORDERED** that Appellee either **REINSTATE APPELLANT OR INITIATE THE PRE-REINSTATEMENT PROCESS**, as set forth, above.



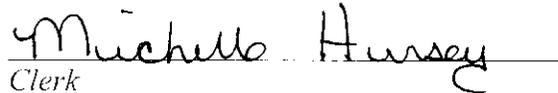
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, April 11, 2011.

  
*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**

Melvin Stretchbery,

Case No. 2010-IDS-12-0337

*Appellant,*

v.

February 28, 2011

Dep't of Rehabilitation and Correction,  
Toledo Correctional Institution,

Beth A. Jewell  
*Administrative Law Judge*

*Appellee.*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter comes on for consideration following the development of the record by questionnaire under Ohio Administrative Code Rule 124-9-05. Appellant and Appellee have each filed responses to the questionnaires issued on December 20, 2010, and February 9, 2011.

**Facts Developed By Questionnaire**

The responses to the questionnaires establish that Appellant and Appellee essentially agree upon the following facts:

1. The last day Appellant was physically at work was July 22, 2008.
2. On January 19, 2009, Appellee hand-delivered to Appellant an order of involuntary disability separation, which provided in pertinent part as follows:

In accordance with the Ohio Administrative Code 123:1-33-02; you are being placed on disability separation effective January 19, 2009. You have been absent from work since July 22, 2008. According to the latest medical evaluation you cannot return to your former position of Correction Officer at this time. In accordance with Ohio Administrative Code 123:1-33-04, application for reinstatement must be made no later than July 22, 2010.

3. On August 21, 2010, Appellant hand-delivered a request for reinstatement to Appellee.

4. Thereafter, Appellee verbally informed Appellant that he applied for reinstatement after the deadline and would not be reinstated.

### **Analysis and Discussion**

Ohio Administrative Code Chapter 123:1-30 establishes rules governing involuntary disability separations and the right to reinstatement. O.A.C. Rule 123:1-30-04(A) provides as follows:

Timeline for reinstatement. An employee may make a written request to the appointing authority for reinstatement from a disability separation. An employee may not make a first request for reinstatement until three months from the date the employee was no longer in active work status. The appointing authority shall notify the employee of its decision to approve or deny the reinstatement request no later than sixty days after it receives the employee's written request. The employee shall not make subsequent requests for reinstatement more than once every three months from the date the employee is notified of a reinstatement denial. An employee is not eligible for reinstatement if the request occurs later than two years from the date that the employee was no longer in active work status due to the disabling illness, injury, or condition.

O.A.C. Rule 123:1-30-04(J) provides as follows:

An employee who fails to apply for reinstatement within two years from the date that the employee was no longer in active work status due to the disabling illness, injury, or condition shall be deemed permanently separated from service.

O. A.C. Rule 123:1-47-01(A)(3) defines "active work status" as follows:

[T]he conditions under which an employee is actually in a work status and is eligible to receive pay but does not include vacation pay, sick leave, bereavement leave, compensatory time, holidays, personal leave and disability leave.

Appellant received the order of involuntary disability separation on January 19, 2009. The order specifically provides in writing that "application for reinstatement must be made no later than July 22, 2010." The July 22, 2010 deadline set forth in the order is two years from Appellant's last day in active work status. This deadline is consistent with the definitions and timelines established in the administrative code provisions that govern eligibility for reinstatement from disability separations. The parties agree that Appellant did not apply for reinstatement until August 21, 2010, nearly a month after the

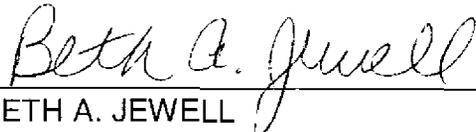
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deadline. According to O.A.C. Rule 123:1-30-04(J), Appellant is deemed permanently separated from service.

Appellant writes in his notice of appeal to this Board that he was injured in the course of his employment with Appellee on October 4, 2007. Appellant was unable to return to full duty, but did return to light duty work in June and July 2008. Appellant avers that he was entitled under the applicable collective bargaining agreement to work a maximum of 90 days of light duty, but "I was advised by Labor relations to save any remaining days & use them to help recover from corrective surgery." Appellant's last day at work was July 22, 2008. Thereafter, Appellant avers that many delays ensued in scheduling his surgery after the retirement of the doctor initially scheduled to perform the surgery. Appellant underwent corrective surgery on April 27, 2010, participated in physical therapy, and was released to return to work on August 19, 2010. Appellant appears to be asking this Board to extend the deadline established for requests for reinstatement.

Unlike a court, this Board is an administrative agency and a part of the executive branch. While this Board may perform adjudicative functions, it does not have inherent judicial powers. This Board's authority is limited to the jurisdiction and powers conferred upon it under Chapter 124 of the Revised Code and the administrative rules promulgated thereunder. See, e.g., Green v. Western Reserve Psychiatric Habilitation Center (Ohio App. 9 Dist., 09-30-1981), 3 Ohio App.3d 218. Neither Ohio Revised Code Section 124.03, which sets forth the powers and duties of this Board, nor any other provision of the law or rules, grants this Board jurisdiction to toll, modify or set aside the time limits on requests for reinstatement from involuntary disability separations.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of subject matter jurisdiction.

  
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BETH A. JEWELL  
*Administrative Law Judge*

BAJ: