

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

ROSETTA MELNICHENKO,

*Appellant,*

v.

Case No. 11-IDS-01-0015

TUSCARAWAS COUNTY  
GENERAL HEALTH DEPARTMENT,

*Appellee*

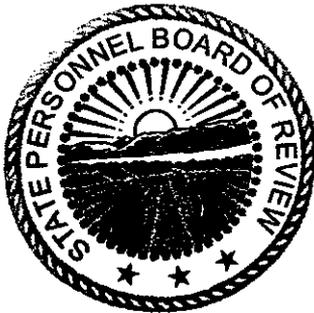
**ORDER**

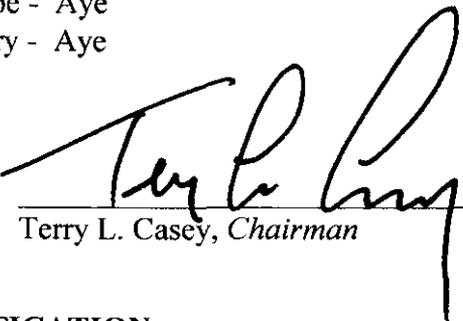
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, 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 denial of reinstatement is **AFFIRMED**.

Casey - Aye  
Lumpe - Aye  
Tillery - Aye



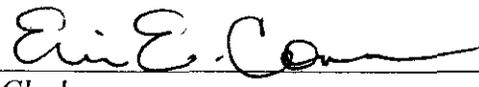
  
Terry L. Casey, *Chairman*

**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 constitutes ~~(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 14, 2012.



  
Erin E. Conroy  
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**

Rosetta Melnichenko,

Case No. 11-IDS-01-0015

*Appellant*

v.

February 9, 2012

Tuscarawas County General  
Health District,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on to be heard on June 21, 2011. Appellant was present at record hearing and was represented by Shawn P. Lindsay, attorney at law. Appellee was present through its designee, Executive Director Linda Fanning, and was represented by Eugene P. Nevada, attorney at law.

Following the record hearing, the record was held open to allow for the video trial deposition of Dr. Aarsal Ahmad and the parties' closing statements. A transcript of that deposition was filed with this Board on September 12, 2011, and the parties' closing statements were filed on September 28 and 29, 2011.

**STATEMENT OF THE CASE**

Linda Fanning testified that she has been employed by Appellee as its Executive Director since 1997. She indicated that she is responsible for personnel matters and oversight of the agency's day to day operations. Ms. Fanning confirmed that she knows Appellant and noted that Appellant was employed by Appellee for more than twenty years. The witness recalled that Appellant became eligible for disability retirement through the Ohio Public Employees Retirement System (PERS) in 2006; the last position held by Appellant was Clerical Specialist.

She stated that PERS notified Appellee in December 2010 that, following a medical examination conducted by its physician in June 2010, it had determined that Appellant was no longer eligible for disability retirement benefits and certified

her to return to work. Ms. Fanning recalled that before beginning a reinstatement process, Appellee scheduled an independent medical examination for Appellant, which Appellant attended. The witness testified that the physician selected by Appellee, Dr. Arsal Ahmad, was provided with a copy of Appellant's most recent position description.

Ms. Fanning stated that Appellee scheduled and Appellant attended a pre-reinstatement hearing on January 7, 2011. She noted that Appellant was provided with a copy of Dr. Ahmad's medical report, which concluded that Appellant was not capable of performing the duties associated with her former position, and had an opportunity to respond to the information contained therein. The witness recalled that Appellant presented no evidence to rebut Dr. Ahmad's conclusions. Ms. Fanning observed that Appellee subsequently made the decision to involuntarily disability separate Appellant, with an effective date of January 13, 2011.

The witness testified that she was aware that Appellant has applied to PERS for reinstatement of her disability retirement benefits.

Appellant confirmed that she applied to PERS for disability retirement benefits in 2006 and received benefits through the end of 2010. She recalled that PERS had allowed her to work as a part-time cashier from July 2010 through December, and that she quit that job in December because she believed she would be returning to her former position with Appellee. Appellant noted that she was also employed part-time at a local gift shop/Florist while she was receiving disability retirement benefits and still works there.

Appellant testified that, in her opinion, she is capable of performing the duties of her Clerical Specialist position. She acknowledged that she did not present any medical evidence at her January 2011 pre-reinstatement hearing regarding her ability to return to work, but noted that she had since obtained a return-to-work slip from her physician.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This appeal concerns a denial of reinstatement to employment with Appellee. In such an appeal, the burden of proof remains at all times with the employee. Appellant must establish, by a preponderance of the evidence, that she