

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

KEITH A. BENNETT,

*Appellant,*

v.

Case No. 11-IDS-02-0051

CLARK COUNTY AUDITOR,

*Appellee*

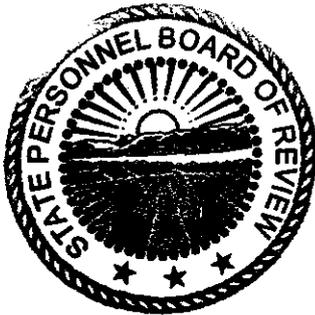
**ORDER**

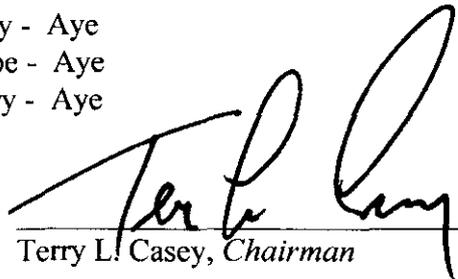
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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**. Appellant retains reinstatement rights for the remainder of the five-year period following the effective date of his receipt of disability benefits. The determination contained herein does not bar him from reapplying to Appellee for reinstatement within the guidelines of applicable statutes.

Casey - Aye  
Lumpe - Aye  
Tillery - Aye

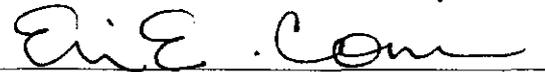


  
Terry L. Casey, *Chairman*

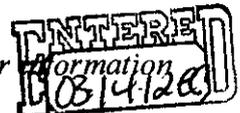
**CERTIFICATION**

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.

  
Clerk

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for regarding your appeal rights.



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

Keith A. Bennett,

Case No. 11-IDS-02-0051

*Appellant*

v.

January 17, 2012

Clark County Auditor,

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 September 28, 2011. Appellant was present at record hearing and appeared *pro se*. Appellee was present through its designee, Real Estate Director Tina Cowan, and was represented by Andrew P. Pickering, Assistant Clark County Prosecutor.

**PROCEDURAL HISTORY AND BACKGROUND**

Appellant filed an appeal of his denial of reinstatement from a voluntary disability separation/disability retirement with this Board on February 4, 2011. On March 2, 2011, the Board issued a Procedural Order requiring the parties to respond to specific questions. The uncontroverted information submitted by the parties establishes the following background information:

The last day Appellant was physically at work with Appellee was June 15, 2007; the last date he was in active pay status was December 28, 2008. Appellant began receiving disability benefits from the Ohio Public Employees Retirement System (OPERS) on January 1, 2008. On October 10, 2010, Appellee received a letter from OPERS stating that Appellant's disability benefit would be terminated effective January 31, 2011, and that OPERS had certified Appellant as sufficiently recovered to return to work.

Appellee subsequently referred Appellant to an independent medical examiner, Dr. Kraus of Layh and Associates, for a psychological evaluation. Appellant submitted to examination by Dr. Kraus in December 2010 and was

provided with a copy of his report and recommendations. Dr. Kraus concluded that Appellant was not able to return to work.

A pre-reinstatement hearing was held on January 27, 2011. Appellant received notice of and attended the hearing. Appellant presented no testimony or evidence at the hearing concerning his ability to return to work. Consequently, based on the report and recommendations of Dr. Kraus, Appellee made a decision not to reinstate Appellant and notified Appellant of its decision at that time.

Appellant filed an appeal of Appellee's denial of reinstatement with this Board. Subsequently, Appellant submitted a medical release and a request to return to work to Appellee, on or about March 4, 2011.

### **STATEMENT OF THE CASE**

Michelle Noble testified that she is employed by the Board of Clark County Commissioners as its Human Resources Director and confirmed that she served as the hearing officer at Appellant's January 27, 2011, pre-reinstatement hearing. She recalled that Appellant attended the hearing and had an opportunity to respond to the information presented at the hearing by Appellee. The witness noted that Appellant presented no testimony or medical evidence at the reinstatement hearing to rebut Dr. Kraus' findings that he was not able to return to work at that time, and his reinstatement was subsequently denied by Appellee.

Appellant testified that in 2008 he began collecting retirement benefits as a result of his disability retirement from employment with Appellee. He noted that his disability benefits were discontinued by OPERS based on a psychiatric evaluation conducted by Dr. Marjorie C. Gallagher in September 2010, who concluded that he was no longer disabled.

Appellant confirmed that he was subsequently requested by Appellee to appear for an independent psychological examination by Dr. George Kraus, and that he did so in December 2010. He noted that he participated in a pre-reinstatement hearing in January 2011, during which hearing the topic was his ability to return to work. Appellant confirmed that he did not personally submit any medical releases or reports, including Dr. Gallagher's September 2010 evaluation at his pre-reinstatement hearing.