

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DIANA MARCUM,

Appellant,

v.

Case No. 11-IDS-08-0315

FRANKLIN COUNTY,
DEPARTMENT OF JOB & FAMILY SERVICES,

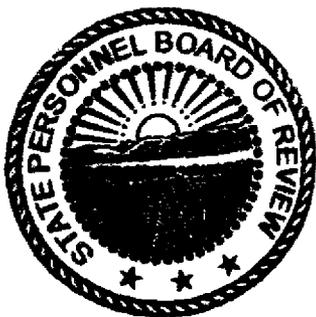
Appellee,

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 the involuntary disability separation of Appellant Marcum from Appellee, which separation was effective March 15, 2011, is **DISAFFIRMED**. Since Appellant Marcum was not on the payroll at the time of effective date of the order of involuntary disability separation, she is not eligible to receive back pay or other benefits or emoluments.



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, November 09, 2011.




Eric E. Conn
Clerk

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

Appellant

v.

October 13, 2011

Franklin County Department of
Job & Family Services

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration on October 13, 2011, upon the notice of appeal of filed by Appellant Marcum. Attached to the notice of appeal was a letter dated August 23, 2011, from Margaret K. Snow, Director, Human Resources, to Appellant Marcum notifying her of her placement on involuntary disability separation. That letter states, in pertinent part:

Enclosed is a copy of Resolution No. 0600-11 with attachment, which was approved on August 23, 2011, by the Franklin County Board of Commissioners. Personnel Action No. 4294206 confirms **your involuntary disability separation effective March 15, 2011**, from the Department of Job and Family Services pursuant to Section 123:1-30-01 of the Ohio Administrative Code. You will remain in this status until March 14, 2013, which is two years from the date that you were no longer in an active work status. (Emphasis added).

As can be seen from reading the above, Appellant Marcum was notified in a letter dated August 23, 2011, that she was being placed on involuntary disability separation effective March 15, 2011. This is in violation of section 124-3-01(A)(2) of the Ohio Administrative Code in that the effective date is prior to when Appellant Marcum was notified of the action. The pertinent part of the administrative rule states:

(A) "Section 124.34 orders" and orders of involuntary disability separation may be affirmed only if each of the following criteria are satisfied:

2) The employer shall serve the employee with a copy of the order on or before the effective date of the action;

Clearly the above letter along with the Resolution and attachment was not received by Appellant Marcum "on or before the effective date of the action" since the involuntary disability separation was effective March 15, 2011 and she did not receive notice of it until August 23, 2011 or after.

It does appear from the letter Appellant Marcum received from Director Snow that the last day Appellant Marcum was in active work status was March 14, 2011. Therefore, Appellant Marcum is not entitled to any back pay since she has not been at work since March 14, 2011.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISAFFIRM** the order involuntarily disability separating Appellant Marcum from Appellee, which separation was effective on March 15, 2011. Since Appellant Marcum was not on the payroll at the time of the effective date of the order of involuntary disability separation, she is not eligible to receive back pay or other benefits or emoluments.



Marcie M. Scholl
Administrative Law Judge

:mms