

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

KAREN THOMPSON,

*Appellant,*

v.

Case Nos. 11-IDS-09-0327  
11-REM-09-0328

DEPARTMENT OF REHABILITATION AND CORRECTION,  
NOBLE CORRECTIONAL INSTITUTION,

*Appellee*

**ORDER**

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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.

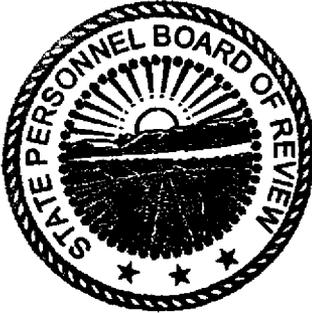
The instant records reflect that Appellant was receiving Temporary Total Compensation (TTC) at the time of her Involuntary Disability Separation (IDS). Receipt of TTC is not only indicative of, but is also essentially an admission of, an applicant's complete inability to perform the essential functions of one's position for a pertinent time period.

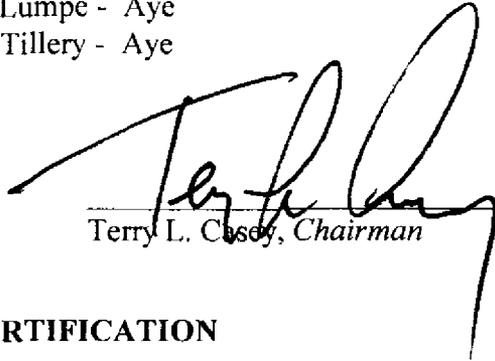
Appellant has complained that Appellee could have left Appellant in her work status and, correspondingly, could simply have waited for her to return to work. The instant records reflect that Appellee did not place Appellant on her IDS from February 22, 2011 (the date of her injury) until September 26, 2011 (the effective date of Appellant's IDS), a time frame of more than seven months.

It is entirely understandable that Appellant wished to avoid separation and simply come back to work on her anticipated return to work date of November 21, 2011. Yet, Appellant was clearly unable to perform the essential functions of her position as of September 26, 2011. Additionally, Appellee likely had a need to have these functions performed considering that Appellant had been absent from the workplace for more than seven months. Accordingly, it is understandable and appropriate for Appellee in this case to have determined that it needed to separate Appellant. Finally, we note that Appellant is eligible for reinstatement to her position until February 22, 2013.

Wherefore, it is hereby **ORDERED** that Appellee's motion to dismiss is granted and the appeals are **DISMISSED**.

Casey - Aye  
Lumpe - Aye  
Tillery - Aye

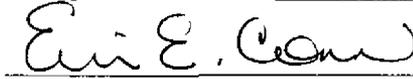


  
Terry L. Casey, *Chairman*

**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, January 20, 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.

ENTERED  
JAN 20 2012

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

Karen Thompson

*Appellant*

v.

Department of Rehabilitation & Correction,  
Noble Correctional Institution

*Appellee*

Case Nos. 11-IDS-09-0327  
11-REM-09-0328

December 13, 2011

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellee's Motion for Procedural Order, filed on October 14, 2011 and Appellee's Motion to Dismiss, filed on November 21, 2011. Appellant Thompson filed a reply to Appellee's Motion to Dismiss on December 9, 2011. Appellant Thompson filed an appeal with this Board on September 19, 2011, citing that she was appealing an involuntary disability separation, effective September 26, 2011, and a removal. Appellee's Motion for Procedural Order is hereby **DENIED** as it concerned disparate treatment information which is not applicable in a case involving an involuntary disability separation. It is also not applicable in the removal case, as there was no removal action of Appellant Thompson, as will be discussed later. A Procedural Order and Questionnaire was issued by this Board on November 21, 2011, the same day that Appellee filed its Motion to Dismiss. Appellee filed its response to the Questionnaire on December 1, 2011.

Appellee's Motion to Dismiss contains an affidavit from Jody Beardmore, Labor Relations Officer 2 at Noble Correctional Institution, records showing dates of payments to Appellant Thompson from the Bureau of Workers Compensation (BWC), a doctor's statement and the order of involuntary disability separation. All of the documents indicate Appellant Thompson was properly placed on involuntary disability separation.

If this case were to proceed to a record hearing, the question on appeal would be if Appellant Thompson was able to perform the essential job duties of her position as of the effective date of the involuntary disability separation, or September 26, 2011. If Appellant Thompson was receiving compensation for being temporarily totally disabled as of that date, she cannot come before this Board and argue in good faith that she was able to perform her duties as of September 26, 2011, while at the same time collect compensation from the Bureau of Workers' Compensation for being temporarily totally disabled. To do so would be tantamount to fraud.

The records attached to Appellee's Motion to Dismiss, marked as Exhibits A and B, and the documents attached to Appellee's response to this Board's Questionnaire, marked as Exhibit A, are evidence that Appellant Thompson was injured on February 22, 2011 and that she received temporary total compensation from BWC beginning July 6, 2011 and continuing to at least October 21, 2011. In her response to Appellee's Motion to Dismiss, Appellant Thompson does not dispute that she was receiving temporary total benefits from BWC as of the effective date of her involuntary disability separation. Appellee's Motion to Dismiss states that at Appellant Thompson's request, the pre-separation hearing was held via telephone and that Appellant Thompson stated she would not be able to perform her essential job duties until after surgery, which was scheduled for September 30, 2011. Also attached to the Motion to Dismiss is Exhibit C, which is from the office of Dr. Kantaras stating that "Patient Karen Thompson will undergo knee arthroscopy on 9/30/11. Estimated return to work date would be 12/05/2011."

In the case of *Sammie C. Cordial v. Dept. of Rehab & Corr., SE Corr. Inst.*, (2006) Tenth Appellat District, No. 05AP-473, the court dealt with facts very similar to the instant case. The employee in that case was receiving temporary total benefits from the Bureau of Workers' Compensation and was placed on involuntary disability separation. The employee appealed to this Board and this Board dismissed the appeal based on the fact that the employee was receiving workers' compensation benefits at the time of being placed on involuntary disability separation. The court found that the imposition of an involuntary disability separation in those circumstances was proper and upheld this Board's dismissal of the case.

Appellee also argues that Appellant Thompson was not removed from her position as is stated in Ms. Beardmore's affidavit. The order that was attached to Appellee's Motion to Dismiss is an order of involuntary disability separation, not an order of removal. The order states on its face that Appellant Thompson has a right to reinstatement until February 22, 2013; a removal does not contain a right of reinstatement. Therefore, there is no evidence to establish that Appellant Thompson was removed from her position; instead, she was placed on involuntary disability separation.

From reading Appellant Thompson's reply to Appellee's Motion to Dismiss it appears she is upset that Appellee separated her and did not wait for her to return to her job. Appellant Thompson states she requested to return to work on November 21, 2011. From that statement, it must be presumed that Appellant Thompson could not perform her essential job duties as of the effective date of her involuntary disability separation, September 26, 2011. Appellee has not abused its discretion by placing Appellant Thompson on involuntary disability separation. She had not been in active work status since February 22, 2011 and Appellee had a doctor's statement which indicated she would not be back to work until early December, 2011. Appellant Thompson has the right to present medical evidence showing she can once again perform the essential duties of her position and request reinstatement to her position. If Appellee denies her reinstatement request, then she can appeal such denial to this Board.

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The only date that this Board is looking at in deciding whether or not Appellant Thompson was properly placed on involuntary disability separation is the effective date. The evidence has established that Appellant Thompson could not perform the essential duties of her position as of September 26, 2011, and in fact, was still receiving temporary total compensation from BWC during that time period; therefore, she was properly placed on involuntary disability separation and she was not removed from her position. Thus, it is my **RECOMMENDATION** that these appeals be **DISMISSED** and Appellee's Motion to Dismiss be **GRANTED**.



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Marcie M. Scholl  
*Administrative Law Judge*

:mms