

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JENNIFER K. ROACH,

Appellant,

v.

Case No. 11-LAY-09-0345

DEPARTMENT OF REHABILITATION & CORRECTION,
OHIO REFORMATORY FOR WOMEN,

Appellee

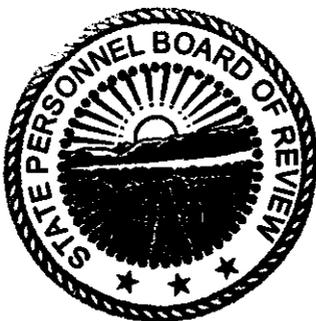
ORDER

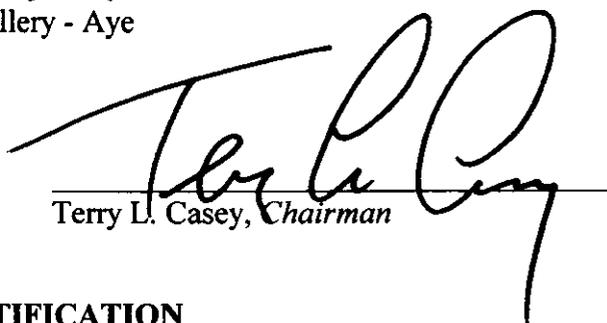
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 motion is granted and the appeal is **DISMISSED**.

Casey - Aye
Lumpe - Aye
Tillery - Aye



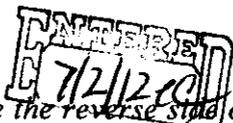

Terry L. Casey, *Chairman*

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, July 02, 2012.


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**

Jennifer K. Roach

Case No. 11-LAY-09-0345

Appellant

v.

March 12, 2012

Department of Rehabilitation & Correction,
Ohio Reformatory for Women

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 March 12, 2012, upon Appellee's Motion to Dismiss, filed on February 9, 2012. To date, Appellant Roach has not filed a memorandum *contra*.

Appellant Roach filed a notice of appeal of her displacement from her position of Correction Warden Assistant 1, effective December 31, 2011. In her notice of appeal, she states:

My appeal is based on the fact the Department of Rehabilitation and Correction has failed to medically separate the person which (sic) is causing the displacement of one employee (Correction Warden Assistant 1 at the Ohio Reformatory for Women) which in turn is then causing my position to be laid off.

Since there is no authority in the Ohio Revised Code or in the Ohio Administrative Code which gives standing to a displaced employee whose position has not been abolished to challenge the appointing authority's rationale for implementing an abolishment or layoff which results in the employee's displacement, the only challenge available to Appellant Roach is that of the notification process, the calculation of her retention points or asserting bad faith on behalf of the Appellee. In her notice of appeal, Appellant Roach does not allege that she was not notified properly of her displacement or that her retention points

were not calculated properly. The only allegation that Appellant Roach makes is that the Appellee failed to medically separate another employee who, because that employee has exercised his or her right to displace, is ultimately responsible for her displacement.

Appellant Roach had ten (10) days to respond to Appellee's Motion to Dismiss and to date, no response has been received from Appellant Roach. Appellee's Motion to Dismiss is based on the argument that pursuant to administrative rule 123:1-41-21(C) of the Ohio Administrative Code, an employee who is on disability leave is still subject to all of the layoff and displacement provisions. Appellee also argues that prior to the effective date of Appellant Roach's displacement, she transferred to the Department of Youth Services at a higher salary than what she was earning at Appellee. (See Affidavit of Roger Keller and Affidavit Ex. 1 attached to the Motion to Dismiss).

A case with almost an identical set of facts was decided by this Board in its Order dated November 19, 2009 in the case of *Finney v. Dept. of Rehab & Corr, Ross Correctional Institution*, case number 08-LAY-06-0366. In that case, Appellant Finney was displaced from her position by an employee who was on disability leave. Appellant Finney argued that because the other employee was not physically at work, the employee should not have been permitted to exercise his displacement rights. The Board adopted the Report and Recommendation, holding that the law provides that an employee on disability leave must be given the right to displace another employee with less retention points so that if and when that employee can return to work, the position will be there for the employee to return to.

Appellant Roach stated in her notice of appeal that Appellee should have taken the employee who displaced her off disability leave and placed that employee on involuntary disability separation. This Board does not have the authority to place an employee on an involuntary disability separation, nor does it have the jurisdiction to tell an appointing authority to place an employee on an involuntary disability separation. If Appellee did not want to pursue an involuntary disability separation for the employee who displaced Appellant Roach, then this Board cannot order the Appellee to do so. That is a decision which is legally left to the discretion of an appointing authority.

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Therefore, inasmuch as Appellant Roach did not respond to Appellee's Motion to Dismiss and since this Board has no jurisdiction to grant Appellant Roach the remedy of ordering Appellee to place another employee on an involuntary disability separation, it is my **RECOMMENDATION** that Appellee's Motion to Dismiss be **GRANTED** and that this appeal be **DISMISSED**.



Marcie M. Scholl
Administrative Law Judge

:mms