

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
GENERAL DIVISION

Brad Bekeleski,		Case No. 13CV-00984
Appellant,		Judge Sheeran
vs.		
Ohio Department of Administrative Services,		
Appellee.		

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**Decision and Entry Affirming Adjudication Order of  
Ohio Department of Administrative Services**

**Notice of Final Appealable Order**

**Sheeran, J.**

This case is a Revised Code 119.12 administrative appeal, by Brad Bekeleski (Appellant), from an Adjudication Order that the Ohio Director of Administrative Services issued on January 11, 2013, denying Appellant’s request for an extension of his short-term disability leave benefits. The record that the Ohio Department of Administrative Services has certified to the Court reflects the following facts and procedural history.

**Facts and Procedural History**

Appellant has been a state employee since 1997, and he is employed by the Ohio Department of Rehabilitation and Correction (ODRC) as a Correction Officer at the Richland Correctional Institution in Mansfield, Ohio. *Transcript of Hearing, Oct. 31, 2012 (T.) 9-10, 20; Record (R.) 141, 164.*

In the spring and summer of 2012, Appellant missed work due to illness. His last date worked was March 20, 2012 and he returned to work on July 26, 2012. *T. 10.*

On April 3, 2012, Appellant applied to his appointing authority, ODRC, for short-term disability leave benefits, having been diagnosed with ulcerative colitis by Ravindra K. Malhotra, M.D., a gastroenterologist who prepared the Attending Physician Statement that Appellant submitted in support of his disability application. *R. 113-114.* Dr. Malhotra stated that Appellant became disabled on March 22, 2012 as a result of ulcerative colitis. *R. 113.* ODRC forwarded Appellant's application to the Disability Services Unit (DSU) of the Ohio Department of Administrative Services (DAS). *R. 165.*

On April 5, 2012, the DSU received a Disability Assessment from United Behavioral Health (UBH). *R. 128-132.* The assessment was conducted by psychologist Melvin Painter, Ph.D., on March 29, 2012. *R. 129-130.* Dr. Painter documented the following findings as a result of the assessment:

\*\*\* [Appellant] arrived on time, drove himself, participated in assessment alone and was cooperative. [Appellant] was marginally but adequately groomed. \*\*\* Assessor observed in interview at "moderate" level, agitated type depression, anxiety, worry, irritability, poor attention, concentration and memory, disturbed sleep and appetite (by report), migraines, "severe" (by report). Additionally, assessor observed [Appellant] to present with anger, aggressive [*sic*] stance, impatience. [Appellant] was alert and oriented x4. Formal thought, speech and language were intact. General knowledge and simple calculations were intact. Serial 7's were not intact. Assessor found [Appellant's] general mental status to be moderately impaired with minimal impulse control. [Appellant] presents with no [illegible] with no plan, intent, means, or history of gestures. [Appellant] presents with passive [illegible] stating he would like to hurt people who hurt him at work. *R. 131.*

Dr. Painter recommended to Jeffrey Uy, M.D., the Medical Director of UBH, that Appellant be referred for outpatient psychotherapy and additional evaluation, and that he be granted short-term disability benefits. *R. 131.* Dr. Painter's assessment was reviewed and approved by Dr.

Uy, who concluded: “Psychiatric symptoms are not of sufficient severity to meet criteria for [psychiatric standard] but due primarily to [Appellant’s] medical condition of inflammatory [*sic*] bowel disease (ulcerative colitis/Crohn’s disease) [Appellant] should be referred to internal medicine or [G.I.] specialist[.] [Appellant] to be referred for [outpatient] psychotherapy and psychiatric [medical evaluation] if [Appellant] wishes to discuss medication. [R]ecommendation is for no [psychiatric] disability.” *R. 128.*

On April 5, 2012, Eric Bayon, a psychologist employed by UBH, telephoned Appellant to review the treatment plan with Appellant. *R. 129.* Appellant advised Dr. Bayon that Appellant intended to follow the treatment plan. *R. 129.*

By letter dated April 10, 2012, the DSU notified Appellant that his request for disability benefits had been approved for the period of March 22 to April 5, 2012, that he had served a fourteen-day waiting period from March 22 to April 4, 2012, and that he was therefore eligible for one day of benefits, on April 5, 2012. *T. 10, 17; R. 127.*

Appellant requested that he be granted an extension of his disability leave benefits for the period of April 6 to July 25, 2012, asserting that he was physically and mentally incapable of performing his job during that time period. *T. 11, 24-26.* By letter dated May 2, 2012, the DSU denied Appellant’s request, notifying him that his request had been denied due to insufficient medical documentation to support an extension of benefits beyond April 5, 2012. *T. 10; R. 123-124.* Appellant timely appealed the DSU’s denial of his request for an extension of benefits. *T. 10; R. 118.*

On June 5, 2012, pursuant to R.C. 124.385(F) and Ohio Adm. Code 123:1-33-04, the DSU requested a medical opinion from an independent third party, Charles S. Burke, M.D., a psychiatrist, as to whether Appellant’s disability file contained sufficient medical documentation

to support a finding that he was unable to perform his job duties after April 5, 2012, as the result of a mentally disabling condition. *T. 12-13; R. 117, 142, 144-145.*

By letter dated June 15, 2012, Dr. Burke rendered the opinion that the medical documentation in Appellant's file did not support a period of disability after April 5, 2012, based on any psychiatric conditions. *R. 104-105.*

On August 1, 2012, pursuant to R.C. 124.385(F) and Ohio Adm. Code 123:1-33-04, the DSU requested a medical opinion from another independent third party, Barney M. Wisinger, M.D., an internal medicine specialist, as to whether Appellant's disability file contained sufficient medical documentation to support a finding that he was unable to perform his job duties after April 5, 2012, as the result of a physically disabling condition. *T. 14; R. 146-148.*

By letter dated August 6, 2012, Dr. Wisinger rendered the opinion that the medical documentation in Appellant's file did not support a period of disability after April 5, 2012 based on any physical conditions. *R. 80-83.*

On October 31, 2012, a Hearing Officer conducted a hearing on Appellant's appeal from the DSU's denial of Appellant's request for an extension of his disability leave benefits. *T. 1-58; R. 1-58.* Appellant represented himself at the hearing and testified. The DSU was represented by counsel and presented the testimony of its employee, Jamie Corder. The testimony of Appellant and Ms. Corder is summarized above.

At the conclusion of the hearing, the parties agreed to hold the record open until the close of business on November 14, 2012, for Appellant to submit additional medical documentation in support of his request to extend his disability benefits. *T. 53-55.* On November 14, 2012, Appellant's physician, Dr. Malhotra, submitted additional medical documentation to the DSU,

regarding Appellant's ulcerative colitis. *R. 163, 170.* On November 30, 2012, the additional medical documentation was forwarded to the Hearing Officer. *R. 163.*

On November 30, 2012, the Hearing Officer directed the DSU to obtain a third, and final, review of the record by an independent third party. *R. 163.* The DSU forwarded the record to Dr. Wisinger, the internal medicine specialist, for that review.

By letter dated December 12, 2012, Dr. Wisinger rendered the opinion that the medical documentation in Appellant's file, which now included the additional documentation from Dr. Malhotra, did not support a period of disability from April 6, to July 25, 2012, based on any physical conditions. *R. 153-162.* On December 19, 2012, Dr. Wisinger's report was forwarded to the Hearing Officer. *R. 163.*

On December 24, 2012, the Hearing Officer issued a Report and Recommendation, in which the Hearing Officer recommended that the Director of DAS affirm the DSU's decision to deny Appellant's request for an extension of his disability leave benefits for the period from April 6 to July 25, 2012. *R. 163-173.* The Hearing Officer found that the opinions of Dr. Burke and Dr. Wisinger constituted reliable, probative, and substantial evidence that Appellant was not unable to perform his job duties as the result of a disabling physical or mental condition during the period of April 6 to July 25, 2012. *R. 163-173.*

By letter dated December 24, 2012, DAS mailed the Report and Recommendation of the Hearing Officer to Appellant, and notified Appellant that he had ten days to file written objections to the Report and Recommendation. *R. 174.* On December 26, 2012, Appellant received the Report and Recommendation by certified mail service. *R. 175.* Appellant did not file objections.

In an Adjudication Order issued on January 11, 2013, the Director of DAS adopted the Hearing Officer’s Report and Recommendation, and affirmed the DSU’s decision to deny Appellant’s request for an extension of his disability leave benefits for the period of April 6 to July 25, 2012. *R. 176-177.*

On January 25, 2013, Appellant timely appealed the Adjudication Order to this Court.

**Standards of Appellate Review**

Revised Code 119.12, which governs this appeal, provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. \*\*\*

In an administrative appeal, pursuant to R.C. 119.12, the trial court reviews the agency’s order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with law. *Burroughs v. Ohio Dept. of Admin. Servs.*, 10th Dist. No. 12AP-522, 2013-Ohio-3261, ¶ 10. The evidence required by R.C. 119.12 has been defined as follows:

- (1) “Reliable” evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true.
- (2) “Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue.
- (3) “Substantial” evidence is evidence with some weight; it must have importance and value.

(Footnotes omitted.) *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 571 (1992).

### Analysis

In support of this appeal, Appellant has presented a single, narrow argument. Appellant asserts that, because Dr. Burke, the independent third-party psychiatrist, did not, in his June 15, 2012 opinion letter, expressly accept the findings of Appellant's examining physicians, Dr. Burke's opinion letter is not reliable. For the following reasons, Appellant's argument is not well taken.

Revised Code 124.385(F) provides, "If a request for disability leave is denied based on a medical determination, the director shall obtain a medical opinion from a third party. The decision of the third party is binding." Ohio Adm. Code 123:1-33-04 provides, in part, as follows: "Where a medical question is at issue, the director or designee shall \*\*\* obtain a medical opinion from an independent third party. \*\*\* The third party shall render a medical opinion within thirty days of the selection and the decision of the third party shall be binding."

An opinion of a third-party, non-examining physician, for purposes of R.C. 124.385(F), can constitute reliable, probative, and substantial evidence, if the third-party physician accepts all of the findings of the examining physicians. *Walters v. Ohio State Dept. of Admin. Servs.*, 10th Dist. No. 06AP-472, 2006-Ohio-6739, ¶ 21. The court explained:

Here, there is no assertion that Dr. Sokolov [the third-party physician] did not accept the findings of the examining physician. Although he referred to the treatment provided by Dr. Raulj [the examining physician], and opined that the intensity of treatment (i.e., the lack of documented medication changes and frequency of visits) was not consonant with a severe depression, **he did not reject any of the findings of appellant's treating psychiatrist.** Therefore, we disagree with appellant's contention that Dr. Sokolov's medical opinion was deficient because he did not personally examine her. *Id.*, ¶ 22. (Emphasis added.)

Contrary to Appellant's assertion in his brief, the *Walters* court did not hold that a third-party physician is obligated to expressly accept all of the findings of a claimant's treating physician. Nor has any Ohio court imposed such a requirement.

In the instant case, the third-party physician, Dr. Burke, stated in his June 15, 2012 opinion letter:

I had the opportunity to perform an independent psychiatric records review regarding records pertaining to the evaluation and treatment of Brad Bekelski [sic] on June 15, 2012. This review is based solely on the records noted below. I did not have the opportunity to meet with Mr. Bekelski [sic]. This evaluation does not establish any form of doctor-patient relationship.

It was noted on the request for this review that the last date worked by Mr. Bekelski [sic] was 3-20-12, at the position of correction officer. The period of benefits in question being approved is between 4-6-12 to 5-31-12.

I had the opportunity to review a position description for Correctional Officer, with the Department of Rehabilitation and Corrections. I also reviewed an application for disability benefits provided by Mr. Bekelski [sic] related to his condition of ulcerative colitis since 1997, also noting workplace stress and panic attacks.

A note by Dr. Malhotra (MD) dated 3-26-12, noted ulcerative colitis. There was no psychiatric condition noted.

**I reviewed a report by Dr. Painter (PhD) dated 4-3-12, who noted the diagnosis of anxiety disorder and adjustment disorder had been considered. He noted that Mr. Bekelski [sic] was being treated for ulcerative colitis and Crohn's disease. It was noted that Mr. Bekelski [sic] had many complaints of an emotional nature. There were multiple issues between he and his supervisors and he had a history of disciplinary action that is now on a final warning. It was determined that psychiatric symptoms were not of sufficient severity to meet the criteria for psychiatric disability.**

A statement by Dr. Bayon dated 4-5-12, noted that Mr. Bekelski [sic] would see Dr. Wagner (PhD) for weekly psychotherapy at some time in the future.

A report by Dr. Desai (MD) dated 5-14-12, noted that Mr. Bekelski [sic] should be off of work from 5-13-12 to 5-31-12, to return to work 6-1-12. The rationale or diagnosis was not made on this statement.

In summary, the records reviewed do not contain emotional symptoms of sufficient severity to warrant disability for any psychiatric condition.

Therefore, in my opinion, the records reviewed do not support a period of disability from 4-6-12 to 5-31-12, based on any emotional condition.



I hope this information is helpful to you in your determinations in this case. *R. 104-105.* (Emphasis added.)

Dr. Burke did not state or imply that he rejected any of the findings of Appellant's physicians. To the contrary, Dr. Burke stated that he had reviewed and considered the findings of Dr. Painter, the only medical professional of record who evaluated Appellant and rendered psychological findings about Appellant. Accordingly, the Court concludes that Dr. Burke's June 15, 2012 opinion letter is, indeed, reliable.

### **Conclusion**

Having considered the entire record on appeal, the Court finds that the Adjudication Order issued by the Director of the Ohio Department of Administrative Services on January 11, 2013, denying Appellant's request for an extension of his disability leave benefits for the period of April 6 to July 25, 2012, is supported by reliable, probative, and substantial evidence and is in accordance with law. Specifically, the Court finds that the Adjudication Order is supported by the June 15, 2012 opinion letter of Dr. Burke, the August 6, 2012 opinion letter of Dr. Wisinger, and the December 12, 2012 opinion letter of Dr. Wisinger.

Accordingly, the Adjudication Order is hereby **AFFIRMED**.

This is a final, appealable order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

**Date:** 01-22-2015  
**Case Title:** BRAD A BEKELESKI -VS- STATE OF OHIO DEPT OF ADMINISTRATIVE SER  
**Case Number:** 13CV000984  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "Patrick E. Sheeran", is written over a circular embossed seal. The seal is partially obscured by the signature and has a textured, dotted appearance.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 13CV000984

Case Style: BRAD A BEKELESKI -VS- STATE OF OHIO DEPT OF  
ADMINISTRATIVE SER

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes