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**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

MAR 11 2015

**THILANDER R. LETT,**  
**Petitioner,**

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**Docket No.:**  
**OSAH-SPB-DIS-1518105-60-Teate**

*Kevin Westray*

Kevin Westray, Legal Assistant

v.

**GEORGIA DEPARTMENT OF  
REVENUE,**  
**Respondent.**

**INITIAL DECISION**

**I. Introduction**

Petitioner Thilander Lett requested a hearing after she was dismissed by Respondent the Georgia Department of Revenue (hereinafter “the Department”). The hearing on this matter was held on January 27, 2015 before the undersigned Administrative Law Judge at the Office of State Administrative Hearings in Atlanta, Georgia. Petitioner represented herself at the hearing. Ms. Katherine Powers Stoff, Assistant Attorney General, represented the Department. For the reasons stated below, the Department’s action is **AFFIRMED**.

**II. Findings of Fact**

1. Ms. Lett, a classified employee, has worked for the Department since 1989. Prior to her dismissal, Ms. Lett was employed by the DOR as a “Clerk II General.” Her duties as a Clerk II General included opening, preparing, and sorting documents in the Department’s Processing Center Division. (Testimony of Demetria Harris; Testimony of Mike Williams).
2. On July 21, 2008, Ms. Lett was designated for family medical leave due to a workplace injury to her wrist. Ms. Lett elected to receive Worker’s Compensation benefits, which began on July 21, 2008. The Department placed Ms. Lett on leave of absence without pay while she received worker’s compensation benefits. (Petitioner Exhibit 8; Testimony of Demetria Harris).
3. Ms. Lett returned to the Department to work in a position modified to accommodate the work restrictions prescribed by her physician for brief periods in January 2009 and March 2010. However, in both instances, Ms. Lett was unable to perform the job duties of the modified positions and returned to authorized leave status. Ms. Lett last reported to work at the Department on March 19, 2010. (Testimony of Demetria Harris; Testimony of Thilander Lett).
4. Ms. Lett’s worker’s compensation benefits exhausted on or about October 17, 2014, whereupon the Department commenced paying her annual and sick leave benefits that she had accumulated during her tenure at the Department. (Respondent Exhibits 1, 2, 4, 6, 10; Testimony of Demetria Harris).

5. On April 2, 2014, after Ms. Lett had exhausted her 456 hours of accumulated leave, Veronica Peeples, Employee Relations Supervisor with the Department, contacted Ms. Lett by letter to inquire about her intention to return to work. In the letter, Ms. Peeples advised Ms. Lett that, inasmuch as her worker's compensation benefits and accumulated leave had been exhausted, she was required to provide the Department with a release authorizing her to return to work and any work restrictions from her treating physician by April 15, 2014. This letter was sent to Ms. Lett by Certified Mail. (Respondent Exhibit 2; Testimony of Veronica Peeples).

6. The Department began the process of terminating Ms. Lett's employment after she failed to respond to the above-described letter by the April 15 deadline. However, after Ms. Lett appealed the Department's adverse action, averring that she never received notice of her leave expiration, the Department rescinded her dismissal. Ms. Ellen Cimaglia, the Department's Human Resources Director, notified Ms. Lett of the rescission in a letter dated August 14, 2014. In the rescission letter, Ms. Cimaglia advised Ms. Lett to notify the Department of her intent to return to work and provide an update of her current status from her treating physician by August 29, 2014. (Respondent Exhibits 4, 5, and 10; Testimony of Ellen Cimaglia).

7. Ms. Lett replied to the rescission letter on or about August 27, 2014. She wrote as follows in her reply:

I am not physically or mentally able to return to work and be put back under all that stress and torment that I received from Management, Supervision [and] your Human Resource Personnel. I think the best thing for me to do is retire at this point.

Ms. Lett attached to her reply a status update form completed by her treating physician, Dr. Jim W. Roderique, M.D. Dr. Roderique indicated on this form that Ms. Lett could return to work on August 22, 2014, with the restrictions "no manual staple remover, no torqueing, twisting of wrist." At the hearing on this matter, Ms. Peeples testified that there was no position available at the Department that could accommodate Ms. Lett's medical restrictions. (Respondent Exhibit 11).

8. In a subsequent telephone conversation with Veronica Peeples, Ms. Lett reiterated that she could not return to work and that she wanted to retire. (Testimony of Veronica Peeples).

9. In a letter dated September 16, 2014, Ms. Cimaglia advised Ms. Lett that she proposed to dismiss her from employment with the Department effective October 7, 2014. Ms. Cimaglia provided in this letter that the Department's decision to dismiss Ms. Lett was based on State Personnel Board Rules 478-1-.24(10)(c) (hereinafter SPB Rule 24(10)(c))<sup>1</sup> Failure to Return from Leave of Absence, and 478-1-.24(10)(d) (hereinafter SPB Rule 24(10)(d)),<sup>2</sup> Suitable Vacancy Not Available. Ms. Cimaglia advised Ms. Lett in this letter of her right to request a review of the proposed action by Mr. Sean Casey, the Commissioner's designee for Adverse Action Reviews. (Respondent Exhibit 6; Testimony of Ellen Cimaglia).

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<sup>1</sup> Now Ga. Comp. R. & Regs. 478-1-.28(4).

<sup>2</sup> Now Ga. Comp. R. & Regs. 478-1-.28(5).

10. Ms. Lett exercised her right to an internal review on September 19, 2014. After conducting an internal review, Mr. Casey upheld the proposed dismissal and communicated his findings to Ms. Lett in a letter dated October 3, 2014. Mr. Casey wrote in this letter that the decision to uphold the dismissal was based in part on Ms. Lett's communications to the effect that she was "unable to return to work or perform the essential functions of her position, with or without reasonable accommodation." Mr. Casey concluded that Ms. Lett was deemed to have voluntarily resigned according to SPB Rule 24(10)(c) and that, inasmuch as a suitable position was not available to accommodate the restrictions provided by her physician, her dismissal comported with SPB Rule 10(d). The letter advised Ms. Lett of her right to appeal the Department's final determination to the Office of State Administrative Hearings.<sup>3</sup> (Respondent Exhibit 8).

11. Ms. Lett requested an administrative hearing on or about October 9, 2014, whereupon the matter was referred to the Office of State Administrative Hearings for adjudication. (Respondent Exhibit 13).

### III. Conclusions of Law

1. Under Georgia law, "[c]lassified employees . . . may be dismissed from employment or otherwise adversely affected as to compensation or employment status only if such action is taken in accordance with the rules and regulations of the State Personnel Board governing adverse actions and appeals for classified employees." O.C.G.A. § 45-20-8(a) (2014). The procedure for adverse action against a classified employee's employment must include, at a minimum, providing the classified employee with reasons for the adverse action and "an opportunity to file an appeal and request a hearing which may be held before either the [State Personnel Board] or an administrative law judge." O.C.G.A. § 45-20-8(b) (2014).

2. According to the Rules of the State Personnel Board (hereinafter "SPB Rules"), employers may deem certain actions by classified employees to be voluntary separations. Ga. Comp. R. & Regs. 478-1-.28(1) (2015). If an employer deems the actions of a classified employee to be a voluntary separation, the employer must provide the employee with written notice of the action, including a statement of his or her right to appeal the separation within the time period specified in SPB Rule 27(3). *Id.*

3. Pursuant to SPB Rule 28(4), "[w]hen an employee fails to return to duty at the expiration of a leave of absence and has not received approval for an extension" the employer has the discretion to consider the employee to have voluntarily resigned from employment. Ga. Comp. R. & Regs. 478-1-.28(4). Further, pursuant to SPB Rule 28(5), if a suitable vacancy is not available "at the expiration of a Contingent Leave of Absence," the employer must release the employee from employment. *Id.* 478-1-.28(5).

4. In the present case, after Ms. Lett's worker's compensation benefits and accumulated leave had exhausted, the Department requested that she notify them of her intent to return to work. Ms. Lett thereafter notified the Department that she had no intention of returning to work and

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<sup>3</sup> The State Personnel Board Rules cited in the Department's adverse action letters, while substantively accurate, do not reflect a reorganization of SPB Rules that went into effect June 20, 2014. Mr. Casey sent Ms. Lett a revised final determination letter on or about January 9, 2015 in order to provide her with citations to updated State Personnel Board rules. (Respondent Exhibit 9).

that she was considering retirement. Ms. Lett therefore, “fail[ed] to return to duty” within the meaning of SPB Rule 28(4) and the Department was within its discretion to consider her as having resigned her position. Ga. Comp. R. & Regs. 478-1-28(4). The Department provided Ms. Lett with written notice of its intent to deem her failure to return from leave as a voluntary resignation and of her right to an appeal pursuant to SPB Rule 27. Accordingly, the Department’s adverse action was taken in accordance with SPB Rules.

#### **IV. Decision**

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department’s action is hereby **AFFIRMED**.

**SO ORDERED**, this 11th day of March, 2015.



**STEVEN W. TEATE**  
**Administrative Law Judge**