

**ARBITRATION DECISION NO.:**

73

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Mental Health

**DATE OF ARBITRATION:**

December 9, 1987

**DATE OF DECISION:**

December 9, 1987

**GRIEVANT:**

John Martin

**OCB GRIEVANCE NO.:**

G-86-1041

**ARBITRATOR:**

Jerry A. Fullmer

**FOR THE UNION:**

Steve Lieber

**FOR THE EMPLOYER:**

Jennifer Dworkin

**KEY WORDS:**

Just Cause

Disability

As Basis For Insubordination

Suspension

**ARTICLES:**

Article 24 - Discipline

§24.01-Standard

**FACTS:**

Grievant is employed by the State of Ohio, Department of Mental Health. He was suspended from work due to alleged insubordination.

**ARBITRATOR'S OPINION:**

It is undisputed that Grievant claimed a psychological inability to perform work tasks that are a

normal function of the institution (escorting violent patients). The Arbitrator concluded that under these circumstances, the employee should either be accepted as a limited duty employee or removed from his job for disability or inability to perform job duties. However, if Grievant's claim is in good faith, it seems to be an inappropriate matter for discipline because it was not a willful act.

**AWARD:**

Grievance is sustained and Grievant is awarded back-pay.

**TEXT OF THE OPINION:**

**ARBITRATION  
BENCH DECISION AND AWARD**

**State of Ohio  
Department of Mental Health  
Employer**

and

**OCSEA, Local 11  
Union**

**Grievance No.:**  
G-86-1041

**Grievant:**  
John Martin

**Date of Hearing:**  
December 9, 1987

**Arbitrator:**  
Jerry A. Fullmer

**Appearances:**

**For The Employer:**  
Jennifer Dworkin, Advocate

**For The Union:**  
Steve Lieber, Advocate

**Issue(s):**

“Was the discipline for just cause?” If not, what shall the remedy be?” (Insubordination)

**Award:**

It is undisputed that Grievant claimed a psychological inability to perform task and the task is normal to the institution (escorting violent patients). It seems to the Arbitrator that under these circumstances that employee should either be accepted as a limited-duty employee or removed from job for disability for inability to perform. But, if claim is in good faith, it seems not an appropriate matter for discipline, simply because it is not an in disciplined act.

Grievance sustained, back pay.

Issued at Cleveland, Ohio

Date: 12/9/87

J. A. Fullmer

Arbitrator