

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

TASHEK HAMLETTE,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2014-2996
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On August 1, 2014, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, TaShek Hamlette, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due August 16, 2014, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Senior Defined Contribution Programs Officer.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. Petitioner’s request for the return of those employee contributions Petitioner made while an approximately three-year member of the Florida Retirement System (“FRS”) Pension Plan, which request was made subsequent to Petitioner’s second election into the FRS Investment Plan and almost immediate termination of her FRS-covered employment thereafter, hereby is denied.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

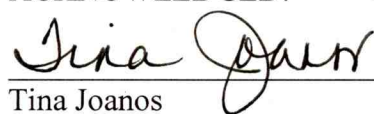
DONE AND ORDERED this 27th day of August, 2014, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman
Senior Defined Contribution Programs Officer
Office of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

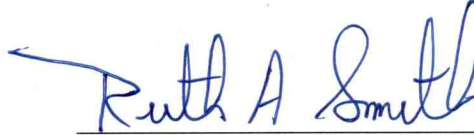
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to TaShek Hamlette, pro se, [REDACTED], and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 27th day of August, 2014.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

TASHEK HAMLETTE,

Petitioner,

vs.

Case No.: 2014-2996

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on May 15, 2013, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Tashek Hamlette, Pro Se



For Respondent: Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner has a right to the return of her employee contributions to the Florida Retirement System (FRS) Pension Plan following her transfer to the FRS Investment Plan and subsequent termination of her FRS-covered employment.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and represented herself. Respondent presented the testimony of Daniel Beard, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-15 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner was employed by the City of Miami Gardens, an FRS-covered agency, beginning March 1, 2010.

2. Petitioner had until August 31, 2010 to make an initial election to join the defined benefit Pension Plan or the defined contribution Investment Plan. Petitioner made no affirmative initial election and therefore defaulted to Pension Plan membership.

3. On August 5, 2013, Petitioner signed a second election form stating that she wanted to transfer from the Pension Plan to the Investment Plan. The second election form Petitioner signed and submitted acknowledges her understanding of two important ramifications of her transfer:

You understand and acknowledge that you have elected to switch to the FRS Investment Plan and that any accrued value you may have in the FRS Pension Plan will be transferred to the FRS Investment Plan as your opening account value. You understand that any Pension Plan accrued value transferred to your account will be subject to the 6-year vesting requirement of the FRS Pension Plan.... .

* * *

You understand that your one-time 2nd Election is irrevocable and that you must remain in the plan you chose... until your FRS-covered employment ends and you retire.

4. According to Petitioner's payroll report, she terminated employment with the City of Miami Gardens on August 21, 2013, after her second election form was received by the FRS Plan Choice Administrator, and so she became a member of the Investment Plan shortly before ending her FRS-covered employment.

5. Petitioner states that when she resigned from her job with Miami Gardens in 2013, she was advised during her exit interview to switch to the Investment Plan from the Pension Plan, "to ensure I was able to keep at least the monies I was forced to pay into FRS." This advice was apparently premised on the fact that the Investment Plan has a one year vesting period and the Pension Plan vesting period is at least six years; it was given by someone in the City of Miami Gardens human relations department.

6. Because Petitioner initially enrolled in the Pension Plan on or before June 30, 2011, her potential benefits in that plan are subject to a six year vesting requirement.

7. After Petitioner requested transfer to the Investment Plan, an Accumulated Benefit Obligation ("ABO") or "Present Value" was calculated and funds representing the Present Value of her Pension Plan account were transferred to the Investment Plan. The present value of Petitioner's Pension Plan benefit was calculated to be \$ [REDACTED]. As explained in the FRS Investment Plan Summary Plan Description, "the ABO calculation is an actuarial determination of service credit; it is not the total of any employee or employer contributions paid into the FRS Pension Plan."

8. Petitioner's Investment Plan Account Statement for the period October 1, 2013 to December 31, 2013, following her resignation, shows that she is vested in approximately \$450 of

her funds and that the approximately [REDACTED] value of her previous Pension Plan account has been subtracted, because this amount, accrued before her second election to the Investment Plan, is still subject to the six year Pension Plan vesting period.

9. Petitioner requested the return of her employee contributions to the Pension Plan pursuant to section 121.091(5)(a), Florida Statutes, and this request was denied on March 10, 2014. Petitioner then submitted a petition for hearing on the denial of her request and this administrative proceeding followed.

CONCLUSIONS OF LAW

10. Petitioner requests the return of her employee contributions to the Pension Plan following her transfer to the Investment Plan.

11. In 2002, the Florida Legislature amended the Florida Retirement System's retirement plan offerings. Starting in 2002, FRS-eligible employees could elect to participate in either the FRS Pension Plan or the FRS Investment Plan.

12. Petitioner became a member of the Pension Plan by default because she did not make an affirmative election to join the Investment Plan before her initial election deadline expired. After the initial election period expired, Petitioner had a one-time, irrevocable, second election to transfer from the Pension Plan to the Investment Plan. See § 121.4501(4)(g), Fla. Stat. (2013). Petitioner acknowledged her understanding of the irrevocable nature of her second election when she signed her second election form.

13. The funds transferred from Petitioner's Pension Plan account to the Investment Plan remain subject to the six-year Pension Plan vesting requirement. See § 121.4501(6)(c)1, Fla. Stat. (2013). Having attained more than one year of creditable service while she was a Pension Plan member, Petitioner was immediately vested in the approximately \$450 of post-

transfer contributions to her Investment Plan account. See §§ 121.4501(6)(a) and (b), Fla. Stat. (2013).

14. Withdrawal of employee contributions to the Pension Plan is addressed by section 121.091(5), Florida Statutes, found in Part I of Chapter 121, Florida Retirement System titled “General Provisions.” Section 121.091(5)(a) provides:

A member whose employment is terminated for any reason other than death or retirement before becoming vested is entitled to the return of his or her accumulated contributions as of the date of termination. Effective July 1, 2011, upon termination of employment from all participating employers for 3 calendar months as defined in s. 121.021(39)(c) for any reason other than retirement, a member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. The refund may be received as a lump-sum payment, a rollover to a qualified plan, or a combination of these methods. Partial refunds are not permitted. The refund may not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against his or her retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2). (Emphasis added.)

15. A “member” is defined by section 121.021(12), Florida Statutes, as “any officer or employee who is covered or who becomes covered under this system in accordance with this chapter.” The term “system” is defined at section 121.021(3):

‘Florida Retirement System’ or ‘system’ means the general retirement system established by this chapter, including, but not limited to, the defined benefit program administered under this part, referred to as the ‘Florida Retirement System Pension Plan’ or ‘pension plan,’ and the defined contribution program administered under part II of this chapter, referred to as the ‘Florida Retirement System Investment Plan’ or ‘investment plan.’

Despite the above definitions, Respondent SBA maintains that the provision allowing refund of contributions made to the Pension Plan applies only to members still in the Pension Plan, even though Investment Plan participants are defined by the above statute as members of the system. Respondent points to the fact that the return of contributions provision does not appear in the Investment Plan part of the statute as meaning that there is no provision available to Investment Plan members authorizing return of employee contributions previously made to the Pension Plan. As a result, the SBA asserts it lacks the authority to grant Petitioner's request.

16. Respondent also points out that once a Present Value Pension Plan Benefit is calculated and transferred, the funds are no longer segregated as "employer" and "employee" contributions. The Present Value calculation (in this case ██████████ is an actuarial determination of service credit, not an accounting of employee or employer contributions. While this is clearly the case, it is not relevant to the question of whether Petitioner is entitled to refund of whatever amounts she actually contributed.

17. I note that the language previously cited from the second election form:

You understand and acknowledge that you have elected to switch to the FRS Investment Plan and that any accrued value you may have in the FRS Pension Plan will be transferred to the FRS Investment Plan as your opening account value (Emphasis added.)

is a duly-enacted rule pursuant to 19-11.007(3)(a), Florida Administrative Code because the form has been adopted and incorporated by reference. This provision therefore represents the Respondent's determination that this is the correct interpretation of the applicable statutes, and controls the result here.

18. Petitioner argues that her decision to transfer to the Investment Plan before her termination was prompted by bad advice she received from her employer, but "Employers are

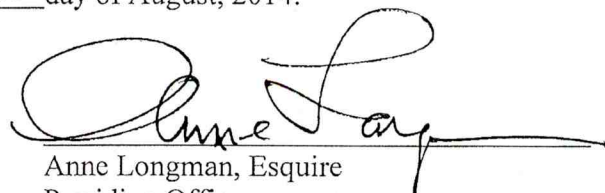
not agents of the... state board... and the... state board... [is] not responsible for erroneous information provided by representatives of employers. § 121.021(10), Fla. Stat. (2013).

19. The SBA is not authorized to depart from the requirements of the statutes it administers when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. See Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998). Here, Respondent's rule, contained in the second election form signed by Petitioner, states that the accrued value of her Pension Plan account will be transferred to the Investment Plan, rather than any portion of it being refunded to her. Under these circumstances, Petitioner's request for relief would be contrary to Respondent's rule.

RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 1st day of August, 2014.



Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
315 South Calhoun Street, Suite 830
Tallahassee, FL 32301-1872

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
Daniel.beard@sbafla.com
(850) 488-4406

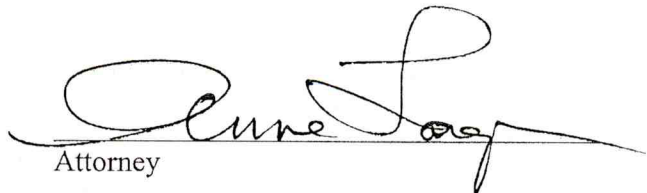
This 1st day of August, 2014.

Copies furnished to:

Via U.S. Mail



Via electronic delivery:
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slindsey@penningtonlaw.com
Attorneys for Respondent


Attorney