

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

WANDA BUDGICK,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2016-3719
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On January 6, 2017, 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, Wanda Budgick, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on January 21, 2017. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she receive the unvested balance of her Florida Retirement System (“FRS”) Investment Plan account even though she terminated FRS-covered employment and did not return to such employment within five (5) years of her initial termination 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.

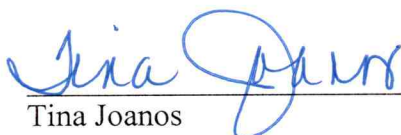
DONE AND ORDERED this 14th day of March, 2017, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

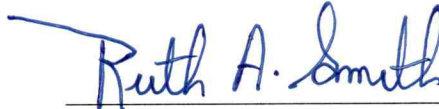
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Wanda Budgick, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 14th day of March, 2017.



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

WANDA BUDGICK,

Petitioner,

v.

CASE NO.: 2016-3719

STATE BOARD OF ADMINISTRATION,

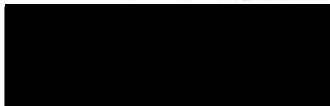
Respondent.

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 November 1, 2016, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Wanda Budgick, pro se



For Respondent: Brian Newman
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether Petitioner may receive the unvested balance of her Investment Plan account after terminating Florida Retirement Service (FRS) covered employment and not returning within five years of her initial termination.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1 through 9 were admitted into evidence without objection.

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

MATERIAL UNDISPUTED FACTS

1. On September 17, 2010 Petitioner was enrolled in the Florida Retirement System by virtue of her employment with an FRS-participating employer.
2. Petitioner had until March 31, 2011 to make an initial election between the defined benefit FRS Pension Plan and the defined contribution FRS Investment Plan. On March 31, 2011, she used her initial election to enroll in the Investment Plan, creating an effective enrollment date of April 1, 2011. The Investment Plan has a one year vesting requirement.
3. Petitioner terminated employment with her FRS-participating employer on July 13, 2011, when she was .17 years from being fully vested in her Investment Plan account.
4. On September 13, 2011, Petitioner was notified, via letter, that any unvested balance in her Investment Plan account would be transferred to a suspense account.

5. On November 11, 2011, Petitioner was notified that the unvested portion of her Investment Plan account had been transferred to a suspense account, and that if she did not return to work in a FRS-covered position within five years, her unvested Investment Plan account balance would be forfeited.

6. On February 1, 2016, Respondent sent Petitioner a letter reminding her that if she did not obtain state employment by July 13, 2016, the unvested portion of her FRS Investment Plan account would be forfeited.

7. Petitioner understood that she needed to return to FRS-covered employment before July 13, 2016 to avoid forfeiture of her Investment Plan account. She was, in fact, offered a position with the Florida Department of Children and Families (DCF), an FRS-participating employer, on June 8, 2016, but she declined the job offer. Petitioner did not return to FRS-covered employment after her July 2011 termination. The essence of Petitioner's complaint seems to be that her prospective employer did not interact with her in a way that made it possible for her to return to FRS-covered employment by July 13, 2016.

8. Petitioner filed a Request for Intervention on July 12, 2016, seeking access to her unvested Investment Plan benefits.

9. Petitioner's request for intervention was denied by Respondent on July 26, 2016, and a timely Petition for Hearing was filed which initiated this administrative proceeding.

CONCLUSIONS OF LAW

10. Section 121.4501(6)(c)2 and (6)(d), Florida Statutes states:

(6)(c)2. If the member terminates employment before satisfying the vesting requirements, the nonvested accumulation must be transferred from the member's accounts to the state board for deposit and investment by the state board in the suspense account created within the Florida Retirement System Investment Plan Trust Fund. If the terminated member is reemployed as an eligible employee within 5 years, the state board shall transfer to the member's accounts any amount previously transferred from the member's accounts to the suspense account, plus the actual earnings on such amount while in the suspense account.

(6)(d) Any nonvested accumulations transferred from a member's account to the state board's suspense account shall be forfeited, including accompanying service credit, by the member if the member is not reemployed as an eligible employee within 5 years after termination.

§121.4501(6)(c)2 and (6)(d), Fla. Stat.

11. The applicable vesting period for benefits in the Investment Plan is one year. §121.4501(6)(b)1., Fla. Stat. Accordingly, Petitioner needed to work until she attained a total of one year of creditable service for her Investment Plan benefit to vest. She did not, as she worked less than one year before terminating FRS-covered employment on July 13, 2011. Because she failed to return to FRS covered employment by July 13, 2016 (within 5 years of July 13, 2011), her nonvested accumulations are properly forfeited. The course of events surrounding Petitioner's dealings with DCF as a prospective employer has no relevance to this proceeding.

12. The SBA is not authorized to depart from the requirements of Chapter 121, Florida Statutes, the statutes it is charged to implement, when exercising its jurisdiction.

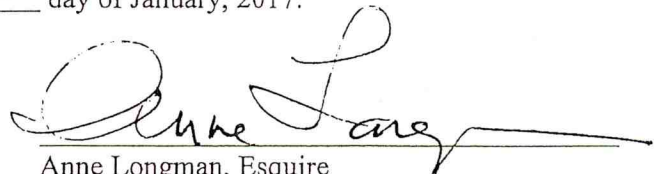
Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Further, the SBA's construction and application of those statutes are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. 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 DCA1998).

13. Petitioner has the burden of proving by a preponderance of the evidence that she is entitled to the relief requested in her Petition. See, e.g., Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). Petitioner failed to establish that she returned to FRS-covered employment before her five-year deadline expired. The Respondent lacks the statutory authority to disburse non-vested, forfeited funds, and the relief Petitioner requests must be denied.

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 6th day of January, 2017.



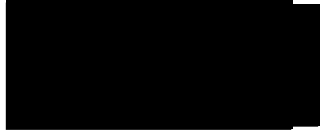
Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
315 South Calhoun Street, Suite 830
Tallahassee, FL 32301-1872

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.

COPIES FURNISHED via mail and electronic mail to:

Wanda Budgick



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
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Counsel for Respondent