

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

CHRISTINA VAUGHN	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2005-329
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On June 12, 2007, 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 Petitioner, Christina Vaughn, and her counsel, Casey L. Chmielewski, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on June 27, 2007. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

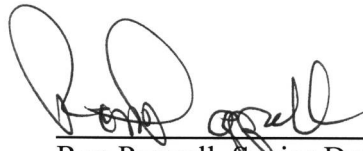
**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to be exempted from the vesting requirement of the FRS Investment Plan and the forfeiture provision of Section 121.4501(6)(b)2., Florida Statutes, 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 200, 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 10<sup>th</sup> day of July, 2007, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



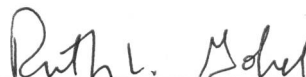
Ron Poppell, Senior Defined Contribution  
Programs Officer  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

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.

  
Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Casey L. Chmielewski, Esq., U.S. Coast Guard, 300 East Main Street, Norfolk, VA 23435, 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, and Anne Longman, Esq., Lewis, Longman & Walker, P.A., P.O. Box 10788, Tallahassee, FL 32302, this 10<sup>th</sup> day of July, 2007.



\_\_\_\_\_  
Ruth L. Gokel  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

CHRISTINA VAUGHN,

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

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CASE NO.: 2005-3

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GENERAL COUNSEL'S OFFICE

**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned Presiding Officer for the State Board of Administration on March 9, 2007, in Tallahassee, Florida. The Petitioner appeared through her attorney by telephone and the Respondent in person, as follows:

**APPEARANCES**

For Petitioner: Casey L. Chmielewski, Esquire  
US Coast Guard  
300 East Main Street  
Norfolk, VA 23435

For Respondent: Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

### **STATEMENT OF THE ISSUE**

Whether Petitioner is exempted from the vesting requirement of Section 121.4501(6)(b)1., Florida Statutes and the forfeiture provision of Section 121.4501(6)(b)2.(c), Florida Statutes because of her husband's absence from the State of Florida due to his active service in the military.

### **PRELIMINARY STATEMENT**

On March 21, 2005, Petitioner submitted a Request for Intervention asking that her Investment Plan account be exempted from forfeiture due to her anticipated failure to meet the vesting requirements of Section 121.4501(6)(b)1., Florida Statutes, because of her husband's absence from the State of Florida for active military service. Respondent provided notice of its intent to deny this request to Petitioner on April 29, 2005. Petitioner filed a Petition for Hearing dated May 5, 2005, to contest the intended agency action. Because there are no disputed issues of material fact, an informal hearing was scheduled pursuant to Section 120.57(2), Florida Statutes to resolve the issues raised by the Petition. An informal hearing was held in Tallahassee, Florida on March 9, 2007.

Petitioner testified at the hearing. Respondent presented the testimony of Dan Beard of the SBA. Petitioner's exhibit P-1 and Respondent's exhibits R-1-3 were admitted into evidence without objection. There were no disputes as to the material facts in this case.

A transcript of the proceedings was made, filed and made available to the parties. Respondent timely filed a Proposed Recommended Order; Petitioner made no further submissions following the hearing.

### **UNDISPUTED MATERIAL FACTS**

The parties have stipulated that the following facts are undisputed: (Tr. 4-8, 14, 15; Petitioner's Unilateral Pre-hearing Statement, para. 2.A.).

1. Petitioner, Christina Vaughn, worked as a teacher for the Pinellas County School Board from August 1993 through December 1994, and August of 1999 through December 2002. The School Board is now, and for all periods relevant to this case has been, a participating employer in the Florida Retirement System ("FRS").

2. FRS eligible employees may elect to participate in either the FRS defined benefit program (the "Pension Plan") or the Public Employee Optional Retirement Program, (the "Investment Plan"). The Pension Plan has a 6 year vesting requirement while the Investment Plan has a 1 year vesting requirement.

3. On November 26, 2002, Petitioner elected to join the FRS Investment Plan, having previously been a member of the Pension Plan, and her choice was effective on December 1, 2002.

4. Petitioner terminated her employment on December 20, 2002 in order to join her husband, Michael Vaughn, who had been called to active duty in the U.S. Coast Guard. Mr. Vaughn had been in California since July 2002. At the time of her termination, Petitioner had 59 months of creditable service in the FRS leaving her 13 months shy of the 6 year vesting requirement for Pension Plan members. Petitioner is not a member of any branch of the uniformed services.

5. On December 30, 2002, the present value of Petitioner's Pension Plan benefit, \$ [REDACTED], was transferred to Petitioner's Investment Plan account. This amount will be forfeited by the Petitioner if she does not become vested in it. Petitioner may become vested in it by resuming employment with an FRS employer on or before December 19, 2007 (5 years from the date of her termination).

6. On April 1, 2005, Respondent distributed to Petitioner \$ [REDACTED] which represented the entire amount in her Investment Plan in which she was fully vested. This was distributed to her as she was no longer employed and it was a *de minimus* amount. Petitioner returned the check to Respondent. Petitioner asked, and Respondent has agreed, that this amount not be distributed to her pending the outcome of the hearing on her Petition.

7. The Vaughns do not intend to return to Florida before Mr. Vaughn's current service is complete. That date is unknown, but will likely not be in 2007.

#### CONCLUSIONS OF LAW

8. Section 121.4501(8)(a) obligates the SBA to administer the Investment Plan. The SBA is not authorized to depart from the requirements of this statute 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 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).

9. Benefits transferred from the Pension Plan are subject to a 6 year vesting requirement, as stated in Section 121.4501(6)(b)(1), which provides:

A participant shall be vested in the amount transferred from the defined benefit program, plus interest and earnings thereon and less administrative charges and investment fees upon meeting the service requirements for the participant's membership class as set forth in s. 121.021(29).

10. Section 121.021(29), Florida Statutes defines the vesting requirements as "6 or more years of creditable service." Because Petitioner had less than 6 years creditable service when she terminated employment, she was not vested in the benefits transferred from the Pension Plan. If she does not return to active FRS employment by December 19, 2007 (5 years after termination), her unvested account balance will be subject to forfeiture, as required by Section 121.4501(6)(b)2. and (c) which provides:

**(6) Vesting requirements.--**

...

(b) 2. If the participant terminates employment prior to satisfying the vesting requirements, the unvested accumulation shall be transferred from the participant's accounts to the state board for deposit and investment by the board in the suspense account of the Public Employee Optional Retirement Program Trust Fund of the board. If the terminated participant is reemployed as an eligible employee within 5 years, the state board shall transfer to the participant's account any amount of the moneys previously transferred from the participant's accounts to the suspense account of the Public Employee Optional Retirement Program Trust Fund, plus the actual earnings on such amount while in the suspense account.

(c) Any unvested accumulations transferred from a participant's account to the suspense account shall be forfeited by the participant if the participant is not reemployed as an eligible employee within 5 years after termination.

It is undisputed that: (1) Petitioner is not vested in the funds she transferred from her Pension Plan to the Investment Plan; and (2) she has the opportunity to become fully vested in those funds if she



resumes employment with an FRS employer by December 19, 2007.

11. Petitioner raises the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. § 4301, et seq., as authority for a temporary stay of the vesting and forfeiture provisions of Florida law. USERRA cannot provide relief in this case, however, as it is applicable by its terms only to persons performing service in the uniformed services, 38 U.S.C. §4301(a)(2) and §4312(a), and Petitioner is not member of the uniformed services. Petitioner has provided no authority that would extend the protections of USERRA to family members of individuals who have been called to active military duty. Even if USERRA extended to family members, it apparently would not afford relief to Petitioner, because she has been given 5 years (under Florida law) to return to active employment with an FRS covered agency before her account balance is forfeited, and USERRA protections extend only to cumulative absences from employment not to exceed five years. 38 U.S.C. §4312 (a)(2).

### **RECOMMENDATION**

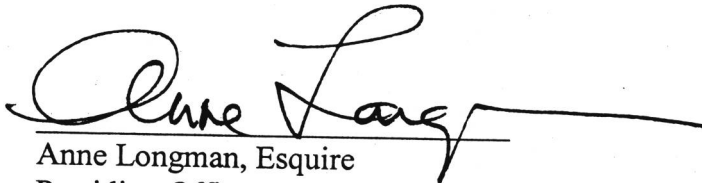
Having considered the foregoing Undisputed Material Facts and Conclusions of Law, it is recommended that a final order be entered by The State Board of Administration denying Petitioner the relief requested. Accordingly, Petitioner's unvested Investment Plan account balance will be forfeited if she does not resume employment with an FRS covered employer on or before December 19, 2007 (five years from the date of her termination), and Respondent will distribute to Petitioner the fully vested portion of her Investment Plan account as soon as possible.

Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
P.O. Box 10095  
Tallahassee, FL 32302-2095

A handwritten signature in cursive script, reading "Anne Longman", with a horizontal line extending to the right from the end of the signature.

Anne Longman, Esquire

RESPECTFULLY SUBMITTED this 12th day of June, 2007.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
P.O. Box 10788  
Tallahassee, FL 32302

**NOTICE OF RIGHT TO SUBMIT EXCEPTIONS**

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the Agency Clerk of the State Board of Administration and served on all parties.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail on the following on this 12<sup>th</sup> day of June, 2007:

Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308

Casey L. Chmielewski, Esquire  
US Coast Guard  
300 East Main Street  
Norfolk, VA 23435  
Attorney for Petitioner, Christina Vaughn