

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

RONALD HADEED,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2016-3636
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On October 19, 2016, 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, Ronald Hadeed, 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 November 3, 2016. 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 received an invalid in-service distribution from his Florida Retirement System (FRS) Investment Plan account. When Petitioner terminated employment from his FRS-participating employer and then took a total distribution from his Investment Plan

account, he was employed part-time with another FRS-participating employer. As such, he took an invalid in-service distribution in violation of Section 121.591(1)(a)3., Florida Statutes. Therefore he is required either to terminate employment with all FRS-participating employers for six (6) calendar months or to repay the invalid distribution within ninety (90) days from the date of this Final Order.

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.

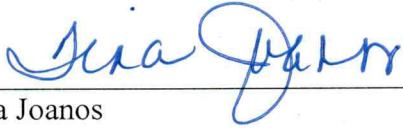
DONE AND ORDERED this 13th day of December, 2016, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

Joan B. Haseman

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 Ronald Hadeed, pro se, both by email transmission, [REDACTED] and by email and by UPS [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 13th day of December, 2016.



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

RONALD HADEED,

Petitioner,

vs.

CASE NO. 2016-3636

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 July 12, 2016, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Ronald Hadeed, pro se


For Respondent:

Brandice D. Dickson
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether Petitioner received an “in-service” distribution and must either repay the distribution or terminate employment with all Florida Retirement System (FRS) participating employers.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1 through 7 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 thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. From January 1991 through the present, Petitioner was employed by the City of Daytona Beach Police Department in a part-time on-call position for special events.

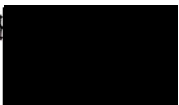
2. From 1991 through January 1996, the City of Daytona Beach Police Department was an FRS-participating employer, but Petitioner was not accruing benefits during this time because his part-time position was not covered by FRS.

3. In May 2005, after its period of non-participation, the City of Daytona Beach Police Department re-joined the FRS as a participating employer and has been a participating employer continuously since that time.

4. From 2005 to 2015, Petitioner also was employed by the Florida Department of Highway Safety and Motor Vehicles (DHSMV) and accrued a FRS Pension Plan benefit.

5. On June 18, 2015, Petitioner submitted an election to the SBA's third party administrator to join the FRS Investment Plan, and his effective date of Investment Plan membership was July 1, 2015.

6. On June 30, 2015, Petitioner terminated employment with the Florida DHSMV.

7. On July 31, 2015, Petitioner was mailed an FRS Investment Plan Confirmation of Opening Balance which advised him that his opening balance was \$ 

8. In August 2015, Petitioner's part-time position with the City of Daytona Beach Police Department became an FRS-covered position, with 3% of Petitioner's salary being deducted from his paycheck for the employee contribution to his Investment Plan account.

9. On October 9, 2015, Petitioner took a total distribution from his FRS Investment Plan account in the form of a rollover to a traditional IRA.

10. On October 8, 2015, the day before the total distribution was effectuated, Petitioner and his financial advisor called the MyFRS Financial Guidance Line and were advised that Petitioner could not be employed in *any position* with any FRS participating employer if he were to take a distribution. Petitioner was advised that such employment was called an "in-service" distribution which was prohibited by the FRS.

11. Petitioner confirmed orally during the recorded call that he was not employed with any FRS participating employer, in any position. Based on that representation, Petitioner's total distribution was approved.

12. An audit of the FRS Investment Plan records revealed that the Petitioner in fact had been employed by an FRS participating employer, the City of Daytona Beach, at the time he took his total distribution. As such, his distribution was deemed an "in-service" distribution. Petitioner and his employer were notified that Petitioner must either terminate his employment or repay the entire distributed amount on or before June 15, 2016. Petitioner then filed a Petition for Hearing stating he was never made aware of his FRS status by the City.

13. Petitioner asserts that he was never informed that the City of Daytona Beach Police Department was an FRS employer, and that after his DHSMV job ended and he was searching for new employment, he carefully avoided FRS-covered employers so as to not violate the in-service distribution rules. He found employment with a private employer. But throughout this entire time, he had been working, part-time, as-needed for the City of Daytona Beach Police Department,

which switched from FRS to non-FRS, back to FRS, and his part-time position went from not covered to covered, and now that he has reduced his hours, back to non-covered again. The Human Resources Director for the City confirmed that Petitioner was never informed of the City's FRS status, or of any change in his status, although at some point the mandatory 3% FRS contribution began being deducted from his paycheck.

14. Respondent points out that whether Petitioner's position is actually covered by FRS is irrelevant to whether he is working for an FRS participating employer and that the deduction of 3% from his paycheck was constructive notice of this fact. This is true, but from Petitioner's perspective, he was simply working at a part-time job which had not changed since 1991, and he had received no notification that, as to his employer's FRS status, it had in fact changed in a way that impacted his ability to withdraw his retirement funds.

CONCLUSIONS OF LAW

15. Benefits are not payable to Investment Plan account members until the member has been terminated for three calendar months and the member cannot return to FRS-covered employment for six calendar months following the termination. §§ 121.591(1)(a)3. and 4., and 121.021(39)(a)2., Fla. Stat.

16. Section 121.591, Florida Statutes states, in pertinent part:

Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department.

...

(1) Normal benefits.--Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.
3. **The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).**
4. **Benefit payments may not be made until the member has been terminated for 3 calendar months**, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

§ 121.591, Fla. Stat. (2015)(emphasis added).

17. When an Investment Plan member takes a distribution (receives benefits) in contravention of Section 121.591(1)(a)3., Florida Statutes, he is said to have taken an “invalid distribution” or “in-service distribution” and the Respondent seeks either the return of the distribution or the member must terminate his employment. Rule 19-11.003, Florida Administrative Code governs invalid distributions and states:

(9) Invalid distributions.

(a) If a member or a former member of the FRS Investment Plan receives an invalid distribution, the member or former member is required to repay the entire invalid distribution within 90 days of the member's receipt of a final notification from the SBA, or in lieu of repayment, the member must terminate employment from all participating employers. If the member fails to repay the invalid distribution, or terminate employment, the employer is liable for the repayment of the invalid distribution even if the member signed a statement at the time the member was hired that no benefit had been received from the Plan.

1. If a member repays the entire distribution, the member's repayment will be deposited in the FRS Investment Plan account; the member will be returned to the Investment Plan; and all future employee and employer contributions will be deposited in the funds the member has chosen.
2. If the employer repays the entire distribution, the repayment will be deposited in the Investment Plan Trust Fund and allocated to the Investment Plan's forfeiture account to offset plan expenses. The member will be returned to the Investment Plan; and all future employee and employer contributions will be deposited in the funds the member has chosen.

3. If the member fails to repay the invalid distribution and terminates employment, the SBA will declare the member a retiree and will not pursue the repayment of the invalid distribution pursuant to paragraph (b) above. As a retiree, the member is subject to the provisions of Section 121.122, F.S., if the member is reemployed in the future with an FRS-covered employer in a regularly established position.

19-11.003, F.A.C.

18. At the time Petitioner took his distribution from the FRS Investment Plan, he was employed with an FRS-participating employer. Because the Petitioner was, and is, employed by an FRS-participating employer, his distribution was an “in-service” distribution and it must either be repaid or he must terminate employment.

19. The State Board of Administration is constrained from granting Petitioner the relief he has requested. 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.), and its 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).

20. In his response to my Query regarding the record, Petitioner states that he would have to pay a substantial penalty to withdraw the distribution (from the account to which he rolled it over) and pay it back. It does appear that his financial interests have been damaged through no fault of his own, but nothing in the record suggests that Respondent SBA is at fault here, or has authority to make him whole. Unfortunately, if there is a remedy for Petitioner, it lies elsewhere.

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 19th day of October, 2016.



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
mini.watson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Ronald Hadeed



Petitioner

and via electronic mail only to:

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Counsel for Respondent