

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

DOUGLAS WADDELL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2013-2880
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
	)	
_____	)	

**FINAL ORDER**

On February 20, 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, Douglas Waddell, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due March 7, 2014. 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**

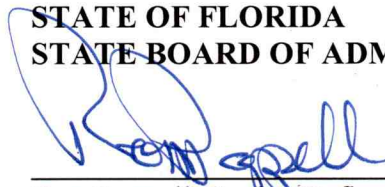
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request, that he be deemed not to have violated Section 121.091(9)(d), Florida Statutes, when he returned to FRS-covered employment within six (6) calendar months of the date on which he “retired” by taking a total distribution from his FRS

Investment Plan account subsequent to his involuntary termination from his prior FRS-covered employment, hereby is denied. As such, Petitioner is required either to repay his FRS Investment Plan distribution in total, or to terminate all FRS-covered employment until the six (6) calendar month reemployment prohibition of Section 121.091(9)(d), Florida Statutes, has been satisfied. There are no exceptions for hardship reasons to the prohibition set forth in Section 121.091(9)(d), Florida Statutes.

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 31<sup>st</sup> day of March, 2014, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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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.

  
\_\_\_\_\_  
Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by U.S. mail to Douglas Waddell, 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 31st day of March, 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

DOUGLAS WADDELL

Petitioner,

vs.

Case No. 2013-2880

STATE BOARD OF ADMINISTRATION,

Respondent.

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**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 December 13, 2013, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Douglas Waddell, pro se



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

### **STATEMENT OF THE ISSUE**

The issue is whether Petitioner returned to Florida Retirement System (FRS) covered employment within six calendar months of retiring from the Investment Plan, in violation of section 121.091(9)(d), Florida Statutes.

### **PRELIMINARY STATEMENT**

This case was initiated after an FRS Investment Plan audit found that Petitioner returned to FRS-covered employment within six calendar months after retiring from the Investment Plan. This audit finding prompted Respondent to issue a notice to Petitioner advising him that he needed to either return the Investment Plan funds he withdrew or terminate all FRS-covered employment. Petitioner responded to this demand by requesting a hearing and this administrative proceeding followed.

At the hearing held on December 23, 2013 on the Petition, Petitioner testified on his own behalf. The SBA presented testimony from Dan Beard, Director of Policy, Risk Management & Compliance, Office of Defined Contribution Programs.

A transcript of the informal 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 Tallahassee Community College, an FRS participating employer, until February 23, 2013 when he was terminated by the college against his will.

2. Petitioner requested and received a total distribution from his FRS Investment Plan account. He needed this money because he had lost his job. During the phone call on June 11, 2013 with the MyFRS Guidance line in which Petitioner requested his money from the Investment Plan, he was specifically advised that taking a distribution would cause him to be retired, that he could not be re-employed with any FRS-participating employer within six calendar months, and that renewed membership in the FRS was not available for retired members rehired after July 1, 2010. Petitioner expressly recognized all of these limitations and consequences.

3. Petitioner was hired by the Leon County School Board, an FRS-covered employer, on August 19, 2013, within six calendar months of receiving his Investment Plan account distribution.

4. Petitioner stated that he was aware of the re-employment prohibition but did not realize the position he accepted with the Leon County School Board was an FRS-covered position. Petitioner also testified that he was not aware that the return-to-work prohibition applied following an involuntary termination of employment.

#### **CONCLUSIONS OF LAW**

5. Section 121.091(9)(d), Florida Statutes prohibits an Investment Plan member from returning to FRS-covered employment within six calendar months of FRS retirement. Retirement occurs by operation of law when a member terminates FRS-covered employment and takes a distribution from an Investment Plan account. Petitioner therefore "retired" from the FRS on June 11, 2012 when he received a total distribution from his Investment Plan account. § 121.4501(2)(k), Fla. Stat.

6. Petitioner contends that the foregoing statutes should not be applied to him because his separation from employment with Tallahassee Community College was involuntary.

Section 121.091(9)(d) does not, however, differentiate between voluntary and involuntary terminations of employment.

7. Petitioner also maintains that repayment of the Investment Plan distribution or termination of his current employment would cause him and his family great financial hardship. Petitioner's claim of hardship is not disputed, but such hardship is not an exception to the return-to-work prohibition found in section 121.091(9)(d), and this unfortunate circumstance affords Petitioner no relief in this proceeding.

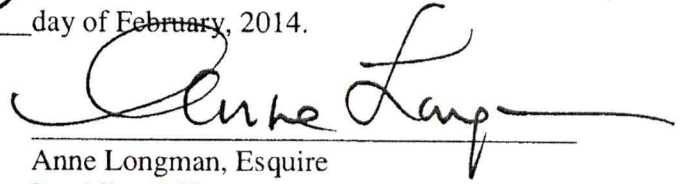
8. Under section 121.091(9)(d)2., a retiree employed in violation of this provision is jointly and severally liable with the employer for reimbursement of any funds previously withdrawn from his Investment Plan account. Respondent requests entry of an order recommending that Petitioner be ordered to either: 1) repay his Investment Plan distribution in total, or 2) terminate all FRS-covered employment until the six calendar month reemployment prohibition has been satisfied. This is the appropriate recommendation under applicable law.

9. If Petitioner is so ordered and terminates his current position in February of 2014, he could return to work with the Leon County School Board as early as August 1, 2014. If, however, Petitioner elects to repay his entire retirement distribution, he could remain employed with the Leon County School Board without a break in service and would be eligible to participate in the FRS.

#### **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 20<sup>th</sup> day of February, 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

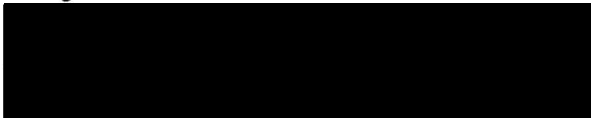
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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](mailto:Tina.joanos@sbafla.com)  
[Daniel.beard@sbalfa.com](mailto:Daniel.beard@sbalfa.com)  
(850) 488-4406

This 20<sup>th</sup> day of February, 2014.

Copies furnished to:  
Via U.S. Mail:  
Douglas Waddell



Via electronic delivery:  
Brian A. Newman, Esquire  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)  
Attorneys for Respondent

