

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

GLORIA GRAHAM,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2015-3366
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On August 27, 2015, 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, Gloria Graham, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent filed a Proposed Recommended Order and requested that the Recommended Order be issued on an expedited basis so that the Petitioner could decide whether to file paperwork to retire from the Florida Retirement System Pension Plan. No exceptions to the Recommended Order have been 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. The Petitioner's request to be allowed to transfer from the Florida Retirement System ("FRS")

Pension Plan to the FRS Investment Plan even though she is not earning salary and service credit in an FRS-qualified position 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.

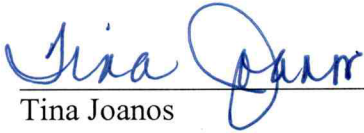
DONE AND ORDERED this 11th day of September, 2015, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

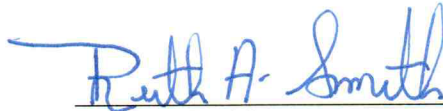
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Gloria Graham, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] 32216; 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 11th day of September, 2015.



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

GLORIA GRAHAM,

Petitioner,

v.

CASE NO.: 2015-3366

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 August 26, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Gloria Graham, pro se



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

EXHIBIT A

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to transfer from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan even though she is not currently earning salary and service credit in an FRS-qualified position.

PRELIMINARY STATEMENT

Petitioner attended the hearing in person, 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 R-1 through R-6 were received in evidence without objection.

At the conclusion of the hearing, counsel for the SBA asked that a recommended order be expedited so Petitioner's decision to retire from the Pension Plan or Investment Plan (depending upon the outcome of this case) could be made as soon as possible. Petitioner agreed that it was in her best interest to receive an expedited decision. Respondent filed a proposed recommended order.

MATERIAL UNDISPUTED FACTS

1. Petitioner enrolled in the Florida Retirement System in 1995.
2. Petitioner was given a deadline of August 31, 2002 to make an initial election to join the Investment Plan.
3. Having failed to make an affirmative election to join the Investment Plan, she defaulted to Pension Plan membership effective September 1, 2002.
4. Petitioner was diagnosed with cancer while employed with her FRS-participating

employer, Florida State College at Jacksonville.

5. Petitioner called the MyFRS Financial Guidance Line on May 3, 2013 to inquire about her retirement options given her health problems. During this call, Petitioner was told about the option of transferring to the Investment Plan, including the need to effect a transfer by submitting a second election form on or before 4:00 p.m. on the last day that she worked. Petitioner acknowledged in her Petition for Hearing that she understood she was required to transfer to the Investment Plan before her employment with the Florida State College at Jacksonville terminated.

6. As a result of Petitioner's prolonged treatment and inability to work, she applied for Long Term Disability (LTD) coverage with a private insurance carrier that was made available to her as an employment benefit. During the process of applying for and being approved for LTD benefits, Petitioner's employment with the college was terminated on November 6, 2014. The last day she worked, however, was April 14, 2014.

7. Petitioner believed she would have an exit interview with her employer's human resources department wherein she would have had the opportunity to methodically put her retirement affairs in order, including filing a second election form to transfer to the Investment Plan, prior to her termination. Instead, Petitioner asserts she was not afforded this opportunity and her employer terminated her without an exit interview. She asserts that this is why she did not file a second election form prior to termination of her FRS-covered employment.

8. Petitioner filed a request for intervention on May 27, 2015 seeking permission to file a second election to transfer to the Investment Plan.

9. Petitioner's request for intervention was denied by the SBA on June 15, 2015, and a timely petition for hearing was filed that initiated this administrative proceeding.

CONCLUSIONS OF LAW

10. Petitioner's request to transfer from the Pension Plan to the Investment Plan must be denied. Participation and enrollment in the Investment Plan are governed by Section 121.4501(4), Florida Statutes. Employees must be earning salary and service credit in a qualified FRS-covered position at the time they submit their second election in order to make a valid transfer to the Investment Plan. §§ 121.4501(4)(g) and 121.021(17)(b), Fla. Stat. (20014).

11. Petitioner acknowledges that she was aware of this requirement before her employment with the college terminated. Unfortunately, her employment was terminated sooner than she anticipated. She now seeks a waiver or exception to the active employment requirement due to her undeniable personal hardship, namely her medical condition and the resulting financial consequences that flow from her inability to work and the costly healthcare services she requires. Regrettably, no hardship exception exists to the active employment requirement and the SBA has no authority to waive a statute that squarely applies to the facts presented here.

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.

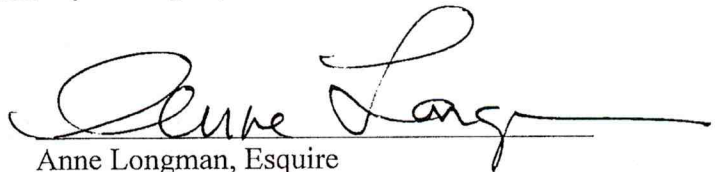
2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA1998). Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements to make a valid election into the Investment Plan. See Young v. Department of Community Affairs, 625 So.2d 837 (Fla. 1993); Department of Transportation v. J.W.C., 396 So.2d 778 (Fla. 1st DCA 1981). Because the Respondent lacks the statutory authority to place the Petitioner into the Investment Plan without a timely election having been made, her request must be denied.

13. The decision here does not, however, preclude Petitioner from submitting a valid second election form to transfer to the Investment Plan in the event she is able to return to active employment in a qualified FRS-covered position.

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 27th day of August, 2015.



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

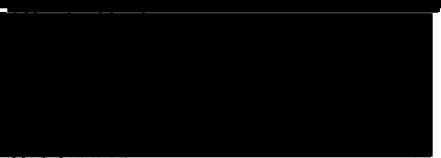
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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 to:

Via U.S. Mail and electronic mail:



Petitioner

Via electronic mail:
Brian A. Newman, Esquire
Brandice D. Dickson
Pennington, P.A.
Post Office Box 10095
Tallahassee, FL 32302-2095
slindsey@penningtonlaw.com
Attorneys for Respondent