

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

VELINDA CHANDLER,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2017-0111
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

AMENDED FINAL ORDER

This Amended Final Order replaces the Final Order rendered in this matter on October 10, 2017, that inadvertently omitted a consideration of Petitioner’s exceptions.

On September 15, 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, Velinda Chandler, and upon counsel for the Respondent. This matter was decided after an informal hearing. Respondent timely filed a Proposed Recommended Order. Petitioner late filed several pages of additional arguments that were accepted by the Presiding Officer as a Proposed Recommended Order. Petitioner timely filed a “Letter of Exception” on September 25, 2017, which sets forth Petitioner’s exceptions to the Recommended Order. Previously, on September 22, 2017, Petitioner filed a document entitled “Prior Signature Questions and Answers” which will be addressed at the end of the response to Petitioner’s Exceptions. 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.

STATEMENT OF THE ISSUE

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

PRELIMINARY STATEMENT

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact of a presiding officer cannot be rejected or modified by a reviewing agency in its final order "...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence...." See Section 120.57(1)(l), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla. 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1st DCA 1987). A seminal case defining the "competent substantial evidence" standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

An agency reviewing a presiding officer's recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the

facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4th DCA 1993). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to “reject or modify conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.” Florida courts have consistently applied the “substantive jurisdiction limitation” to prohibit an agency from reviewing conclusions of law that are based upon the presiding officer’s application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the presiding officer’s interpretation of a statute or rule over which the Legislature has provided the agency with administrative authority. *See Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140, 1141-42 (Fla. 2d DCA 2001); *Barfield v. Dep’t of Health*, 805 So.2d 1008, 1011 (Fla. 1st DCA 2001). When rejecting or modifying any conclusion of law, the reviewing agency must state with particularity its reasons for the rejection or modification and further must make a finding that the substituted conclusion of law is as or more reasonable than that which was rejected or modified. Further, an agency’s interpretation of the statutes and rules it administers is entitled to great weight, even if it is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. *See, State Bd. of Optometry v. Fla. Soc’y of Ophthalmology*, 538 So.2d 878, 884 (Fla. 1st DCA 1998). An agency’s interpretation will be rejected only

where it is proven such interpretation is clearly erroneous or amounts 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 DCA 1998).

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides that “...an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

RULINGS ON PETITIONER’S EXCEPTIONS TO THE RECOMMENDED ORDER

None of Petitioner’s arguments identifies the disputed portions of the Recommended Order by page number or paragraph; identifies any legal basis for the exceptions; and none set forth appropriate and specific citations to the record. On that basis alone, the Respondent is not required to address any of Petitioner’s exceptions.

Petitioner’s Exception 1: Discussion as to Why Three Prior Cases of Other FRS Members Are Not Relevant to Petitioner’s Situation

The Recommended Order does not rely on or cite any of the three cases discussed by Petitioner in her exceptions. A review of the hearing transcript shows that none of the three cases were discussed in the hearing. Those cases only were discussed in the Proposed Recommended Order submitted by Respondent, and then only for the purpose of indicating that since Florida Retirement System (“FRS”) retirement benefits are of a contractual nature, contractual principals of estoppel, waiver and rescission can be applied when evaluating member protests. There is nothing in the Recommended Order to indicate that the Presiding Officer considered any of the cited cases in formulating her Recommended Order.

Petitioner claims that the three cases of “past FRS members” cited in her exceptions are “irrelevant to” her case. Petitioner first discusses the consolidated cases, *State Board of Administration v. Huberty* and *Huberty v. State Board of Administration*, 46 So.3d 1144 (Fla. 1st DCA 2010), and states that she is “not certain” if Ms. Huberty was aware of her decision in selecting the FRS Investment Plan. Petitioner goes on to state that it is “unfair” that major decisions or conversations are held over the phone rather than being conducted in a “professional setting.” *Huberty* held that the State Board of Administration’s (as administrator for the FRS Investment Plan) interpretation of Section 121.4501(4)(a)1.a., Florida Statutes, as allowing state employees to switch from the Pension Plan to the Investment Plan by telephone did not constitute an unadopted rule. Ms. Huberty had been a state employee and a member of the Pension Plan since 1997. In 2002, she affirmatively elected to participate in the newly-available Investment Plan. She had consulted with her financial advisor and she decided to elect the Investment Plan so she could invest in four funds offered by the Investment Plan. Thus, Ms. Huberty was indeed aware that she was selecting the Investment Plan. Ms. Huberty made her election over the telephone and that election was recorded. For a six-year period, Ms. Huberty received quarterly statements regarding the performance of her selected funds and apparently was satisfied with her election to join the Investment Plan. In 2008, she decided she no longer wished to be in the Investment Plan because her account had lost considerable value and she further wanted to transfer to the Pension Plan without being required to pay the statutorily-required buy-back amount. Ms. Huberty alleged she had been enrolled in the Investment Plan without her knowledge. She further argued that allowing enrollment over the telephone is an unadopted rule. She claimed she never would have joined the Investment Plan if she knew she would not also be getting a pension. The District Court of Appeal (“DCA”)

found that use of a telephone hotline to effectuate a plan election simply constitutes one means by which an employee is able to exercise his or her statutorily provided right to elect the FRS Investment Plan. Thus, the DCA did not agree that there was an unadopted rule. Further, the DCA affirmed the SBA's Final Order that found that Ms. Huberty needed to pay the buy-back amount if she wanted to switch from the Investment Plan to the Pension Plan. The DCA did not find that it would be unfair to FRS members to allow "major decisions" to be made over the telephone. Rather, the DCA agreed the use of the telephone was merely one acceptable method for effectuating a retirement plan election.

Next, Petitioner refers to the case, *Felder v. Department of Management Services*, Case Number 03-0486 (DOAH October 6, 2003, adopted *in toto* in the Final Order issued December 12, 2003). Petitioner states that while Felder waited twenty years, she is "uncertain" why he waited so long. Mr. Felder had been placed in the State University Optional Retirement Plan ("ORP") after he filed an election form. He received statements regarding his ORP account balance for almost 20 years, and during that time changed the percentages he was contributing to ORP. Mr. Felder argued he really did not want to be in ORP, and that therefore he should be placed in the Pension Plan. The Administrative Law Judge ("ALJ") recommended that Mr. Felder's request that he be placed in the Pension Plan should be denied. Because of Mr. Felder's ultimate length of service, the Pension Plan would provide him with a much better retirement benefit than ORP would. The ALJ stated the "...each State employee bears the burden of acting timely to protect his or her own interests with regard to retirement accounts...". *Id.* The ALJ noted that since Mr. Felder took actions over a 20-year period that evidenced an intent to participate in ORP, Mr. Felder should be required to stay in ORP. Petitioner argues that she should be treated differently from Mr. Felder since the only reason

she waited to file her complaint was because she “assumed she had to be a certain age to receive a pension.” However, as *Felder* held, an employee has the obligation to act in a manner that will protect the employee’s interests concerning that employee’s retirement account. Petitioner did not take any action to determine if her assumptions were correct. She had the opportunity to call the MyFRS Financial Guidance Line to ensure her assumptions were not erroneous. There is no indication from any record evidence that Petitioner was prevented in any manner from calling the FRS Financial Guidance Line as often as she needed to ensure that her interests were protected.

Finally, Petitioner references *Kuge v. State, Department of Education*, 449 So.2d 389 (Fla. 3d DCA 1984). Petitioner states Ms. Kuge was told she needed 10 years of service to receive benefits. *Kuge* involved a situation in which Ms. Kuge was informed by the Division of Retirement in January 1983 that she had 9.58 years of creditable service toward the 10 year vesting requirement of the Pension Plan, the only plan that was available to state employees at that time. She further was informed that if she purchased back prior state service and worked through March 1983, she then would have 10 years of creditable service. When she terminated state employment in March 1983, she inquired what her retirement benefit she could expect. She was informed that an error had been made in calculating her retirement service benefits and that she really had only 9.33 years of creditable service. The error was the result of her having been given credit for educational leave with pay which was available only to employees with ten years of creditable service excluding the period of the educational leave. As a result, Ms. Kuge was deemed to be ineligible for a retirement benefit. The court found otherwise, based on the specific actions of the Division of Retirement.

Petitioner states she was not informed that she needed eight years of service credits in order to receive disability benefits. However, the Presiding Officer noted that disability determinations, by law, are within the purview of the Division of Retirement and not that of the SBA. Respondent's Exhibit 5 (Transcript of recorded call between Petitioner and MyFRS Financial Guidance Line on January 7, 2005) clearly shows that Petitioner had spoken to the Office of Disability Determinations of the Division of Retirement first before she was transferred to the MyFRS Financial Guidance Line to obtain information regarding the Investment Plan. The transcript notes that Disability Determinations had answered Petitioner's questions about "...disability retirement and the pension plan..." and that Petitioner was transferred to the MyFRS Financial Guidance Line for questions she had about the Investment Plan. (emphasis added) [Respondent's Exhibit 5, page 3, lines 7-13]. Based on competent substantial evidence in the record, the Presiding Officer correctly concluded that the Petitioner was not misled or misinformed by anything the SBA or its third party providers said to her. Petitioner correctly was advised that if she were to receive disability benefits, any money she had in the Investment Plan if she decided to switch would be used to fund disability benefits. On the other hand, if she were to be denied disability benefits, then she would be able to access her Investment Plan benefits in a lump sum or she could allow the benefits to grow. Those options would not have been available to her if she had been in the Pension Plan. At no time was she advised she also would get a pension if she elected the Investment Plan. [Respondent's Exhibit 5, page 8, lines 13-21; page 10, lines 13-25; page 11, lines 1-5].

Accordingly, Petitioner's Exception 1 hereby is rejected.

Petitioner's Exception 2: Petitioner's Claim She Was Deceived and Insulted Based on Her Disability

Petitioner argues she was “deceived “ and “insulted” regarding her disability. Yet, as noted previously, the record evidence showed that Petitioner did receive accurate information about what benefits she could expect based on her particular circumstances, and further received correct answers to her questions. There is nothing in the recorded calls that demonstrates that Petitioner was ever insulted concerning her disability. [See, Respondent's Exhibits 5 and 6]. In fact, when a MyFRS Financial Guidance Line representative was informed by Petitioner that she is legally blind, the representative stated he was “...sorry to hear that.” [Respondent's Exhibit 5, page 4, lines 1-4].

Accordingly, Petitioner's Exception 2 hereby is rejected.

Petitioner's Exception 3: Claim for Damages

Petitioner claims she is entitled to \$15.8 million as compensation for “specific damages.” When an issue involves a cause of action in which damages are sought, a court, not an administrative body, has jurisdiction. *See, e.g., Mobile America Corp. v. Southern Bell Telephone & Telegraph Co.*, 282 So.2d 181 (Fla. 1st DCA 1973), *modified* 291 So.2d 199 (Fla. 1974). Accordingly, the Petitioner must file her claim for damages in another forum, as damages cannot be awarded in the instant case.

Accordingly, Petitioner's Exception 3 hereby is rejected.

Petitioner's “Prior Signature Questions and Answers”

Nothing in this document identifies the disputed portions of the Recommended Order by page number or paragraph. Nothing in the document provides any legal argument. And,

nothing in the document sets forth appropriate and specific citations to the record. On that basis alone, the SBA is not required to respond to anything contained in the document.

As the Recommended Order notes, Petitioner was “....assisted, repeatedly and accurately...” with trying to figure out what would be the most beneficial benefits election for her to make in view of her length of employment, disability and retirement account status. Everything contained in Petitioner’s document is simply a variation on arguments she presented earlier that she was not advised of her potential available benefits, and that she was deliberately misled. These arguments were properly rejected by the Presiding Officer.

As such, this document hereby is rejected *in toto* without further discussion.

FINDINGS OF FACT

The State Board of Administration adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The State Board of Administration adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

ORDERED

The Recommended Order (Exhibit A) hereby is adopted in its entirety. Petitioner’s request to receive a monthly pension benefit, either through the rescission of the second election she made in 2005 to switch from the FRS Pension Plan to the FRS Investment Plan, or through some other legal means, 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 3rd day of November, in Tallahassee, Florida.
2017

**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

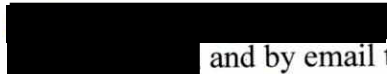
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

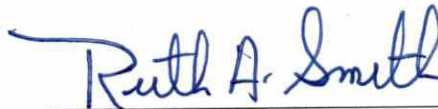


Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Velinda Chandler, pro se, both by email transmission,

 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 3rd day of November, 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

VELINDA CHANDLER,

Petitioner,

vs.

Case No.: 2017-0111

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 June 21, 2017, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Velinda Chandler, 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 is entitled to receive a monthly pension benefit, either by rescission of her 2005 second election switch from the Pension Plan to the Investment Plan, or by any other legal means.

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 6 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. Respondent filed a proposed recommended order; Petitioner submitted 22 pages of additional materials consisting of argument on September 7, 2017. Although late-filed, I have accepted this as Petitioner's proposed recommended order.

MATERIAL UNDISPUTED FACTS

1. Petitioner was enrolled in the FRS beginning on February 1, 1998 while employed with the Palm Beach County School Board.
2. Petitioner had until November 30, 2002 to make an initial election between the FRS defined benefit Pension Plan and FRS defined contribution Investment Plan. Petitioner defaulted into the FRS Pension Plan effective December 1, 2002.
3. On January 27, 2005, Petitioner called the Division of Retirement to apply for disability under the Pension Plan. At the time of the call, Petitioner had seven years of service credit. Pension Plan disability retirement apparently required at least eight years of service credit. Petitioner was transferred to the MyFRS Financial Guidance Line to discuss switching from the Pension Plan to the Investment Plan. During the call, Petitioner advised that she had lost part of her vision, was separating from her employment in February 2005, and would want to switch to the Investment Plan to get the "lump sum" if she was determined not to be eligible for disability pension benefits under the Pension Plan. The MyFRS Financial Guidance Line representative

explained the process of submitting a second election form. The following exchange regarding the Petitioner's options also occurred:

MR. VANCE: So that's the form that you can print out. Now, that form will put you in the default fund of people – you know, there's 20 different funds in the investment plan. That will put you in the moderate balance fund, which is the fund that people go into if they don't know what to go into. And it's a mix of stocks and bonds. It could go up as well as down, but you're only 27.

MS. CHANDLER: Uh-huh.

MR. VANCE: So, you know –

MS. CHANDLER: Twenty-eight.

MR. VANCE: Twenty-eight, excuse me. This money would be able to grow for many years until your retirement in your mid 50s or so, if you don't get disability pension.

MS. CHANDLER: Oh.

MR. VANCE: Okay. So, any way, you –

MS. CHANDLER: So what will happen when I'm like 65?

MR. VANCE: Well, the money would grow for many years, and then once you reach 65, you're going to reach a lump sum – it's going to grow into a lump sum that you can then use to help fund your pension.

MS. CHANDLER: U-huh. But if I get out the disability pension, what that do to my retirement when I'm 65?

MR. VANCE: Well, okay. I guess you're going into the investment plan because you're not sure you're going to be – you're not sure it's going to be ruled that you will be eligible for a disability pension; is that right?

MS. CHANDLER: Right.

MR. VANCE: So, therefore you're going to go into this and then, you know, this will be there if you don't get eligible for disability pension. If you do get eligible for disability pension, then this will used to fund your disability pension. And you won't be entitled to both, you know. You'll get the disability pension instead of this, which would be more generous by the way. So that's how it works.

4. On January 28, 2005, Petitioner called the MyFRS Financial Guidance Line again, advised she could not print the second election form from the website, and asked that the form be faxed to her. During that call, Petitioner also told the MyFRS Financial Guidance Line representative that she was “trying to transfer from what it is, FRS to investment. I’m trying to turn it over into investment.” In response, the representative asked:

MR. LARRY: Okay. That’s what was suggested to you would be the best thing for you to do?

MS. CHANDLER: Uh-huh.

MR. LARRY: Is that what you want to do, Ms. Chandler, you want to switch into the investment plan?

MS. CHANDLER: Yeah, so I can have a one-time chance of just drawing out the funds.

MR. LARRY: That is correct.

MS. CHANDLER: Uh-huh.

MR. LARRY: If that is what you want to do and that is what was advised to you as being the best financial move for you because you may need some emergency moneys now –

MS. CHANDLER: Uh-huh.

5. On January 31, 2005, Petitioner submitted a second election EZ Retirement Plan Enrollment Form to the Respondent’s third party administrator. In completing the form, Petitioner acknowledged that she had access to the 2nd Election CHOICE SERVICE, “a comparison of [her] projected benefits under both plans, available at MyFRS.com or through the Financial Guidance Line.”

6. On June 15, 2005, Petitioner took a total distribution of the funds in her FRS Investment Plan account.

7. Petitioner submitted a Request for Intervention almost 12 years later, on March 27, 2017 asking to return to the Pension Plan because she received “improper information.” Petitioner believes that she should have been urged to remain employed and earn eight years of service credit in order to qualify for Pension Plan disability retirement, that she should have been counseled in person, was rushed into a decision, and was deliberately misled and deceived.

8. Petitioner filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

CONCLUSIONS OF LAW

9. Movement between the Pension Plan and Investment Plan is governed by Section 121.4501(4)(g), Florida Statutes. That section states, in pertinent part:

(g) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

§ 121.4501(4)(g), Fla. Stat. (emphasis added).

10. Members of the FRS are allowed only one opportunity to switch plans after their initial election period expires. Petitioner's initial election period expired in 2002 and she defaulted into the Pension Plan.

11. When Petitioner used her one-time second election in 2005, she exhausted her only opportunity to move between plans. Petitioner cannot rescind her second election because she failed to do so before the deadline established by the applicable rule. The grace period provided under Rule 19-11.007, Florida Administrative Code, is as follows:

(4) Grace Period.

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the SBA will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by a telephone call to the toll free MyFRS Financial Guidance Line at: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, or to the Division, no later than 4:00 p.m. Eastern Time on the last business day of the election effective month.

(b) If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election's being officially reversed. Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), F.A.C.

12. Under the rule, Petitioner had until the time the present value of her Pension Plan benefit was transferred to her Investment Plan account to rescind her second election. This deadline passed long ago, and her request is now time-barred.

13. In addition, Petitioner has taken a total distribution from her FRS Investment Plan account, which means that she is retired from the FRS as a matter of law. §121.4501(2)(k), Fla. Stat.

14. I have carefully reviewed the transcripts of the calls Petitioner made to the MyFRS Guidance Line before submitting her second election. I see nothing in the colloquy in those calls

that suggests she was misled or misinformed. To the contrary, she was assisted, repeatedly and accurately, with figuring out her best course given her potential disability, employment, and retirement account status. Petitioner's decision to separate from FRS covered employment prior to obtaining eight years of service credit cannot be attributed to Respondent. Her own statements show that she wanted to switch to the Investment Plan in order to access a lump sum in 2005. That decision was entirely hers to make and had to be made while she was actively working. Petitioner called the MyFRS Financial Guidance Line on numerous occasions and also had at her disposal the educational materials available to all FRS members prior to making her switch and distribution request. My review indicates that Petitioner may indeed been confused about the various resources available to her based on disability, but she was listened to carefully and given accurate information by Respondent and its third party providers.

15. FRS disability determinations are not administered by the SBA, and whatever conversations Petitioner may have had in that regard with the Division of Retirement or with her employer are not part of the record here. Petitioner's call of January 27, 2005 to the MyFRS Financial Guidance Line began with "Carol" from FRS Disability Determinations transferring the call to an Ernst & Young counselor as follows: " She was transferred to us for answers to her questions about disability retirement and the pension plan, and now she would like to ask some more questions about the investment plan." Petitioner was advised more than once that disability matters were the province of Division of Retirement, and she clearly spoke with that agency about obtaining a disability benefit. Again, the record here does not reflect what became of her application for disability benefits, but that is not the issue in this proceeding.

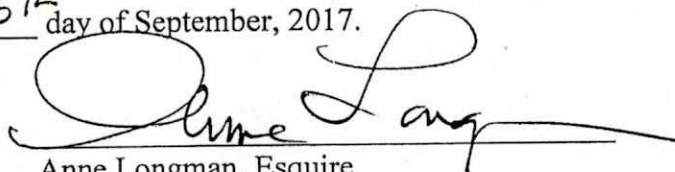
16. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System. Balezentis v. Department of Management Services, Division of

Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, 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 DCA 1998). I note as well that Section 121.4501 (8)(g) Florida Statutes creates a presumption that actions taken by the SBA with regard to a member five years or more before a complaint is submitted are taken at a member's request and with their full knowledge and consent. It is unfortunate that Petitioner apparently now regrets the decisions she made in 2005 and believes she was inadequately advised, but she has not shown entitlement to the relief she has requested.

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 15th day of September, 2017.



Anne Longman, Esquire
Anne Longman
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
nell.bowers@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Velinda Chandler



and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301
slindsey@penningtonlaw.com
Brian@penningtonlaw.com
Brandi@penningtonlaw.com

Counsel for Respondent

FROM: CHANDLER, VELINDA A.

SUBJECT: STATE OF FLORIDA STATE BOARD OF ADMINISTRATION
LETTER OF EXCEPTION

I am writing this letter to lay emphasis on the importance of the chief intentions of my petition.

I am also writing this letter to give reasons on how the following cases of past FRS members: Kuge vs. State, Department of Education, 449 So. 2d 389, (Fla. 3d DCA 1984). Huberty vs. State Board of Administration Case No. 09-0640, and Felder v. Department of Management Services, Division of Retirement, Case No. 03, are irrelevant to this case.

For example, in Huberty vs. State Board of Administration, Case No. 09-0640, I am not certain whether the petitioner was aware of her initial decision in selecting the investment plan. Neither is it clear whether the petitioner invested in any stocks. With this in mind, it seems unfair that major decisions or conversations are held over the phone, opposed to being made in a professional setting. In Huberty's case it is unclear, but, I did not sit back and watch the market, because I did not buy any stocks, neither was it my intention to purchase any stock(s). I believed the investment plan was necessary to receive the lump sum. Again, it was never clear this would cancel my pension. In addition, a buy-back was never discussed in my case. Clearly, this confirms I believed I was still enrolled in the initial Pension Plan.

Felders's case should not be compared to mine, because, yes, he waited twenty years, but I am uncertain as to why he waited so long. In my case, the wait was long because I assumed I had to be a certain age to receive pension. In fact, it wasn't until a couple of months ago, I learned a person can receive early pension if they have a disability.

Whereas, in Kuge vs. State, Department of Education, 449 So. 2d 389,(Fla.3d DCA 1984), Katherine Kuge was informed she needed ten years of service to receive benefits. In my phone conversation with Mr. Vance, my service of 7 years was mentioned, yet, Mr. Vance never informed, or corrected me that the minimum period to receive benefits was 8 years. In fact, I wasn't informed on needing 8 years of service for disability pension until after the documents were signed. Reviewing the phone conversation transcribed by Tracey L. Brown; (*See page 9, 25 and page 10, 1-11*):

25 **MR. VANCE:** *Just a minute, though. One*
1 *thing -- you are only -- I'm noticing your years of*
2 *service. Did they tell you that you're not*
3 *eligible for disability pension yet because of*
4 *the --*
5 **MS. CHANDLER:** *They said based on the years*
6 *that I've been there, I can get the disability*
7 *pension.*
8 **MR. VANCE:** *Oh, okay. Yes, you've got seven*
9 *years. Yeah, yeah, I'm sorry. I was confusing*
10 *that with something else. So, yeah, they'll make a*
11 *determination.*

Mr. Vance briefly mentions my years of service, but doesn't give a specific amount of years to determine eligibility. Instead, his explanation for the disability pension program is somewhat vague and ambiguous.

This goes back to my primary argument of the delusions in the phone conversation with FRS. The initial phone conversation was intended to receive information about the Pension Plan. I was lead to believe that upon choosing the investment plan, it would help fund my disability pension, and that the investment plan had nothing to do with my disability pension (*See page 9, 4-15*):

4 *MS. CHANDLER: Okay. So, I prefer to get the*
5 *disability pension, try to get, you know, them to*
6 *approve it.*

7 *MR. VANCE: You've applied to see if that will*
8 *be approved.*

9 *MS. CHANDLER: Right.*

10 *MR. VANCE: And if it's approved, great,*
11 *you're gonna get that. If it's not, then you're*
12 *gonna say to yourself, well, I've got this*
13 *investment plan and I'll start off with it and it*
14 *will grow, tax deferred for many years, to help fund*
15 *my retirement.*

The argument also insists that I was not informed that choosing the lump sum would result in a cancellation of my disability pension. I believed these were two different things.

September 25th, 2017

Furthermore, unlike Kuge, Huberty, or Felder, the mention of examining detailed information in a document is irrelevant to a person who is visually impaired; and in such a short amount of time for that matter. It is like asking a deaf person to listen to a verbally recorded message. Now, not only have I been deceived in this case, but I have been insulted regarding my disability. Besides, even if these documents were recited to me; the reader would have to understand the rules and regulations of the retirement system. Otherwise, it would be in vain. Still, the request being made was in such a small time frame and the documents signed were during such a stressful point in my life. In fact, psychological studies show "[Under favorable circumstances, most people will do their best to think logically and make good decisions. However, life frequently produces circumstances that are far from favorable, and the impact of adverse conditions can significantly degrade the quality of the decision-making process]."(Psychological Science journal, 2009).

Actually, several studies show depressed people should either let someone make decisions for them, or go with their first instinct. A study from Cognition and Emotion (2011) explain that our first instincts (even if it's a whisper) are usually right while making a decision when depressed. However, these instincts can be crowded out by distractions. My first instinct was that I preferred disability pension, but no one listened. They ignored, and shoved an investment plan into my face and made me believe it had naught to do with my pension.

No one knows, or will ever recognize the scars I bear from my experience. Not unless they have been in my shoes. I was the one receiving injections into my eyeballs. I was the one told by the doctors, I would go blind. I was the one who had to hang up my car keys, swallow my pride, and take the school bus with children to work in order to survive. So, why would I deliberately sign away my pension?

The noticeable fact on making the decision to receive the lump sum is to stress it was never stated to have my pension plan rolled over into an investment, since the word pension was never used. Early in the conversation; the word rollover was mentioned, however, the word pension was excluded: *(See page 3)*

22. *MS. CHANDLER: I was told to do a rollover*

23 *from -- to the investment plan.*

Even now, Mr. Vance fails to mention the word pension: *(See page 5, 14-19).*

14 *MR. VANCE: Okay. You know, you can switch to*

15 *the investment plan. And then if ultimately it's*

16 *determined that you're eligible for disability*

17 *pension, that money would be used to fund the*

18 *disability pension. But if you want to switch to*

19 *the investment plan right now, you can do that.*

I hate to sound like a broken record, but the main reason for contacting FRS was to inquire about my disability pension. *(See page 5, 1-7).* It was FRS who brought up the investment plan to begin with.

1 *MS. CHANDLER: Yes, I want to do the*

2 *rollover*

3 **MR. VANCE:** *Okay. That's different.*

4 **MS. CHANDLER:** *Oh, it is?*

5 **MR. VANCE:** *So do you want to -- you want to*

6 *roll over to the investment plan?*

7 **MS. CHANDLER:** *Yes, so I can fill out the*

8 *disability pension*

Finally, in the phone conversation with Mr. Larry on January 28th (Page 6, 1-3), I believe the quote was to turn "it" over which could have meant anything. Again, the word pension was never used. I never stated that I wanted to rollover my pension, but simply stated that I wanted to turn "it" over. For this reason, the issue should be null or void. With this in mind, I have and am still requesting: a monthly pension, pension from all previous years to the present, and an additional 15.8 million dollars as compensation for specific damages.

1. Failure to mention important information until after the documents were signed, Vagueness, ambiguity.
2. Manipulation for signature
3. Insults on my intelligence, and my disability
4. Taking advantage of me during my vulnerability

Respectfully,

Velinda A. Chandler

STATE OF FLORIDA (SBA) LETTER OF EXCEPTION

September 25th, 2017 ⁷

Prior signature Questions and Answers

1. When I, Velinda Chandler first called; I spoke with Ms. Carol, Mr. Vance, and also Mr. Larry, but did anyone mention that I needed eight years of credit during our phone call conversation? So I can receive my disability pension; if there is any verification that states this during our phone call conversation, I would love for them to send proof.
2. Mr. Larry stated that I called numerous of times, However, when I called the first time, I spoke with Ms. Carol first, and then she connected me to Mr. Vance, Remember, this is the same phone call, not a recall, then I called Mr. Larry, but my question is, How many times did I call in total? Also, what are the names of the Individuals that I have spoken with, and do they have the proof of the conversation that I had with these individuals confirming the same explanation that Mr. Vance and Mr. Larry have already have stated. If there is proof, please send it to me.
3. When I first called, I wanted to know, how can I receive my disability pension? the question is, I was never told what I have to do to become eligible, verbally, and two, if I was signing up for the disability pension, why was they trying to get me to sign up for the Investment plan at the same time?
4. FRS knew, I did not have the full eight years of credit in, why they did not make it known right then, that I needed to work another year, if I wanted my disability pension, Because I was speaking with them in the month of January of 2005, Moreover, why was it so important for me to rollover into the Investment plan, without me making proper decisions on my own, Because I did not have full eight years? I felt more manipulated and brainwashed in many ways, to connivance FRS plan. I remind you all, I worked from January 1998, and my ending date was April 12, 2005, meaning I could have worked for seven to eight more months. I find it to be odd, simple things like this was not mentioned. It could have made a huge difference in this matter.

5. The paper they have sent me for the Investment plan, they are keep stating it is a deadline that these papers have to be turned in, why a short amount of time was given, when a huge decision has to be made? A person should be given time to think before they sign anything; There should be no such thing as a time frame, When it comes to your finances, otherwise it would be called persuading and influencing, to get someone to sign those papers quickly, why is that? And please do not say, it is a rule, regulation, law, or code or standard procedure, it is not professional and there is no excuses, No matter what way you put it or state it, there is no excuse, for this reason.
6. If a person does not have the full eight year credit, and they retire early, why are you told automatically to go into the Investment plan? Without, the person knowing the pros and the cons, and the advantages and the disadvantages, before making a decision, without being persuaded.
7. In the phone conversation; there is a lot of blank words; especially when I am having the conversation with Mr. Vance, but a few blank words with Mr. Larry, why is that? Do you all have the full conversation, or is there blank words in the conversation with Mr. Vance, and Mr. Larry and I myself, if you do, send me the proof, or Is it to cross me up as the petitioner so I can give a confusing argument?
8. Mr. Vance ask the question, When did I go through with my vision problem, In the conversation, it have me stating the month of March, that is inaccurate, I am confused, why would I say that, No one forget, a great event that have taken place in their life. That is strange, but it was in the month of January of 2004, I was going through treatment with my eyes for over a year, and even during that time, When I was speaking with Mr. Vance, I was still going through eye treatment, so again, I do not know why I would state the month of March, and I can prove that by requesting records from Bascom Palmer.

9. If the Investment plan was my idea, then why I told Mr. Vance, I was told to do the rollover, I was only doing what they influence or persuaded me to do whatever you want to call it, but however, it was in two different angles, One was for what I thought was entitled to me at that point of time, which is the lump sum, that I thought you had to receive it through the investment plan, but I could not receive the pension just yet, but I will receive it later on.

I thought I was told to go that way for that purpose only, however, I did not know, they was trying to get me to do the rollover, to get me out of the pension plan period, and the other is the motive. Was the motive was for me to rush and sign those papers, to make things concrete. So I will never be entitled to the monthly pension? However, I thought the lump sum and the pension was not the same money. Again, FRS motive was for me to do the rollover plan, so I will no longer be entitled to my disability pension. What is the truth? Is the real motive hidden, to make me seem like I am confused, crazy, or I am the one have the problem? I learn when it comes to money; you will be surprise the link that people will go through to make themselves look innocent. I learned that I have to look deep at any situation to get the real truth, sometimes people can get away with things, when they feel they have that opportunity or when it is necessary, or sometimes no one believe that a person can do anything wrong, there is a such thing as two sides, to every story, if we are not careful, We can side with the one we think is so right, but we can be wrong.

10. Everyone have their own opinion, but only God knows the truth. We can hide many things from others, but we cannot hide nothing from God, I have told you all the truth, the bible said, the truth shall make you free; I have told everyone the truth, In spite of the criticism that I have gotten from this case; At least I have a clear conscious and I know what I am talking about, and God is my witness; The truth have made me free, but what about you?