

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

FONDTINA CHRISTOPHER,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2021-0456
)	
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On February 24, 2022, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Fondtina Christopher, and upon counsel for the Respondent. Neither party filed exceptions to the Recommended Order which were due on March 11, 2022. 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

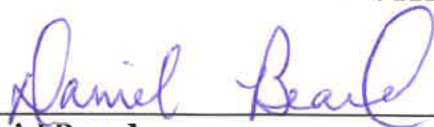
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she be allowed to rescind her 2004 second election from the Pension Plan to the Investment Plan hereby is denied. While Petitioner claimed she failed to understand the impact of making a second election, the evidence clearly demonstrated that she received ample instructions that a second election is a one-time, irrevocable

option. Further, pursuant to Section 121.4501(8)(g), Florida Statutes, Petitioner's 2004 second election is presumed to have been taken with Petitioner's full knowledge and consent.

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 24 day of May, 2022, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
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 Fondtina Christopher, *pro se*, both by email transmission to Lashauncf2020@aol.com and by U.P.S. to [REDACTED] and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@ausley.com) and jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 24 day of May 2022.



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

FONDTINA CHRISTOPHER,

Petitioner,

vs.

CASE NO. 2021-0456

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on January 12, 2022, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: Fondtina Christopher, *pro se*



For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner may rescind her second election, which she used in 2004 to transfer from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan, and be placed back in the Pension Plan.

PRELIMINARY STATEMENT

During the telephone hearing, Petitioner testified on her own behalf, and Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-7 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency clerk on January 22, 2022, and simultaneously provided to the parties. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based on the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

MATERIAL UNDISPUTED FACTS

1. The Petitioner began employment in an FRS-eligible position with the Brevard County School Board on December 6, 2002. In accordance with Section 121.4501(4)(a)1, Florida Statutes, Petitioner was temporarily enrolled in the defined benefit Pension Plan and was given an initial choice period deadline of May 31, 2003, to make an initial election between the Pension Plan or the defined contribution Investment Plan.

2. The FRS Plan Choice Administrator has no record of receiving an initial choice form from the Petitioner on or before the May 31, 2003, deadline or at any other time. Pursuant to Section 121.4501(4)(b), Florida Statutes, Petitioner was therefore deemed to have made an initial election to retain her membership in the Pension Plan.

3. On April 7, April 12, and April 15, 2004, prior to submitting a 2nd Election EZ Retirement Plan Enrollment Form (2nd Election Form), Petitioner made phone calls to the MyFRS Financial Guidance Line. These calls were documented as case numbers 528945,

529948 and 531423, respectively. During these calls, Petitioner was expressly informed about her one-time option to switch between plans.

4. During the April 7, 2004, call, Petitioner was advised that she had a “one-time career opportunity” to switch plans. Likewise, during the conversation on April 12, 2004, Petitioner was advised that if she decided to switch to the Investment Plan, her decision would be irrevocable and could not be changed in the future, as there is only one second election. Petitioner was also provided with information on workshops she could attend to ensure she had sufficient information to utilize her one-time second election.

5. During the conversation on April 15, 2004, Petitioner discussed the 2nd Election Form with the EY Financial Planner and her intention to select the most aggressive investment fund. She was again specifically advised that by submitting the form she would be using her one-time second election and that after making this election she could not go back to the Pension Plan. Petitioner stated that she understood.

6. In addition to information provided by EY Financial Planners during Petitioner’s calls to the MyFRS Guidance Line, Section 1 of the 2nd Election Form executed by Petitioner titled “Retirement Plan 2nd Election” states:

- **“I wish to utilize my one-time 2nd election to:**
2. Change from the FRS Pension Plan to
the FRS Investment Plan.”

In addition, Section 4 (Paragraph 1) of the 2nd Election Form executed by Petitioner advised her as follows:

If you selected option 2 in Section 1:

- I understand that I have elected to change retirement plans to the FRS Investment Plan, and that any accrued value I may have in the FRS Pension Plan will be transferred to the FRS Investment Plan.

- **I understand that this election will constitute my one-time second elections as provided under the FRS and that I must remain in this retirement plan until my retirement.**
- I understand the initial transfer amount is an estimate and that within 60 days of that transfer, there will be a reconciliation pursuant to Florida law, which will use my actual membership record. The amount could be more or less than the estimate I received.
- I understand that I can get the amount of my accrued value by calling the MyFRS Financial Guidance Line and connecting to the Division of Retirement.
- I understand that if I am currently a member of the FRS Investment Plan Hybrid Option, I cannot make this election.
- **I understand my one-time second election is irrevocable and I understand that I must remain in this plan until my retirement.**

(Emphasis added).

Finally, Section 4 (paragraph 3) of the 2nd Election Form again states that Petitioner is utilizing her one-time second election.

7. On April 20, 2004, the Plan Choice Administrator received Petitioner's 2nd Election EZ Retirement Plan Enrollment Form which requested a transfer to the Investment Plan, and established a May 1, 2004, effective date for her Investment Plan membership. The present value of Petitioner's Pension Plan benefit was transferred into her Investment Plan account as an opening account balance on May 31, 2004.

CONCLUSIONS OF LAW

1. The burden of proof in an administrative proceeding, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

2. The Florida Retirement System is comprised primarily of two plans which are defined in Part I of Chapter 121, Florida Statutes as follows:

(3) "Florida Retirement System" or "system" means the general retirement system established by this chapter, including, but not limited to, the defined benefit program administered under this part, referred to as the "Florida Retirement System

Pension Plan” or “pension plan” and the defined contribution program administered under part II of this chapter, referred to as the “Florida Retirement System Investment Plan” or “investment plan.”

§ 121.021(3), Fla. Stat.

3. Movement between the two FRS plans is governed by Section 121.4501(4)(f),

Florida Statutes. This section states, in pertinent part:

(f) 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. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

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

4. As provided in the above statute, members of the FRS have one opportunity to switch plans after their initial election period expires. Because Petitioner used her one-time second election in 2004, she has exhausted her only opportunity to move between plans.

5. The online form completed and submitted by Petitioner instructed Petitioner to contact the MyFRS Financial Guidance Line before exercising her one-time second election to ensure she understood the impact of her action. She was also advised of the option of using the 2nd Election Choice Services at MyFRS.com and to review the requirements of Rule 19-11.007, F.A.C.

6. During the three calls made by Petitioner prior to submitting her 2nd Election EZ Retirement Plan Enrollment Form, as well as in numerous locations within the form itself,

Petitioner was advised that she had only one opportunity to switch between plans, that using the second election was irrevocable, what to do if she believed the election was made in error, and finally, that any accrued value that was transferred from her Pension Plan to her Investment Plan account opening balance remained subject to the Pension Plan vesting requirements. There is no statutory authority for Respondent to grant Petitioner an additional election to switch back to the Pension Plan, which would violate the statutory restrictions on elections within the FRS system.

7. Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear, and the SBA cannot deviate from them. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

8. Petitioner was advised via multiple sources and on multiple occasions that she would be utilizing her one-time second election when she made the switch from the Pension Plan to the Investment Plan. Petitioner acknowledges participating in the conversations and receiving the documents referenced above. She does not deny or dispute the evidence but states that she failed to understand, made a mistake, and should be allowed more than two choices.

9. Finally, pursuant to Section 121.4501(8)(g), Florida Statutes, the Respondent's action taken in 2004 is presumed to have been taken at Petitioner's request and with her full knowledge and consent. This section states:

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years

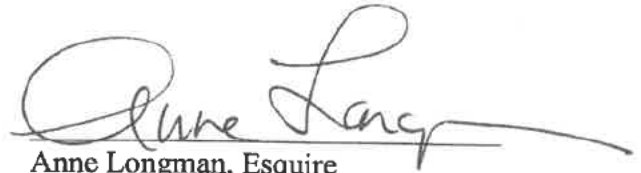
before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

§ 121.4501(8)(g), Fla. Stat. (emphasis added). Petitioner cannot demonstrate entitlement to the relief she has requested under the applicable law.

RECOMMENDATION

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying Petitioner's request for relief.

DATED this 24th day of February 2022.



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.ioanos@sbafla.com
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Ruthie.Bianco@sbafla.com
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COPIES FURNISHED via mail and electronic mail to:

Fondtina Christopher



Petitioner

and via electronic mail only to:

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