

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

KARRIGAN LAWSON,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2016-3533
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On June 23, 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, Karrigan Lawson, 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 July 8, 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's request to rescind his second election by which he transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan in September 2007 hereby is denied. While Petitioner claims he was not made aware that he was using his one-time second election when he switched plans in 2007, the record evidence clearly

shows otherwise. Further, while Petitioner also contended that he received incorrect advice from his employer's representative, the SBA by law is not responsible for any erroneous information that an FRS-participating employer and/or its representatives provide to employees.

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.

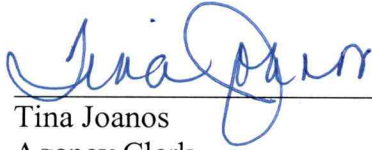
DONE AND ORDERED this 27th day of July 2016, in Tallahassee, Florida.

**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

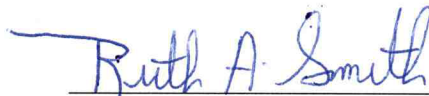
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Karrigan Lawson, pro se, both by email transmission, [REDACTED] and by UPS to [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 27th day of July, 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

KARRIGAN LAWSON,

Petitioner,

vs.

Case No.: 2016-3533

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 January 29, 2016, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Karrigan Lawson, pro se


For Respondent:

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

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to rescind a second election by which he transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan or otherwise allow him to return to the Pension Plan.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his 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 provisionally due to Petitioner's questions about the dates of some telephone calls he made to the FRS Guidance Line. The context of the phone calls removes the date of same as a matter of a potential fact dispute, and all offered exhibits are admitted.

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 made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner became a member of the Florida Retirement System (FRS) by virtue of his employment with Miami-Dade College. He states that he started part time with the college in 2001. According to Respondent's records, Petitioner became a member of the FRS in 2002 and had until October 31, 2002 to make an initial election between the defined benefit Pension Plan and the defined contribution Investment Plan; he defaulted to Pension Plan membership. Petitioner states that he did not know he was an FRS member until 2004¹.

2. On June 10, 2005, Petitioner called the MyFRS Financial Guidance Line to discuss the pros and cons of the Pension Plan versus the Investment Plan. During the call the MyFRS representative confirmed to Petitioner that he was in the Pension Plan and had been in the Pension

¹ Whether Petitioner first became a member of the FRS in 2002 or in 2004 does not control any issue to be decided in this proceeding, and referral of this case to the Division of Administrative Hearings for a section 120.57(1) hearing involving disputed issues of material fact is not required.

Plan for three and a half years. Petitioner also was advised that as a Pension Plan member his vesting requirement was six years and that he needed to work another two plus years of FRS-covered employment to be vested as a member of the Pension Plan. Petitioner said he was interested in the Investment Plan because he might be moving out of state and wanted to know about the portability of his benefits.

3. The MyFRS representative advised Petitioner as follows:

The other plan that you're talking about is the investment plan. And that's where you would control and direct where the money would be invested and how you, you know, invest it going forward over the rest of your working career. **So you do have the ability to switch once throughout your career**, but before you do that, we just, you know, examine some of your options and what your intentions are over the rest of your career and we can potentially help you out in terms of which plan will be better for you over the long run.

(emphasis added).

4. On August 17, 2007 the Plan Choice Administrator received Petitioner's completed and signed 2nd Election Retirement Plan Enrollment Form indicating his desire to transfer from the Pension Plan to the Investment Plan. This established a September 1, 2007 Investment Plan effective date for Petitioner's Investment Plan membership.

5. The second election form Petitioner completed and signed states in pertinent part

SECTION 1: RETIREMENT PLAN 2ND ELECTION

* * *

SECTION 4: AUTHORIZATION

I am exercising my one-time 2nd Election to: (Choose only one by marking an X in the appropriate box.)

* * *

2. Change from the FRS Pension Plan to the FRS Investment Plan

* * *

I understand that my one-time 2nd Election is irrevocable and that I must remain in the plan I chose in Section 1 until my FRS-covered employment ends and I retire.

(emphasis in original).

6. Petitioner submitted a Request for Intervention on January 6, 2016 requesting to return to the Pension Plan, asserting he did not realize he was using his second election in 2007 and that he made the switch believing he still had another second election remaining. His request was denied. Petitioner then filed a Petition for Hearing requesting the same relief and this proceeding followed.

CONCLUSIONS OF LAW

7. 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. (2015) (emphasis added).

8. As provided in the above statute, 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 he was defaulted into the Pension Plan. If, in accordance with Petitioner's memory, he joined the FRS in 2004, his initial election period expired that same year.

9. Because Petitioner used his one-time second election in 2007, he has exhausted his only opportunity to move between plans, as there are no additional elections. Petitioner cannot rescind his second election because he 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.

10. Under the rule, Petitioner had until the time the present value of his Pension Plan benefit was transferred to his Investment Plan account to rescind his second election, but this time period elapsed in 2007.

11. Petitioner's assertion that he was not made aware that he was using his second election in 2007 is not supported by the election form itself or by the transcript of the recorded call between Petitioner and the MyFRS Financial Guidance Line representative.

12. Petitioner also contends that he received bad advice from "Vivian," a representative of Miami-Dade College. Because the SBA is "not responsible for erroneous information provided by representatives of employers." § 121.021(10), Fla. Stat. (2015), this assertion cannot be a basis for the result Petitioner seeks.

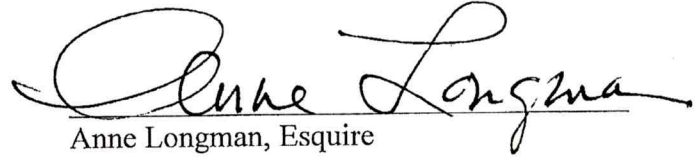
13. Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear and the SBA cannot deviate from them. Balezantis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Further, the SBA's construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, 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 DCA 1998).

14. Although it is unfortunate that Petitioner's FRS status and his available elections were unclear to him going back as far as 2001, there is no record documentation which would support the relief he has requested under the applicable law.

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 23^d day of June, 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
alongman@llw-law.com

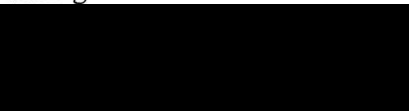
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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:

Karrigan Lawson



Petitioner

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

Counsel for Respondent