

STATE BOARD OF ADMINISTRATION

CHRISTINA L. GOLDEN)
Petitioner)
vs.) Case No. 2002-079
STATE BOARD OF ADMINISTRATION,)
Respondent.)

FINAL ORDER

THIS CAUSE came on before the State Board of Administration (SBA) for consideration and final agency action.

On January 8, 2003 Petitioner filed a Petition for Hearing. Pursuant to notice, the matter was heard before Presiding Officer Thomas A. Beenck on March 19, 2003 in the St. Augustine Room at 1801 Hermitage Boulevard, Tallahassee, Florida. Petitioner participated in the hearing by telephone.

After consideration of the evidence, argument and testimony presented at hearing, and subsequent written submissions by the parties, the Presiding Officer issued his Recommended Order (attached as Exhibit A). The Presiding Officer recommended denying Petitioner's request to void her election into the FRS Investment Plan.

FINDINGS OF FACT

The Findings of Fact of the Presiding Officer set forth in the Recommended Order are adopted in full as the SBA's Findings of Fact.

CONCLUSIONS OF LAW

The Conclusions of Law of the Presiding Officer set forth in the Recommended Order are adopted in full as the SBA's Conclusions of Law.

ORDERED

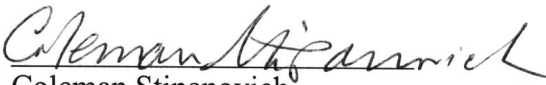
Petitioner's request to void her election into the FRS Investment Plan is hereby denied.

NOTICE OF APPEAL RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Notice of Appeal with the Clerk of the State Board of Administration, 1801 Hermitage Blvd., Tallahassee, Florida 32308, and a copy of the same and the filing fee with the appropriate District Court of Appeal within thirty (30) days of the rendition (issuance) of this Final Order.

Done and Ordered this 4th day of June, 2003 in Tallahassee, Florida.

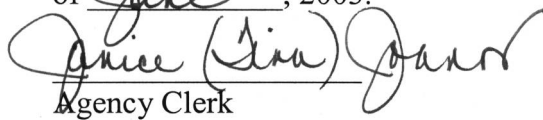
State Board of Administration


Coleman Stipanovich
Executive Director
P.O. Box 13300
Tallahassee, Florida 32317-3300

Copies furnished to:

Christina L. Golden
Ruth L. Gokel, Esq.
Thomas A. Beenck, Esq.

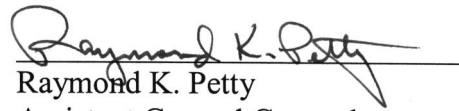
Filed this 4th day
of June, 2003.


Anice (Lisa) Jordan
Agency Clerk

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed to Christina L. Golden, [REDACTED] and was hand delivered to Ruth L. Gokel, Esq., Assistant General Counsel, State Board of Administration, 1801 Hermitage Blvd., Tallahassee, FL 32308 and Thomas A. Beenck, Esq., Presiding Officer, State Board of Administration, 1801 Hermitage Blvd., Tallahassee, FL 32308 on this 4th day of June, 2003.

State Board of Administration



Raymond K. Petty
Assistant General Counsel
P.O. Box 13300
Tallahassee, Florida 32317-3300


STATE BOARD OF ADMINISTRATION
OFFICE OF THE GENERAL COUNSEL

CHRISTINA L. GOLDEN,)	
Petitioner)	
)	
vs.)	Case No. 2002-079
)	
STATE BOARD OF ADMINISTRATION,)	
Respondent.)	
)	

RECOMMENDED ORDER

Pursuant to notice, the State Board of Administration, by its duly designated presiding officer, Thomas A. Beenck, held an informal hearing in this matter on March 19, 2003, in Tallahassee, Florida, by telephone conference call.

APPEARANCES

For Petitioner:	Christina L. Golden, pro se
	
For Respondent:	Ruth L. Gokel, Esq. Office of the General Counsel State Board of Administration 1801 Hermitage Blvd. Tallahassee, FL 32308

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GENERAL COUNSEL'S OFFICE

STATEMENT OF THE ISSUE

Whether Petitioner should be permitted to void her election into the FRS Investment Plan and be permitted to return to the FRS Pension Plan while being allowed to retain her one-time second election option, available as provided in accordance with Section 121.4501(4)(e), Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed a Complaint Petition with the State Board of Administration (SBA) on January 8, 2003, by which she sought to have her election to transfer into the Investment Plan of the Florida Retirement System voided, allowing her to return into the Pension Plan of the Florida Retirement System, while preserving her "2nd Election Retirement Plan Choice". The SBA investigated the issues raised by the Petitioner and reached a decision that the Petitioner would not be permitted to void her election. That decision was communicated to the Petitioner by letter dated January 13, 2003, advising her of her right to a hearing. Petitioner filed a request for a hearing on February 3, 2003. By letter entitled "Notice of Proceeding", dated February 18, 2003, the SBA advised Petitioner of her opportunity to present either written or oral evidence. Petitioner chose to present oral evidence. A Notice of Hearing was issued on February 24, 2003, setting March 19, 2003, as the hearing date. The Petitioner requested that the hearing be conducted by conference telephone which was audiotaped. The audio tape was not transcribed.

The matter was heard as scheduled on March 19, 2003. Petitioner testified in her own behalf as her only evidence. Respondent introduced an audio tape of the conversation Petitioner had with the FRS Investment Plan's Administrator on December 6, 2002, in which she elected to transfer to the FRS Investment Plan. Respondent also questioned Petitioner regarding the events leading to her decision and subsequent events. Respondent presented no other testimony.

The presiding officer offered an opportunity for the parties to file proposed recommended orders, no later than close of business on March 26, 2003. Petitioner declined the opportunity. Respondent accepted the opportunity.

Respondent's proposed recommended order was filed with the presiding officer on March 26, 2003.

Based upon the audio and documentary evidence received, and the entire record compiled herein, I hereby make the following relevant factual findings:

FINDINGS OF FACT

1. Petitioner is employed by Palm Beach County, a unit of local government in the State of Florida, with approximately sixteen and one-half years (16 ½) years as a member of the Florida Retirement System.
2. As a local employee and a member of the Florida Retirement System, Petitioner was entitled to make a choice between staying in the existing defined benefit retirement plan, called the FRS Pension Plan or electing to transfer into the optional defined contribution retirement plan, called the FRS Investment Plan.

3. The statutory choice period applicable to the Petitioner is prescribed in Section 121.4501(4)(c), Florida Statutes. The choice period began for existing local employees on December 1, 2002, and ended, in accordance with Section 121.4501(4)(c)1.a., Florida Statutes, on February 28, 2003.

4. Petitioner acknowledged receiving a packet of information about the retirement choice in August, 2002. This information included a personalized benefit comparison statement for Petitioner, information about the choice, information about her choice deadline, information about investment options in the optional program, and a list of free workshops where she could obtain additional information.

5. Petitioner acknowledged attending an information workshop on October 2, 2002, at the Palm Beach County Governmental Center.

6. Petitioner acknowledged three telephone calls to the FRS Financial Guidance service on October 22, 2002. Those calls totaled about an hour and included discussion about the February 28, 2003, deadline; questions about money market funds and the Treasury inflation protected securities; questions about fees, past fund performance, and benchmarks; questions about rollovers from other investment plans; and a statement by Petitioner that she had made up her mind that she was choosing the FRS Investment Plan.

7. After authentication by Petitioner, Respondent played an audio tape of the telephone conversation Petitioner had with a representative of CitiStreet, the FRS Investment Plan Administrator, on December 6, 2002, in which Petitioner made the formal choice and elected the FRS Investment Plan. The audio tape clearly showed that Petitioner knew exactly what she was doing and had given the issue of whether to transfer into the Investment Plan some thought. She started the conversation with the firm statement that she wanted to make her election. She had already determined which funds and the percentages of those funds that she wanted to invest in and had already determined the names of the four primary beneficiaries and the two contingent beneficiaries for the plan. There was no hesitation or doubt expressed by the Petitioner, as to whether she was doing the right thing, evident during that conversation.

8. Petitioner's complaint petition, filed January 8, 2003, alleges that she "was confused and mixed up." Petitioner further stated therein that "[i]t only stands to reason, a person with my past record and future career plans I should [have chosen] 'FRS' as my first choice. I plan to work at my present job for another fifteen years for a total of 30 years in the retirement plan."

9. She testified at the hearing that she knew that the statement referred to in Paragraph 8 above, was inconsistent with her statement to an Ernst & Young financial planner with whom she spoke on December 9, 2002. During the telephone conversation, she said that she was in the correct plan and although she needs to work 20 more years, she was not sure who the employer would be. Petitioner made three calls to Ernst & Young on December 9, 2002, for a total of over an hour.

10. On December 10, 2002, an Ernst & Young planner called Petitioner back to discuss the material on the online Choice Service, material which had not been available the day before during the December 9, 2002, phone calls, because of a technological problem. On December 10, 2002, Petitioner appears to have changed her mind and, during three separate follow-up phone calls, also on December 10, 2002, asked if she could void the election she had made on December 6, 2002. The planner informed her about her "second choice" to return to the FRS Pension Plan.

11. Petitioner's hearing request was filed on February 3, 2003. In that document, Petitioner for the first time raises the issue of the possible effect that her medication had on her election decision. The document states: "I've been prescribed anti-depressants since 1996 for depression which may [have] attributed to the wrong 'First Choice'. I am still under the doctor's supervision."

12. At the hearing, counsel for Respondent asked Petitioner about her medication. Petitioner stated that she made the election to transfer into the Investment Plan during "a low period"; that she had made the decision "...without thinking it through"; that she had recently changed from one medication to another but did not otherwise name the medication, discuss any side effects of that medication or give any indication of inappropriate or adverse reactions to either the previous or the current medication.

CONCLUSIONS OF LAW

1. The State Board of Administration has jurisdiction over the subject matter of and the parties to this action pursuant to Sections 120.569, 120.57, and 121.4501, Florida Statutes.

2. The parties were duly noticed pursuant to Chapter 120, Florida Statutes.

3. Section 121.4501(4)(c)1., Florida Statutes, which applies to the election process for local government employees, states that: "This election is irrevocable, except as provided in paragraph (e) [relating to a participant's "second choice"]." This language has been implemented by rule in Rule 19-10.001, titled "Asset Transfer Procedures: Initial Transfers Occurring between 7/1/02 and 3/31/03." Rule 19-10.001(3)(d), Florida Administrative Code, states: "Although Section 121.4501(4), Florida Statutes, provides for a 90-day period during which public employees can make an election to transfer to PEORP [Public Employee Optional Retirement Program], once an employee has made an election to transfer to PEORP or remain in the defined benefit plan or SMOAP [Senior Management Optional Annuity Program], that election is irrevocable, even though the 90-day period may not have expired. Section 121.4501(4)(e), Florida Statutes, provides one additional opportunity for an employee to change his or her mind after the employee's 90-day election period."

4. Petitioner's election to transfer into the Investment Plan on December 6, 2002, was irrevocable on that day. Petitioner has not cited any authority, and the presiding officer is unaware of any statutory provisions or administrative rule, which would provide the presiding officer with the needed jurisdiction or authority to override the clear dictate of Section 121.4501(4)(c), Florida Statutes, that once an election is made, it is irrevocable, except for the one-time option election available pursuant to Section 121.4501(4)(e), Florida Statutes. Petitioner retains said one-time option provided by Section 121.4501(4)(e), Florida Statutes, to transfer back into the Pension Plan of the Florida Retirement System, if she so chooses and complies with any statutory requirements necessary to effect the transfer.

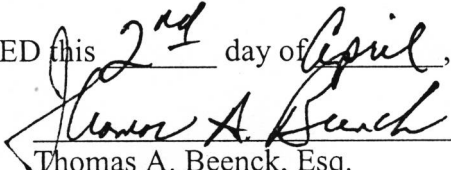
5. Petitioner had an opportunity at hearing to more fully describe her medical condition and the possible effect of taking prescribed medication might have affected her actions. She did not present any concrete testimony to support the allegations made in her hearing request. As a consequence, the record is devoid of any information on that issue.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that:

Respondent enter a Final Order denying Petitioner's request to void her election into the FRS Investment Plan.

DONE and ENTERED this 2nd day of April, 2003, in Tallahassee, Leon County, Florida.


Thomas A. Beenck, Esq.
Presiding Officer
State Board of Administration
1801 Hermitage Blvd.
Tallahassee, Florida 32308
(850) 413-1183

Copies furnished:

Christina L. Golden



Petitioner

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