

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

VALENCIA H. DONALD-WILLIAMS,)
)
 Petitioner,)
)
 vs.)
)
 STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
)
 _____)

1416
Case No. 2008-~~1405~~

FINAL ORDER

On July 27, 2009, 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, Valencia H. Donald-Williams, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on August 12, 2009. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

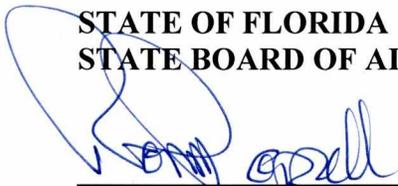
ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to rescind her second election and be returned to the Pension Plan 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.

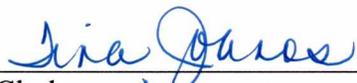
DONE AND ORDERED this 17th day of August, 2009, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

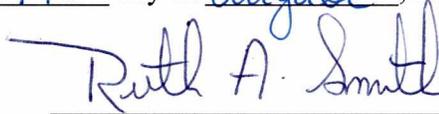
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Clerk TINA JOANOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by U.S. Mail to Valencia H. Donald-Williams, pro se, [REDACTED], and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 17th day of August, 2009.



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

VALENCIA H. DONALD-WILLIAMS,

Petitioner,

vs.

CASE NO. 2008-1416

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned Presiding Officer on March 26, 2009, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Valencia Donald-Williams


Petitioner

For Respondent:

Brandice D. Dickson, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

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GENERAL COUNSEL'S OFFICE

STATEMENT OF THE ISSUE

The issue is whether Petitioner may switch back to the Florida Retirement System (FRS) Pension Plan despite having used her second election to move to the Investment Plan.

PRELIMINARY STATEMENT

Petitioner filed a Request for Intervention with Respondent, Florida State Board of Administration (SBA), raising the above issue, which was investigated and denied by letter of

EXHIBIT A

January 22, 2009. Petitioner then filed a Petition for Hearing on February 2, 2009 disputing Respondent's decision, and this informal hearing ensued.

Petitioner attended the hearing in person and testified on her own behalf. Respondent presented the testimony of Daniel Beard, SBA Director of Policy, Risk Management and Compliance. Respondent's Exhibits R-1 through R-4 and R-11 were admitted into evidence without objection.

A transcript of the hearing was filed with the agency and made available to the parties, who were invited to submit proposed recommended orders within 30 days. Respondent filed a proposed recommended order; Petitioner made no further submissions.

UNDISPUTED MATERIAL FACTS

1. Petitioner is an employee of the Calhoun County Correctional Institution, Florida Department of Corrections.
2. On September 1, 2002, Petitioner defaulted into the FRS Pension Plan.
3. On April 9, 2007, Petitioner executed a 2nd Election Retirement Plan Enrollment Form, changing from the Pension Plan to the Investment Plan. This form was mailed to Respondent's third party administrator on April 23, 2007 and received and processed on April 25, 2007. This established a May 1, 2007 effective date for her participation in the Investment Plan. The form states, among other things,

I understand that this enrollment will constitute my one-time second election as provided under the FRS; I will have to remain in this retirement plan until my retirement from the FRS.

4. A Second Election Plan Choice Confirmation Statement was mailed to Petitioner advising that her second election form had been processed and confirming that she had made her final plan choice election under the Florida Retirement System.

5. Assets were transferred from Petitioner's FRS Pension Plan to establish her FRS Investment Plan account on May 31, 2007.

6. The MyFRS Financial Guidance Line is a toll free number which provides FRS participants access to information and counseling through various SBA third party providers. Calls with FRS participants are recorded. Prior to making her second election, Petitioner utilized this service several times and had extensive conversations with different counselors about moving to the Investment Plan, how it compared to the Pension Plan, how to effectuate a move and how to time this second election to coordinate with her employment plans and need for funds.

7. At hearing, the audio recording of Petitioner's June 13, 2006 call was played. During this call, Petitioner was expressly advised by the Guidance Line representative that she had only one second election, that it would be her final plan choice and that she could not then re-enter the Pension Plan.

8. Petitioner first notified Respondent of her desire to rescind her second election in December 2008, well over a year after the effective date of this election.

CONCLUSIONS OF LAW

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

(e) After the period during which an eligible employee had the choice to elect the defined benefit program or the Public Employee Optional Retirement Program, 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 defined benefit program to the Public Employee Optional Retirement Program or from the Public Employee Optional Retirement Program to the defined benefit program. Eligible employees may elect to move between Florida Retirement System programs only if they are earning service credit in an employer-employee relationship consistent with the requirements under s. 121.021(17)(b), excluding leaves of absence without pay.

§ 121.4501(4)(e), Fla.Stat.

10. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period runs. Because Petitioner used her one-time second election in April 2007, she has exhausted the opportunity to move between plans.

11. Respondent is not authorized to depart from the requirements of the statutes governing the Investment Plan when exercising its jurisdiction. See, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), Final Order No.: DMS-05-009 (Dept.Mgmt.Svs. April 4, 2005).

12. The essence of Petitioner's complaint seems to be that she made her second election without sufficient education about the effects of that decision and about the fact that it was final. The undisputed facts of record show that she had extensive, substantive discussions about this decision, and received accurate information. At this point, Petitioner cannot change her mind and withdraw her plan transfer, because the statutes governing all members of the FRS do not permit it.

13. Respondent has no statutory authority to allow Petitioner to rescind her second election into the Investment Plan.

RECOMMENDATION

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

RESPECTFULLY SUBMITTED this 27th day of July, 2009.


Anne Longman, Esquire

Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
P.O. Box 16098
Tallahassee, FL 32317

NOTICE: 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, which 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 with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
(850) 488-4406

This 21st day of July, 2009.

Copies furnished to:

Valencia Donald-Williams



Petitioner

Brandice D. Dickson, Esquire
Pennington, Moore, Wilkinson Bell & Dunbar
Post Office Box 10095
Tallahassee, FL 32302-2095
Attorneys for Respondent