

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

KATHLEEN REED,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2019-0247
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On December 9, 2019, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, Kathleen Reed, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due by December 24, 2019, were filed by either party. 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 receive the employer contributions made to her Florida Retirement System (“FRS”) Investment Plan account when she had accrued only 0.89 years of service credit and had already received a full distribution of all contributions she made to her account, hereby is denied. Petitioner had insufficient

service credits for her to be vested in the contributions made by her employer to her FRS Investment Plan account. Pursuant to Section 121.4501(6), Florida Statutes, whenever an FRS Investment Plan member elects to receive any of his or her vested employee contributions upon termination of employment, that member forfeits all non-vested employer contributions.

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.

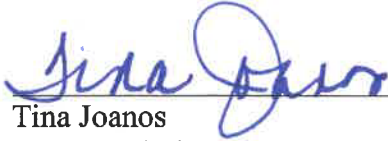
DONE AND ORDERED this 10th day of January, 2020, in Tallahassee, Florida.

**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

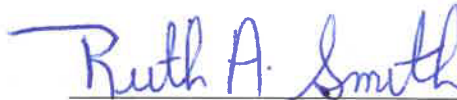
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Kathleen Reed, pro se, both by email transmission at [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 10th day of January, 2020.



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

KATHLEEN REED,

Petitioner,

vs.

CASE NO. 2019-0247

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 October 9, 2019, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Kathleen Reed, pro se (telephonically)

For Respondent: Ruth Vafek
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to distribution of the employer contribution portion of her Florida Retirement System (FRS) Investment Plan account, after having accrued 0.89 years of service in an FRS covered position and having requested and received a distribution from her account of all her employee contributions.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-5, and Petitioner's Exhibit P-1, 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 after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner began her first FRS-qualifying employment with the Broward County School Board (BCSB), an FRS-participating employer, on November 1, 2013. Petitioner was employed as a classroom assistant, or "paraprofessional," which is a school-year position, and was employed pursuant to a nine-month contract.

2. On or about April 7, 2014, during her first-election choice period, Petitioner signed onto the MyFRS.com website and elected the defined contribution Investment Plan.

3. During the term of her qualifying employment, Petitioner made the required employee contributions to her Investment Plan account.

4. BCSB made employer contributions to this account on Petitioner's behalf.

5. Petitioner's last day of employment in an FRS-covered position was June 30, 2014, per BCSB's records as submitted to Respondent.

6. Petitioner received salary payments for eight months of her nine month FRS-covered position.

7. On or about June 11, 2019, Petitioner requested and received a distribution of her employee contributions from her Investment Plan account.

8. On June 19, 2019, Petitioner submitted a Request for Intervention (RFI) requesting that all Investment Plan employer contributions made on her behalf also be distributed to her. Petitioner's RFI was denied.

9. On July 7, 2019, Petitioner filed a Petition for Hearing (PFH) requesting the same relief. This administrative proceeding followed.

CONCLUSIONS OF LAW

10. Petitioner requests that the employer contributions made by BCSB to the Investment Plan on her behalf be distributed to her. Florida law sets out the applicable statutory vesting requirements. Section 121.4501(6), Florida Statutes, provides in relevant part:

(a) A member is **fully and immediately vested** in all **employee** contributions paid to the investment plan as provided in s. 121.71, plus interest and earnings thereon and less investment fees and administrative charges.

(b)1. With respect to **employer contributions** paid on behalf of the member to the investment plan, plus interest and earnings thereon and less investment fees and administrative charges, a member is **vested after completing 1 work year with an employer**, including any service while the member was a member of the pension plan or an optional retirement program authorized under s. 121.051(2)(c) or s. 121.055(6).

2. If the member terminates employment before satisfying the vesting requirements, the nonvested accumulation must be transferred from the member's accounts to the state board for deposit and investment by the state board in its suspense account created within the Florida Retirement System Investment Plan Trust Fund. If the terminated member is reemployed as an eligible employee within 5 years, the state board shall transfer to the member's account any amount previously transferred from the member's accounts to the suspense account, plus actual earnings on such amount while in the suspense account.

....

(d) Any nonvested accumulations transferred from a member's account to the state board's suspense account shall be **forfeited**, including accompanying service credit, by the member **if the member is not reemployed as an eligible employee within 5 years after termination**.

(e) If the member elects to receive any of his or her vested employee or employer contributions upon termination of employment as provided in s. 121.021(39)(a), except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the Internal Revenue Code, **the member shall forfeit all nonvested employer contributions**, and accompanying service credit, paid on behalf of the member to the investment plan.

(Emphasis added.)

11. The pertinent portion of Section 121.021(12) provides that “[m]ember’ means any officer or employee who is covered or who becomes covered under this system in accordance with this chapter.” “‘Officer or employee’ means any person receiving salary payments for work performed in a regularly established position....” Section 121.021(17)(b) provides that “[o]n and after July 1, 1985, one month of service credit shall be awarded for each month salary is paid for service performed.”

12. The requirements for teachers are addressed more specifically. Section 121.021(17)(a) states:

Service by a teacher, a nonacademic employee of a school board, or an employee of a participating employer other than a school board whose total employment is to provide services to a school board for the school year only shall be based on contract years of employment or school term years of employment, as provided in chapters 122 and 238, rather than 12-month periods of employment.

13. In this case, Petitioner was not employed as a paraprofessional with BCSB for the full “contract year” of her position. She was paid a salary for services performed for only eight months but was employed in her FRS-covered position pursuant to a nine month contract. She therefore did not complete “1 work year” with an employer as required to vest in the employer contributions to her Investment Plan account pursuant to Section 121.4501(6), Florida Statutes.

14. Respondent is charged with implementing Chapter 121, Florida Statutes and it is not authorized to depart from the requirements of these statutes when exercising its jurisdiction.

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"). The relief Petitioner requests here is contrary to the applicable and controlling statutes.

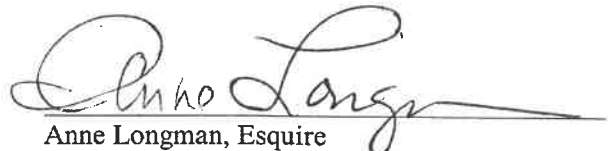
15. Petitioner's interest in the employer contributions made to her Investment Plan account never vested, and therefore Respondent cannot grant the relief requested.

16. Petitioner's perception of her FRS status was understandably complicated by her previous non-FRS employment with BCSB, but that employment is irrelevant to the issue presented here.

RECOMMENDATION

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

RESPECTFULLY SUBMITTED this 9th day December, 2019.



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.

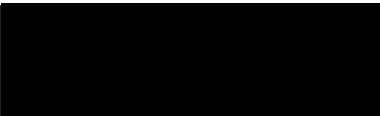
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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 Boulevard, Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
Mini.watson@sbafla.com
Nell.Bowers@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
(850)488-4406

COPIES FURNISHED via mail and electronic mail to:

Kathleen Reed



Petitioner

and via electronic mail only to:

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Ruth Vafek, Esquire
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Tallahassee, Florida 32301
dminnis@ausley.com
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Counsel for Respondent