

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SANDRA McCORKLE,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2011-2188
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
_____)	

FINAL ORDER

On January 5, 2012, 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, Sandra McCorkle, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner made no further filings. Neither party filed exceptions, which were due on January 20, 2012. 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.

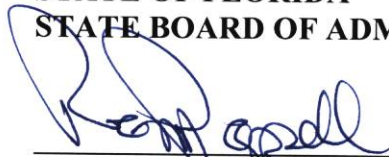
ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that she be deemed vested in benefits transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan before Petitioner had attained six years of creditable FRS service hereby 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 8th day of February, 2012, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



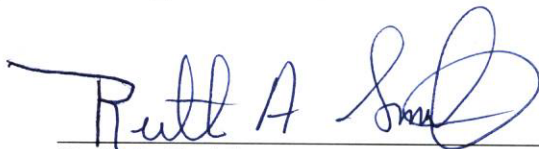
Ron Poppell, Senior Defined Contribution
Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

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 JOANDS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Sandra McCorkle, 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 8th day of February, 2012.



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

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GENERAL COUNSEL'S OFFICE

SANDRA McCORKLE,

Petitioner,

vs.

Case No.: 2011-2188

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case came before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on September 23, 2011, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Sandra McCorkle, *pro se*



For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner is vested in benefits transferred from the Pension Plan to the Investment Plan before she had attained six years of creditable Florida Retirement System (FRS) service.

PRELIMINARY STATEMENT

An informal hearing was held at the offices of the State Board of Administration, 1801 Hermitage Blvd., Suite 100, Tallahassee, Florida, on the Petition filed by Sandra McCorkle. Petitioner attended the hearing by telephone, testified on her own behalf and offered one exhibit, which was received in evidence without objection. Respondent offered the testimony of Petitioner and Daniel Beard, SBA Director of Policy, Risk Management, & Compliance, Office of Defined Contribution Programs. Respondent offered five exhibits which were received in evidence without objection. Petitioner stated during the hearing that she agreed with the undisputed facts identified by Respondent in its Pre-hearing Statement.

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

MATERIAL UNDISPUTED FACTS

1. Petitioner returned to FRS-covered employment with the Orange County School Board as a rehired retiree in August of 2005.
2. After this reemployment, Petitioner had until February 28, 2006 to choose between the Pension Plan and the Investment Plan.
3. Respondent records show that an FRS Plan Choice Kit and two other reminder notices advising Petitioner of the February 28 deadline were mailed to Petitioner at [REDACTED]
[REDACTED]. Petitioner confirmed that this was her address in 2006, but stated that she never received these mailings.

4. Additional educational materials that advise FRS members about their plan choice options and deadlines include the Toll-free MyFRS Financial Guidance Line and the MyFRS.com website.

5. Petitioner did not make an affirmative election to join the Investment Plan before February 28, 2006 and therefore defaulted into Pension Plan membership.

6. Petitioner used her one-time second election to transfer from the Pension Plan to the Investment Plan on March 15, 2006, thus establishing an effective date of Investment Plan membership of April 1, 2006.

7. On April 28, 2006, the then-present value of Petitioner's Pension Plan account was transferred to the Investment Plan.

8. As of July of 2011, Petitioner had attained 2.42 years of creditable FRS service following her re-employment as a rehired retiree.

9. Petitioner is receiving benefits at this time from her previous period of FRS employment and also is fully vested in the Investment Plan benefit she has accumulated since April 1, 2006.

10. Petitioner has asked that she be deemed fully vested in the part of her new Pension Plan account that was transferred to her Investment Plan account, even though she has not met the statutory six year Pension Plan vesting requirement since being rehired.

CONCLUSIONS OF LAW

11. Section 121.4501(6), Florida Statutes provides:

(6) Vesting requirements.--

(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.

(c) 1. With respect to amounts contributed by an employer and transferred from the pension plan to the investment plan, plus interest and earnings, and less investment fees and administrative charges, a member shall be vested in the amount transferred upon meeting the vesting requirements for the member's membership class as set forth in s. 121.021(45). The third-party administrator shall account for such amounts for each member. The division shall notify the member and the third-party administrator when the member has satisfied the vesting period for Florida Retirement System purposes.

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 the 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 accounts any amount previously transferred from the member's accounts to the suspense account, plus the 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, [FN7] the member shall forfeit all nonvested employer contributions, and accompanying service credit, paid on behalf of the member to the investment plan.

(Emphasis added). Section 121.021(45), Florida Statutes prescribes a 6-year vesting requirement for Pension Plan benefits. The portion of Petitioner's Investment Plan account representing the value of the benefit accrued in the Pension Plan and transferred from that plan to the Investment Plan after she used her second election is still subject to the Pension Plan's six year vesting requirement.

12. The deadline for Petitioner to make an initial election is set by Section 121.4501(4), Florida Statutes, and cannot be waived by the agency. Petitioner contends that she did not receive an initial plan choice kit and thus missed her opportunity to make an initial election to join the Investment Plan. SBA records show that a benefits comparison statement was printed for Petitioner in October 2005, a choice kit mailed in November of that year, and two reminder letters sent in January and February of 2006, before the choice deadline. On March 21, 2006 Petitioner filed a request for intervention raising the same issues that are presently under consideration and asking that she be permitted to elect Investment Plan membership

retroactive to her date of rehire. After investigation, by letter of September 6, 2006, Respondent SBA informed Petitioner that pursuant to statutory requirements, her request could not be granted, and also informed her of her right to file a petition within 21 days challenging this decision. Mrs. McCorkle did not file a petition at that time. She renewed her request in the petition currently under consideration, after making inquiry to her elected representative.

13. Having carefully reviewed the undisputed facts in this case, I can find no basis for the action Petitioner requests of Respondent, nor any fact disputes material to my decision. (Although not the basis for my decision, I note that Section 121.4501(8)(g), Florida Statutes provides that actions taken five years or more before a complaint is submitted carry a presumption that they were taken at the participant's request. Petitioner's current Request for Intervention, on which her Petition is based, was submitted on August 9, 2011, more than five years after her February 28, 2006 initial election deadline.)

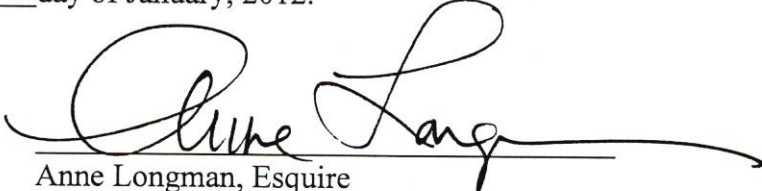
14. Petitioner also contends that her prior years of service (before her initial retirement) should count toward her vesting requirement, but in 2005, a rehired retiree was required to re-satisfy the service requirement for vesting. § 121.122(1)(a), Fla. Stat. (2005).

15. Respondent lacks the statutory authority to grant Petitioner the relief she seeks in this proceeding.

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 5th day of January, 2012.


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: 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.

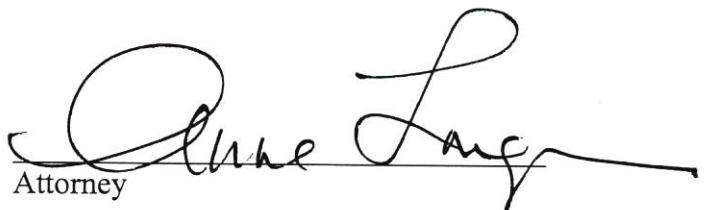
Filed with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
(850) 488-4406

This 5th day of January, 2012.

Copies furnished to:

Sandra McCorkle


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


Attorney