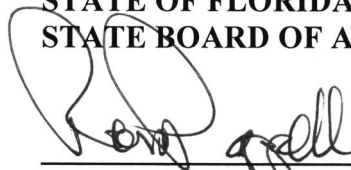


Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 200, 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 1st day of August, 2008, 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

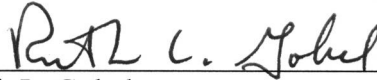
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Clerk TINA JOANOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Richard Staszyn, 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 1st day of August, 2008.



Ruth L. Gokel
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

RICHARD STASZYN,

CASE NO.: 2007-971

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

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GENERAL COUNSEL'S OFFICE

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned Presiding Officer on February 13, 2008, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Richard Staszyn, pro se



For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether the Respondent State Board of Administration (SBA) should grant Petitioner's request for payment to him of amounts from his Florida Retirement System (FRS) account which were Pension Plan assets subject to the six year vesting requirement of Section 121.4501(6), Florida Statutes.

Exhibit A

PRELIMINARY STATEMENT

On September 18, 2007, Petitioner filed a Request for Intervention seeking to have the unvested portion of his FRS Investment Plan account distributed to him. The SBA investigated his request and it was denied. Petitioner then filed a Petition for Hearing requesting the same relief, which was forwarded to the undersigned for informal hearing.

Petitioner attended the informal hearing by telephone and testified on his own behalf. Respondent attended in person and presented the testimony of Dan Beard, Director of Policy, Risk Management and Compliance. Respondent's Exhibits R-1 through R-6, consisting of official records and documents reflecting contacts with Petitioner, were admitted into evidence without objection. Petitioner did not submit any exhibits. A transcript of the recorded telephone call identified as R-5 was filed with the Agency Clerk.

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

UNDISPUTED MATERIAL FACTS

1. Petitioner was hired by Alachua County Sheriff's Department in October 2002 and was given the option to elect membership in the FRS Investment Plan before April 30, 2003.
2. Petitioner did not elect at that time to participate in the FRS Investment Plan and therefore remained a member of the FRS Pension Plan by default.

3. Petitioner subsequently used his second election to join the Investment Plan on November 13, 2003, which established a December 1, 2003 effective date for his membership in the Investment Plan.

4. On December 31, 2003, the present value of Petitioner's Pension Plan was transferred to his Investment Plan account.

5. On January 6, 2007, Petitioner terminated employment with the Alachua County Sheriff's Office with 4.25 years of FRS service.

6. Petitioner was 100% vested in those retirement contributions paid into his Investment Plan account from December 1, 2003 through January 6, 2007, because the Investment Plan has a one year vesting requirement.

7. In order to be 100% vested in those benefits transferred from the Pension Plan, Petitioner was required to work an additional 1.75 years, in order to meet the six year vesting requirement for the Pension Plan.

8. On May 21, 2007, Petitioner requested a distribution in order to cash out his retirement assets. His account balance was approximately \$ [REDACTED]. Approximately \$ [REDACTED] of this amount was unvested because attributable to the amount transferred from his Pension Plan account and still subject to the six year vesting requirement

9. When Petitioner took a distribution of his vested account amount, the remainder of his unvested account balance was forfeited.

10. When Petitioner contacted CitiStreet, the SBA third party administrator, on May 21, 2007, to request distribution from his Investment Plan account, the CitiStreet representative informed

Petitioner of his vested and unvested account balances. The representative also informed Petitioner that if he took a distribution of his vested account balance, he would forfeit his unvested account balance and any years of service represented by that amount.

11. At hearing, Petitioner stipulated that he was informed that he would forfeit the unvested portion if he took a distribution, but stated that he believed he was entitled to approximately \$ [REDACTED], the accrued amount that transferred from his Pension Plan account to his Investment Plan account but was not vested when he cashed out his account.

CONCLUSIONS OF LAW

12. FRS-participating employees are eligible to participate in either the FRS defined benefit program (the Pension Plan) or the Public Employee Optional Retirement Program (the Investment Plan). See § 121.4501(4), Fla.Stat. Participation in the Investment Plan by a new employee is achieved by the employee filing an election form prior to expiration of the five month statutory enrollment period. Id. Failure to file a timely election results in default into the Pension Plan. Id.

13. When the Petitioner did not file an initial election to join the Investment Plan, he defaulted into the Pension Plan and began accruing a retirement benefits under that plan. See § 121.4501(4)(c)2.c., Fla.Stat.

14. An employee who does not file a timely election during the five month statutory window for making an initial election may still use the one time irrevocable second election to switch from the Pension Plan into the Investment Plan, if that employee is otherwise eligible for participation in the Investment Plan. See § 121.4501(4)(e), Fla.Stat. The Petitioner exercised his

right to a second election and switched from the Pension Plan to the Investment Plan effective December 1, 2003.

15. Benefits transferred from the Pension Plan to the Investment Plan by a second election are subject to a six year vesting requirement under Section 121.4501(6)(b)1., Florida Statutes. That provision states, in pertinent part:

A participant shall be vested in the amount transferred from the defined benefit program, plus interest and earnings thereon and less administrative charges and investment fees, upon meeting the service requirements for the participant's membership class as set forth in s. 121.021(29).

§ 121.4501(6)(b)1., Fla.Stat.

16. Section 121.021(29), Florida Statutes sets out the service requirement for various classes of employees, and for special risk class members such as Petitioner, this is "6 or more years of creditable service." §121.021(29)(b)(1), Fla.Stat. Because Petitioner had less than 6 years of creditable service when he terminated employment in January 2007, he was not vested in the benefits transferred from the Pension Plan. He was vested in the amounts accrued from his participation in the Investment Plan from December 1, 2003 to January 6, 2007.

17. When the Petitioner took a distribution from his Investment Plan account, he became a "retiree" under the FRS. See § 121.021(60), Fla.Stat. Additionally, pursuant to Rule 19-11.008, Florida Administrative Code, he forfeited the unvested portion of his Investment Plan account upon becoming a retiree. That rule states, in pertinent part:

(1) Purpose. The purpose of this rule is to clarify the provisions regarding forfeitures of account balances.

(2) Forfeitures after Separation or Retirement from FRS Employment.

...

(b) If the member leaves FRS-covered employment after vesting in his Investment Plan account, but before the member vests in any transferred Pension Plan benefit, the member shall only receive the vested Investment Plan benefit. However, if the member takes any distribution from his vested Investment Plan account, the unvested Pension Plan benefit transferred into the Investment Plan will be forfeited. ...

Rule 19-11.008, F.A.C.

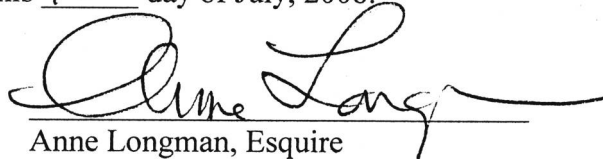
18. The Florida Retirement System, and Petitioner's rights and responsibilities under that system are created by statute. The SBA's construction and application of the statutes it is charged to implement will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 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).

19. It does not appear that Respondent has authority to distribute to Petitioner the unvested portion of his FRS Investment Plan account.

RECOMMENDATION

In light of the undisputed facts and applicable law, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 15th day of July, 2008.



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 should be filed with the Agency Clerk of the State Board of Administration. 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 15th day of July, 2008.

Copies furnished to:

Richard Staszyn



Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095