

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

ZEFFERY MIMS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2022-0431
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On February 3, 2023, 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, Zeffery Mims, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by February 18, 2023, 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 he be granted a “third election” so that he could switch back from the Florida Retirement System (“FRS”) Pension Plan to the FRS Investment Plan hereby is denied. Members such as Petitioner that joined the FRS Pension Plan after July 1, 2011, are ineligible for a Cost-of Living Adjustment (“COLA”). This information was

made available to Petitioner in several educational resources. Petitioner used his one-time second election to transfer to the FRS Pension Plan and failed to take timely action to undo his second election. Thus, he must remain in the FRS Pension Plan.

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 29<sup>th</sup> day of March 2023, 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.

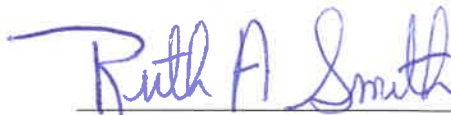


---

Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Zeffery Mims, *pro se*, both by email transmission to [Zmims1@yahoo.com](mailto:Zmims1@yahoo.com) and by U.P.S. to 14237 Feather Sound Drive, Clearwater, Florida 33762; and by email transmission to Deborah Minnis, Esq. ([dminnis@ausley.com](mailto:dminnis@ausley.com)) and [jmcvaney@ausley.com](mailto:jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 29<sup>th</sup> day of March, 2023.



---

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

ZEFFERY MIMS,

Petitioner,

vs.

CASE NO. 2022-0431

STATE BOARD OF ADMINISTRATION,

Respondent.

---

**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on December 6, 2022, at 10:00 a.m., with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner:       Zeffery Mims, *pro se*  
14237 Feather Sound Drive  
Clearwater, FL 33762

For Respondent:       Deborah S. Minnis  
Ausley & McMullen, P.A.  
Post Office Box 391  
Tallahassee, Florida 32302

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner may be placed back into the Florida Retirement System (FRS) Investment Plan after having used his one-time second election to transfer from the FRS Investment Plan to the FRS Pension Plan. Petitioner states that he was not made aware that he

would not be entitled to a Cost of Living Adjustment (COLA) as a member of the FRS Pension Plan.

### **PRELIMINARY STATEMENT**

Petitioner testified on his own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance.

A transcript of the hearing was made, filed with the agency, and provided to the parties on December 29, 2022. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based on the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

### **FINDINGS OF FACT**

1. Petitioner was initially enrolled in the FRS when he was employed by the Pinellas Board of County Commissioners on March 11, 2013. He had until August 30, 2013, to choose between the defined benefit Pension Plan and the defined contribution Investment Plan. Petitioner submitted an election to enroll in the Investment Plan through the [MyFRS.com](http://MyFRS.com) website. The Plan Choice Administrator processed this election on May 30, 2013, with an effective date of June 1, 2013.

2. Petitioner completed and signed a 2<sup>nd</sup> Election Retirement Plan Enrollment Form to change from the Investment Plan to the Pension Plan. This form was received and processed by the Plan Choice Administrator on March 23, 2020 with an effective date of April 1, 2020.

3. Prior to making his second election, Petitioner contacted the MyFRS Financial Guidance Line. During conversations on September 10 and September 19, 2019, the EY

Financial Planner provided Petitioner with information relating to the issues he raised and responded to his inquires. At no point during these conversations did Petitioner inquire about a Cost-of-Living Adjustment (COLA).

4. Because Petitioner was not eligible for a COLA, it would not be customary for the EY Financial Planner to speak to Petitioner about a COLA.

5. Numerous educational resources were available to Petitioner. For example, information relating to the COLA can be found in the FRS Pension Plan Member Handbook. It can also be found in the Florida Retirement System Pension Plan section on the [MyFRS.com](http://MyFRS.com) website.

6. The handbook and the website explain that the COLA is based on years of service before July 1, 2011, and that members joining the Pension Plan after July 1, 2011 are not eligible for the COLA.

### CONCLUSIONS OF LAW

1. Movement between the two FRS plans is governed by Section 121.4501(4)(f), Florida Statutes. This section states, in pertinent part:

(f) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, 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 pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator.

§ 121.4501(4)(f), Fla. Stat. (emphasis added).

2. As provided in the above statute, members of the FRS have one opportunity to switch plans after their initial election. Because Petitioner used his one-time second election in March of 2020, he has exhausted his only opportunity to move between plans. There is no “third” election. Unfortunately, Petitioner cannot now rescind his second election. The grace period provided under Rule 1911.007, Florida Administrative Code, establishes the deadline applicable in this case as follows:

(4) Grace Period.

If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has considered his or her plan choice, the SBA will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by a telephone call to the toll free MyFRS Financial Guidance Line at: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, or to the Division, no later than 4:00 p.m. Eastern Time on the last business day of the election effective month.

If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election’s being officially reversed. Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to take the necessary steps to reverse the election and to correct the member’s records to reflect the election reversal.

A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

Nothing contained in this subsection will interfere with a member’s right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), F.A.C. (emphasis added).

3. Under the rule, the Petitioner had until 4:00 p.m. April 30, 2020, to rescind his election transferring to the Pension Plan. No request to rescind the election was received by the Plan Choice Administrator on or before the deadline.

4. Numerous educational resources were available to Petitioner, and information specifically related to the COLA was readily available to Petitioner in the FRS Pension Plan Member Handbook and on the MyFRS.com website.

5. EY Financial Planners responded fully to Petitioner's inquires during conversations with him, and provided him with all information he requested.

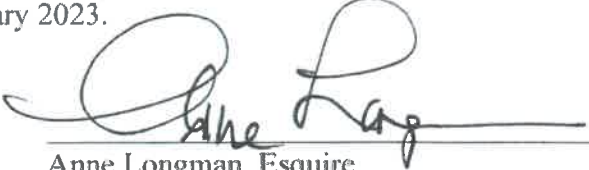
6. The Florida Statutes creating and governing the Florida Retirement System and Petitioner's rights and responsibilities under them are clear, and the SBA cannot deviate from them. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

7. It is unfortunate that Petitioner cannot be in the FRS plan that he would now prefer, but Respondent does not have the authority to waive the statutory requirement allowing only a one-time second election.

**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.

DATED this 3d day of February 2023.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
106 East College Avenue, Suite 1500  
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.

Filed via electronic delivery with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Blvd., Suite 100  
Tallahassee, FL 32308  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
[Nell.Bowers@sbafla.com](mailto:Nell.Bowers@sbafla.com)  
[Ruthie.Bianco@sbafla.com](mailto:Ruthie.Bianco@sbafla.com)  
[Allison.Olson@sbafla.com](mailto:Allison.Olson@sbafla.com)  
[Ruth.Smith@sbafla.com](mailto:Ruth.Smith@sbafla.com)  
(850) 488-4406

COPIES FURNISHED via email and U.S. mail to:

Zeffrey Mims  
14237 Feather Sound Drive  
Clearwater, FL 33762  
[Zmims1@yahoo.com](mailto:Zmims1@yahoo.com)  
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire  
123 South Calhoun Street  
P.O. Box 391  
Tallahassee, Florida 32301  
[dminnis@ausley.com](mailto:dminnis@ausley.com)  
[jmcvaney@ausley.com](mailto:jmcvaney@ausley.com)