

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

CHRISTOPHER DOUGHTY,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2009-1600
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
)	
)	

FINAL ORDER

On April 7, 2010, 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, Christopher Doughty, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order, but Petitioner did not. 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 the State Board of Administration change his status as a "retiree" 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 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 3rd day of May, 2010, 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

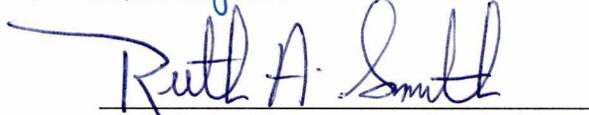
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



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 Christopher Doughty, pro se, [REDACTED], [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 3rd day of May, 2010.



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

CHRISTOPHER DOUGHTY,

Petitioner,

vs.

Case No.: 2009-1600

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned presiding officer on January 21, 2010, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Christopher J. Doughty, pro se

Petitioner

For Respondent: Brandice D. Dickson, 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 the Respondent has been correctly deemed to be a Florida Retirement System (FRS) retiree.

PRELIMINARY STATEMENT

By letter of August 27, 2009, Respondent State Board of Administration (SBA) notified Petitioner that Florida law required that he be designated a retiree because he had terminated FRS employment and taken a distribution from his Investment Plan account. This letter was the result of SBA's investigation of his situation after having been forwarded a letter written by Petitioner to his elected State Representative. Mr. Doughty then filed a Petition for Hearing contesting this determination with the SBA, which administers the Public Employee Optional Retirement Program (commonly known as the Investment Plan) portion of the Florida Retirement System, as Petitioner was part of this plan.

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, State Board of Administration. Respondent's Exhibits R-1 through R-4 were admitted into evidence.

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 after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. The Petitioner was employed by the Florida Department of Corrections (DOC) from 2003-2004.
2. At that time, he was enrolled in the FRS Investment Plan.
3. Upon resigning from DOC, the Petitioner took a total distribution of his Investment Plan account in the amount of approximately [REDACTED].

4. Petitioner later was employed by the Lee County Sheriff's Office (LCSO).

5. He was informed by the LCSO that he had been declared to be a "reemployed retiree" and therefore was not eligible for the special risk class or disability retirement benefits through the FRS.

6. Before taking the distribution in 2004, Petitioner called the MyFRS Guidance Line and stated that he wanted to do something with the money that was in his Investment Plan account. He was advised that taking this money out would make him ineligible for participation in the Deferred Retirement Option Program (DROP), for disability retirement benefits and for participation in the special risk class if he ever returned to FRS-covered employment, as he would be considered a reemployed retiree.

CONCLUSIONS OF LAW

7. Section 121.4501(2)(j), Florida Statutes provides:

(j) "Retiree" means a former participant of the Florida Retirement System Public Employee Optional Retirement Program who has terminated employment and has taken a distribution as provided in s. 121.591, except for a mandatory distribution of a de minimis account authorized by the state board.

§ 121.4501(2)(j), Fla.Stat. (emphasis added).

8. Section 121.591(1)(c), Florida Statutes provides:

(1) Normal benefits.--Under the Public Employee Optional Retirement Program:

...

(c) Upon receipt by the third-party administrator of a properly executed application for distribution of benefits, the total accumulated benefit shall be payable to the participant, as:

1. A lump-sum distribution to the participant;

2. A lump-sum direct rollover distribution whereby all accrued benefits, plus interest and investment earnings, are paid from the participant's account directly

to the custodian of an eligible retirement plan, as defined in s. 402(c)(8)(B) of the Internal Revenue Code, on behalf of the participant; or

3. Periodic distributions, as authorized by the state board.

§ 121.591(1)(c), Fla.Stat..

9. By operation of the above-referenced statutes, when the Petitioner terminated his employment with the Florida Department of Corrections and then took a voluntary distribution, he converted his status in the FRS to that of a retiree. If the Petitioner had not taken a distribution, he would not be considered a "retiree" under Section 121.4501(2)(j), Fla.Stat.

10. Upon his reemployment with an FRS-covered employer, he became a renewed member and subject to Section 121.122, Florida Statutes. That section states, in pertinent part:

121.122. Renewed membership in system

Except as provided in s. 121.053, effective July 1, 1991, any retiree of a state-administered retirement system who is employed in a regularly established position with a covered employer shall be enrolled as a compulsory member of the Regular Class of the Florida Retirement System ... subject to the following conditions:

(1)...

(b) Such member shall not be entitled to disability benefits as provided in s. 121.091(4).

(c) Such member must meet the reemployment after retirement limitations as provided in s. 121.091(9), as applicable.

...

§ 121.122, Fla.Stat..

11. Additionally, Section 121.091(13), Florida Statutes prohibits renewed members in the FRS from participating in DROP. Taken together, the referenced statutes impose substantial conditions on FRS participants who become retirees, as that term is defined by statute, in that they are not eligible for special risk, DROP participation, or disability retirement benefits through

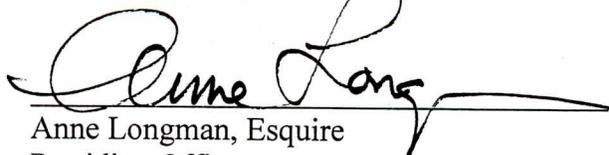
any subsequent re-employment with an FRS-covered employer. Under Section 121.4501(2j), Florida Statutes, an Investment Plan participant becomes a retiree simply by terminating employment and taking a distribution of any amount from that account.

12. Respondent SBA cannot deviate from the requirements of the Florida Statutes creating and governing the Florida Retirement System and defining Petitioner's rights and responsibilities when administering the Investment Plan. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). It is unfortunate that Petitioner may not have fully appreciated the long-term effects of taking a distribution from his Investment Plan account, but the applicable Florida Statutes require that he be regarded a retiree who now has been rehired into an FRS-covered position, and he was informed of the consequences of this action before taking a distribution.

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 7th day of April, 2010.



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

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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 27th day of April, 2010.

Copies furnished to:

Christopher J. Doughty, pro se

[REDACTED]

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