

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

MARSHA WATSON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE BOARD OF ADMINISTRATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

SBA Case No. 2023-0004

**FINAL ORDER**

On May 31, 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, Marsha Watson, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by June 15, 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 she be allowed to repay a distribution she received from her Florida Retirement System ("FRS") Investment Plan account so that she could accept reemployment with an FRS-participating employer without any reemployment restrictions hereby is denied. When Petitioner took the distribution, she became a retiree. As such, she was prohibited by statute from becoming employed with an FRS-

participating employer for six calendar months after her most recent distribution. The SBA has no statutory authority to allow Petitioner to repay the distribution to avoid the mandatory six-month waiting period.

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 29th day of August, 2023, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

*Mimi Watson  
for Daniel Beard*

**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.




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Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Marsha Watson, *pro se*, both by email transmission to [Mwatson207@yahoo.com](mailto:Mwatson207@yahoo.com) and by U.S. Mail to Post Office Box 682292, Orlando, Florida 32868; and by email transmission to Deborah Minnis, Esq. ([dminnis@ausley.com](mailto:dminnis@ausley.com)) and Margaret Wallace ([mwallace@ausley.com](mailto:mwallace@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 29th day of August, 2023.



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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**

MARSHA WATSON,

Petitioner,

vs.

Case No.: 2023-0004

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on April 5, 2023, 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: Marsha Watson, pro se  
P.O. Box 682292  
Orlando, FL 32868

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

**STATEMENT OF THE ISSUE**

The issue is whether Respondent can allow Petitioner to repay a distribution received from her Florida Retirement System (FRS) Investment Plan account prior to her accepting reemployment with another FRS-participating employer, in order to allow her to accept reemployment with an FRS-participating employer without any reemployment limitations.

### **PRELIMINARY STATEMENT**

At the hearing, Petitioner testified on her own behalf and presented no other witnesses. Respondent was represented by Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R1-4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 18, 2023. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

### **UNDISPUTED MATERIAL FACTS**

1. The Petitioner initially joined the Investment Plan effective June 1, 2018 when employed by the Department of Corrections, by utilizing her one-time second election to transfer from the defined benefit Pension Plan to the defined contribution Investment Plan.

2. Petitioner terminated her employment with the Department of Corrections on June 8, 2018. She took a partial distribution from her Investment Plan account on August 1, 2018, and was deemed a retiree pursuant to section 121.4501(2)(k), Florida Statutes.

3. Petitioner was reemployed with the Department of Corrections on June 28, 2019 and pursuant to section 121.122(3), Florida Statutes, was required as a renewed member to be in the Investment Plan.

4. Petitioner terminated her second period of employment with the Department of Corrections on September 23, 2021.

5. On November 29, 2022, Petitioner logged into her account using the MyFRS.com website and again requested a partial distribution from her Investment Plan account.

6. Petitioner had the option of taking a “partial distribution,” “a prior career distribution” or a “total distribution.” Petitioner opted to take a “partial distribution.”

7. To request the distribution from her Investment Plan account, Petitioner had to navigate the “Withdrawals and Rollovers” section of the MyFRS.com website. The language in the “Impact of Early Withdrawal” area of this section expressly informed Petitioner that if she took a distribution from her Investment Plan account, she would be considered retired.

8. Prior to finalizing this “partial distribution,” Petitioner was required to answer a series of questions. The questions and Petitioner’s responses are shown below.

a. Question #1, in pertinent part, reads and Petitioner responded as follows:

The following requires careful review. You must respond to each of the following questions. If you fail to respond to each question, your distribution will not be processed.

Does the FRS have your correct date of termination on file, including all temporary, part time, Other Personal Services (OPS), and any regularly established position? Your FRS records show your date of termination is 10/23/2019. **Answer: Yes**

b. Question #2 reads, and Petitioner responded as follows:

The FRS offers all FRS members free, unbiased financial guidance services from financial planners who do not sell any investments and can assist you with clarifying specific FRS guidelines regarding this distribution as well as other financial planning topics. Would you like to speak to an FRS Financial Planner before proceeding with your distribution? **Answer: No.**

c. Question #3 reads, and Petitioner responded as follows:

Your distribution is being processed in good faith, based on information you provide. Florida Statutes prohibits in-service distributions. You must not be actively employed or pending reemployment with any FRS-covered employer in

any type of position at the time of this distribution. This includes, but not limited to, all regularly established, full-time, part time, temporary, Other Personal Services (OPS), adjunct professors, or substitute teaching positions. This also includes any paid or unpaid positions, service arrangements or employment by or through a third-party providing services to an FRS employer.

If you take a distribution of your vested Investment Plan benefit, any unvested Pension Plan years of service and the accumulated benefit associated with that service will be forfeited.

**When you take a distribution from your Investment Plan account, you are retired from the FRS** and cannot be reemployed by any FRS participating employer in any position within 6 calendar months from the date the distribution is processed. This includes, but not limited to, all regularly established, full-time, part-time, temporary, Other Personal Services (OPS), adjunct professors, or substitute teaching positions. This also includes any paid or unpaid positions, service arrangements or employment by or through a third-party providing services to an FRS employer. If you are reemployed within 6 calendar months of your retirement date, your distribution will be considered invalid. Florida law states that you and any FRS participating agency that employs you are jointly liable for returning any funds distributed.

If you receive an in-service and/or invalid distribution, you will have 90 days to repay the full amount of the distribution to the FRS. In lieu of repayment, you may terminate all employment with FRS participating agencies. If full repayment is not made within 90 days, or you do not terminate employment the State Board of Administration of Florida may declare you a retiree and/or pursue its legal options.

By proceeding with your distribution, you certify that you are currently eligible to receive this distribution. You also understand that if it is later determined you were not eligible you will have to repay the invalid distribution.

Is there any reason why you are not eligible to receive this distribution? **Answer:**  
**No.**

**(Emphasis added.)**

d. Question #4 reads, and Petitioner responded as follows:

If you are reemployed with an FRS-participating employer in any position during the first 7-12 calendar months of the retirement and still have a vested Investment Plan benefit, you will not be able to receive additional Investment Plan

distributions until either you terminate employment or complete 12 calendar months of retirement.

**If you take a distribution and later return to covered-FRS employment, you will considered a “retiree” for any possible future FRS membership.**

Do you understand the reemployment limitations and the consequences of taking a distribution at this time. **Answer: Yes. (Emphasis added)**

9. In addition to the information provided in the questions referenced above, a final warning page was presented to Petitioner before she could proceed with finalizing her distribution request. Petitioner was warned that by continuing the partial distribution she had selected, she would be considered retired.

10. Because she was considered a retiree, she was prohibited from obtaining employment with an FRS-participating employer for six calendar months after her most recent distribution.

11. Petitioner does not deny that she took a partial distribution, but states that she did so in error.

12. Petitioner filed her request for intervention and this petition for relief because she received a job offer from the Orange County Clerk of Courts on December 22, 2022. This offer was within six months of her most recent statutory retirement.

13. During pre-employment screening, the Orange County Clerk of Courts discovered that Petitioner’s retirement date was November 29, 2022, making her employment in violation of the requirement that she not be employed by an FRS participating employer within six months after her retirement date, and the offer of employment was rescinded.



14. Had the Orange County Clerk of Courts proceeded with employing Petitioner, pursuant to section 121.091(9)(d), Florida Statutes, it would have been jointly and severally liable to repay the distribution Petitioner had received.

15. Petitioner seeks to repay the distribution in advance to induce the Orange County Clerk of Courts to take back its rescission of the offer of employment.

### CONCLUSIONS OF LAW

1. Section 121.091(9)(d), Florida Statutes states:
  1. A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.
  2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.
2. The statutory repayment requirement is triggered when a retiree becomes employed with an FRS participating employer within the prohibited six-month period.
3. There is no statutory authority for Respondent to accept prepayment of the distribution and negate the statutory waiting period.
4. Petitioner had adequate notice that by taking a distribution she would be prohibited from accepting employment with an FRS-participating employer for six months after her established retirement date.

5. There is no evidence presented that either Respondent or its agents made any material misstatements to Petitioner that would equitably estop Respondent from denying Petitioner's requested relief.

6. The SBA cannot deviate from the Florida Statutes creating and governing the FRS, and Petitioner's rights and responsibilities under 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. While Petitioner may not have recognized that her most recent distribution date would become her new "retirement" date, Respondent has no authority to grant Petitioner's request to prepay a distribution and negate the mandatory six-month waiting period.

#### **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 31<sup>st</sup> day of May 2023.

s/Anne Longman  
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.

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

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Petitioner

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