

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

LARRY SPARKMAN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2012-2507
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On October 19, 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, Larry Sparkman, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due on November 3, 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 the unvested Florida Retirement System (FRS) Pension Plan benefit that had been transferred to his FRS Investment Plan account not be forfeited 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 15<sup>th</sup> day of November, 2012, in Tallahassee, Florida.


**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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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.

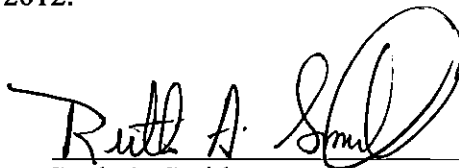


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Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by US mail to [REDACTED] 32309, 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 15<sup>th</sup> day of November, 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

LARRY SPARKMAN,

Petitioner,

vs.

Case No.: 2012-2507

STATE BOARD OF ADMINISTRATION,

Respondent.

**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on July 16, 2012, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Larry Sparkman

[REDACTED]

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 the unvested balance of funds in Petitioner's Florida Retirement System (FRS) Pension Plan benefits have been forfeited in accordance with applicable law.

EXHIBIT A

## **PRELIMINARY STATEMENT**

Petitioner attended the hearing in person and testified on his own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, Defined Contribution Programs, SBA. Respondent's Exhibits R-1 through R-5 were admitted into evidence at the hearing without objection. At the conclusion of the hearing I requested Respondent identify calls relating to Petitioner's Investment Plan choice and circulate the transcripts of those calls to determine whether there was a need for further proceedings in this case. Respondent's Exhibits R-6 through R-12 were then filed, reflecting all recorded calls from Petitioner.

A transcript of the informal hearing was filed with the agency on July 30, 2012 and provided to the parties. After reviewing Respondent's Exhibit R-6 through R-12, I concluded that no further proceedings were needed, and invited the parties to submit proposed recommended orders on or before October 10, 2012. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **MATERIAL UNDISPUTED FACTS**

1. Petitioner began FRS-covered employment in September of 1976. He terminated FRS-covered employment in June of 1984 and at that time had accumulated 7.75 years of creditable service. At that time only the defined benefit FRS Pension Plan was offered.

2. Petitioner returned to FRS-covered employment with the Florida Department of Transportation on August 15, 2003, planning to work for another ten or 15 years, and made an initial election to join the defined contribution Investment Plan. He made his choice after speaking with a FRS counselor about various investment options, but asked no questions about any other aspects of the plan.

3. On December 31, 2003, the present value of Petitioner's Pension Plan account (\$10,198.53) was transferred to his Investment Plan account.

4. Petitioner terminated FRS-covered employment on January 30, 2004, having accumulated a total of 8.25 years of creditable service.

5. Petitioner's Investment Plan statement for the period of October 1, 2004 through December 31, 2004 reflected a balance of \$ [REDACTED] showing a deduction of \$ [REDACTED], which represented the unvested portion of his Pension Plan assets that were transferred to the Investment Plan.

6. Petitioner's Pension Plan benefit was placed in a suspense account upon his termination.

7. Petitioner received a letter on or about December 17, 2008, advising him that he would forfeit the Pension Plan benefit that was transferred to his Investment Plan account if he did not return to work within five years of his termination date of January 30, 2004 (i.e. by January 30, 2009).

8. Petitioner did not return to employment with an FRS-covered agency before January 30, 2009, and the Pension Plan benefit that was placed in the suspense account was considered forfeited.

9. Petitioner filed a request for intervention asking that his Pension Plan benefit be returned to his account. This request was denied by the SBA on June 13, 2012. Petitioner timely requested a hearing to challenge this decision and this administrative proceeding followed.

10. As shown in the transcripts filed after the hearing, Petitioner called the MyFRS Financial Guidance line on November 3, 2003. He asked questions about the different investment options available to Investment Plan members, but never asked any question about

the vesting requirements that applied to either plan. It was Petitioner's apparent intention to remain employed for longer than one year when he returned to FRS-covered employment with the Florida Department of Transportation in 2003, but he resigned sooner than he originally planned due to a contentious work situation. Petitioner has not identified any misrepresentation by the SBA or its agents regarding the vesting provisions at issue in this proceeding. He also received a follow-up call on November 17, 2003 to see if he had any questions about his plan choice, and he had none.

### CONCLUSIONS OF LAW

11. Up to 2001, the vesting requirement for the Pension Plan (defined benefit plan) was ten years; it then changed to six years. A member who was not employed in a regularly established position on July 1, 2001, when the vesting period changed from ten to six years, was required to return to work for at least one year after July 1, 2001 in order to take advantage of the new six year vesting requirement. § 121.021(45)(b)2., Fla. Stat. (2001). Section 121.021(45), Florida Statutes (2001) provides:

(45)(a) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(b) Effective July 1, 2001, a 6-year vesting requirement shall be implemented for the defined benefit program of the Florida Retirement System. Pursuant thereto:

1. Any member employed in a regularly established position on July 1, 2001, who completes or has completed a total of 6 years of creditable service shall be considered vested as described in paragraph (a).

2. Any member not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of 6 years of

creditable service, provided that such member is employed in a covered position for at least 1 work year after July 1, 2001. However, no member shall be required to complete more years of creditable service than would have been required for that member to vest under retirement laws in effect before July 1, 2001.

(Emphasis added). The vesting requirement for the defined contribution Investment Plan created in 2002 has always been one year.

12. Petitioner did not work a full year after he returned to work on August 15, 2003. As a result, the ten year vesting requirement remained applicable to the Pension Plan benefit that had been transferred to his Investment Plan account. Because Petitioner then did not return to work within five years of his termination on January 30, 2004, his Pension Plan benefit was required to be forfeited in accordance with section 121.4501(6)(d), Florida Statutes. The Investment Plan benefit he earned from August 15, 2003 through January 30, 2004 remains, because he met the one year vesting requirement for the Investment Plan.

13. Petitioner contends that he was not informed that he would lose the unvested portion of his Pension Plan account if he did not return to work within five years of terminating his second round of FRS-covered employment, but I see no indication that he sought this information; although he had called the My FRS Financial Guidance Line, and knew informational resources were available to him.

14. Respondent SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications



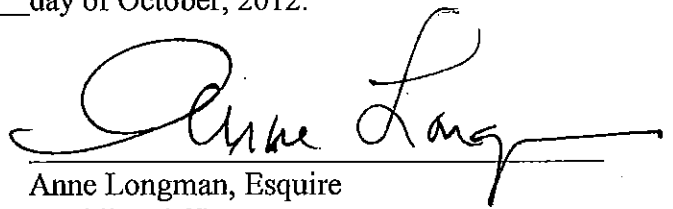
v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

15. It is unfortunate that Petitioner's employment plans changed in 2004, causing him to leave his renewed employment before one year had elapsed and thereby preventing him from taking advantage of the six year Pension Plan vesting provision enacted in 2001; and that he then did not return to FRS-covered employment before five years had elapsed, requiring forfeiture of his unvested benefit. But the SBA has no alternative to applying the applicable Florida law, which precludes it from providing the Petitioner the relief he 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 19<sup>th</sup> day of October, 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 19<sup>th</sup> day of October, 2012.

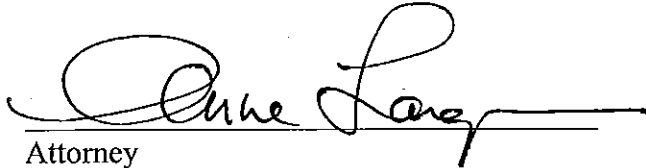
Copies furnished to:

Larry Sparkman

[REDACTED]

Petitioner

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

  
Attorney