

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

HARVEY THOMAS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2008-1364
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On March 31, 2009, 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, Harvey Thomas, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on April 15, 2009. 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.

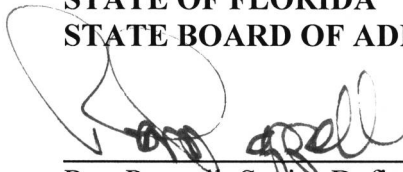
**ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that he be permitted to withdraw funds from his Investment Plan account even though he is still working for an FRS-covered employer and has not met the conditions for a distribution 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 17<sup>th</sup> day of April, 2009, 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.

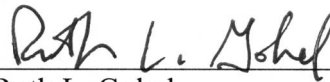


---

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 Harvey Thomas, 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, this 17th day of April, 2009.



\_\_\_\_\_  
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

HARVEY THOMAS,

CASE NO. 2008-1364

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

---

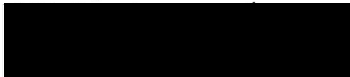
**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned Presiding Officer on December 16, 2008, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner:

Harvey L. Thomas

  
Petitioner

For Respondent:

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

RECEIVED  
STATE BOARD OF ADMIN  
09 MAR 32 PM 3:25  
GENERAL COUNSEL'S OFFICE

**STATEMENT OF THE ISSUE**

The issue is whether the State Board of Administration (SBA) should grant Petitioner's request to withdraw funds from his Investment Plan account.

Exhibit A

## **PRELIMINARY STATEMENT**

Petitioner filed a Petition for Hearing on November 7, 2008 requesting an administrative hearing on the denial by Respondent of his request to withdraw all funds from his Investment Plan account. An informal hearing was held on this Petition, at which Petitioner appeared by telephone and testified on his own behalf. Respondent's exhibits 1 – 7, consisting of official agency records and communications by and to Petitioner, were admitted without objection. Respondent also presented the testimony of Daniel Beard, Director of Policy, Risk Management and Compliance for the SBA.

A transcript of the informal hearing was filed with the agency and made available to the parties, who were invited to file post-hearing hearing submissions. Respondent submitted a proposed recommended order; Petitioner made no further submissions.

### **MATERIAL UNDISPUTED FACTS**

1. Petitioner is a 40 year old member of the FRS Investment Plan who participates through his employment as a Security Specialist with the School Board of Broward County.
2. Petitioner's employment with the School Board of Broward County was terminated on June 3, 2008; he returned to work with the School Board of Broward County at the end of August 2008. Petitioner received compensation from the School Board of Broward County for days worked in June 2008, and for days worked in August 2008.
3. Petitioner has been working full-time for the School Board of Broward County since returning to work in August 2008.
4. Petitioner wants to take a distribution of the moneys in his Investment Plan account, and cites hardship and need for these funds to pursue better employment options.

## CONCLUSIONS OF LAW

5. Section 121.591(1)(a)4., Florida Statutes provides that members of the FRS Investment Plan may not take a distribution from their Investment Plan account until they have been terminated for three calendar months. Section 121.591(1)(a)4., Florida Statutes provides:

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

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) shall be payable under this subsection in accordance with the following terms and conditions:

4. Benefit payments may not be made until the participant has been terminated for 3 calendar months, except that the board may authorize by rule for the distribution of up to 10 percent of the participant's account after being terminated for 1 calendar month if a participant has reached the normal retirement requirements of the defined benefit plan, as provided in s. 121.021(29).

Petitioner has not been terminated from FRS employment for three calendar months.

6. Nor has Petitioner reached the normal retirement requirements of the FRS Pension Plan (age 62 with 6 years of service or 30 years of service), and therefore he is not eligible to receive a distribution of 10% from his Investment Plan account.

7. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System and Petitioner's rights and responsibilities under that system. Balezantis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). The SBA's construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight and 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.

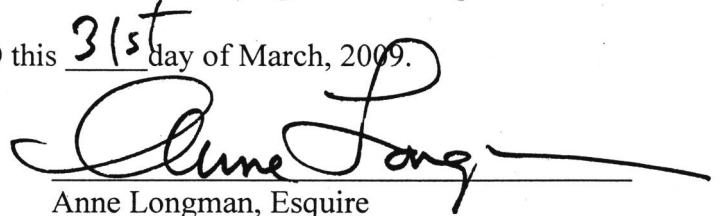
Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

8. Respondent SBA cannot grant Petitioner's request for a distribution of funds from his Investment Plan account, as he does not meet the statutory requirements for withdrawing this money. The applicable law does not appear to contain any exception which would allow Petitioner to have access to these funds at this time, despite hardship or demonstrated need.

### 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 31<sup>st</sup> day of March, 2009.



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

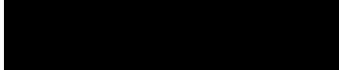
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order, which must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will 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 31<sup>st</sup> day of March, 2009.

Copies furnished to:

Harvey L. Thomas



Petitioner

Brian A. Newman, Esquire  
Brandice D. Dickson  
Pennington, Moore, Wilkinson Bell & Dunbar  
Post Office Box 10095  
Tallahassee, FL 32302-2095  
Attorneys for Respondent