

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

AJA ARRINDELL,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2015-3402
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On November 17, 2015, 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, Aja Arrindell, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent filed a Proposed Recommended. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on December 2, 2015. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Senior Defined Contribution Programs Officer.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner received an invalid distribution from her Florida Retirement System (FRS) Investment Plan account. Petitioner was a vested member of the FRS Investment Plan at the time she terminated her FRS-covered employment with Duval County Public Schools in June 2012. When she took her first partial distribution from her FRS Investment Plan account in October 2012, she was working as an adjunct instructor for another FRS-

participating employer, and thus she did not meet the distribution requirements of Section 121.591, Florida Statutes. Because she received an invalid in-service distribution, she is required either to terminate employment with all FRS-participating employers for 6 calendar months or to repay the invalid distribution within 90 days from the date of this Final Order. There are no provisions that would allow the 90 day repayment period to be extended even for a showing of hardship.

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.

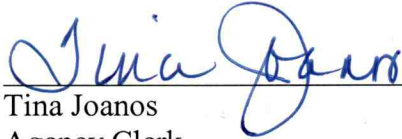
DONE AND ORDERED this 17th day of December, 2015, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman
Senior Defined Contribution Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

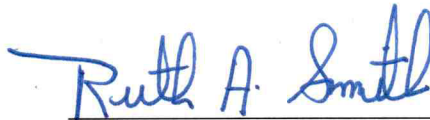
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Aja Arrindell, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 17th day of December, 2015.



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

AJA ARRINDELL,

Petitioner,

vs.

Case No.: 2015-3402

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 September 16, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Aja L. Arrindell, pro se


For Respondent:

Brandice D. Dickson, Esquire
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

EXHIBIT A

STATEMENT OF THE ISSUE

The issue is whether Petitioner's request to extend the time to repay her in-service distribution should be extended beyond 90 days of final notification. Petitioner does not contest that she took an invalid distribution, but requests that she be given until July 17, 2016 to repay the invalid distribution.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 and R-2 were admitted into evidence without objection at the hearing.

MATERIAL UNDISPUTED FACTS

1. Petitioner joined the Florida Retirement System Investment Plan December 1, 2009.
2. On June 12, 2012, she terminated her FRS-covered employment.
3. On October 25, 2012, she received a partial distribution of \$ [REDACTED] from her Investment Plan account.
4. At the time Petitioner received that distribution, she was employed with Florida State College.
5. Petitioner subsequently received additional distributions between November 6, 2012 and January 7, 2013 for a total of [REDACTED] in distributions.
6. Respondent conducted a routine audit and determined Petitioner had taken an in-service distribution, and requested she either terminate her FRS-covered employment or repay the distributions.

7. Petitioner was given until September 30, 2015 to either terminate or repay the distributions. That date was extended by the Respondent through the end of October 2015.

8. Petitioner does not dispute that she took an invalid distribution; rather, she requests that she be given until July 17, 2016 to repay the invalid distribution due to financial hardships including family medical issues.

CONCLUSIONS OF LAW

9. Section 121.591, Florida Statutes regarding payment of benefits to FRS members states, in pertinent part:

Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code.

...

(1) Normal benefits.--Under the investment plan:

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

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.
2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.
3. **The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).**
4. **Benefit payments may not be made until the member has been terminated for 3 calendar months,** except that the state board may authorize

by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

§ 121.591, Fla. Stat. (2014)(emphasis added).

10. When an Investment Plan member receives benefits in contravention of Section 121.591(1)(a), Florida Statutes by taking money from her Investment Plan account, she is said to have taken an "invalid distribution". Rule 19-11.003, Florida Administrative Code governs invalid distributions and states:

(9) Invalid distributions.

(a) If a member or a former member of the FRS Investment Plan receives an invalid distribution, the member or former member is required to repay the entire invalid distribution within 90 days of the member's receipt of a final notification from the SBA, or in lieu of repayment, the member must terminate employment from all participating employers. If the member fails to repay the invalid distribution, or terminate employment, the employer is liable for the repayment of the invalid distribution even if the member signed a statement at the time the member was hired that no benefit had been received from the Plan.

1. If a member repays the entire distribution, the member's repayment will be deposited in the FRS Investment Plan account; the member will be returned to the Investment Plan; and all future employee and employer contributions will be deposited in the funds the member has chosen.

2. If the employer repays the entire distribution, the repayment will be deposited in the Investment Plan Trust Fund and allocated to the Investment Plan's forfeiture account to offset plan expenses. The member will be returned to the Investment Plan; and all future employee and employer contributions will be deposited in the funds the member has chosen.

3. If the member fails to repay the invalid distribution and terminates employment, the SBA will declare the member a retiree and will not pursue the repayment of the invalid distribution pursuant to paragraph (b) above. As a retiree, the member is subject to the provisions of Section 121.122, F.S., if the member is reemployed in the future with an FRS-covered employer in a regularly established position.

19-11.003, F.A.C.

11. In accordance with Rule 19-11.003(9)(a), final notification in this case is entry of the final order finding that Petitioner received an invalid distribution. If the invalid distribution is not repaid by Petitioner or her employer within 90 days of entry of a final order by Respondent, Petitioner's FRS-covered employment must be terminated. There is nothing in either the statute or the rule that would allow an extension of one year to repay the distribution.

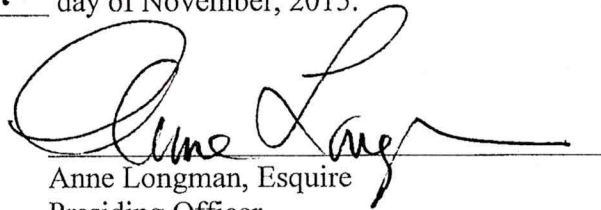
12. If Petitioner terminates FRS-covered employment – instead of repaying her invalid distribution – she will be considered an FRS “retiree” and, as such, be ineligible for future participation in the FRS. Bleasser v. State Board of Administration, 134 So. 2d 1013 (Fla. 1st DCA 2012); and § 121.122(2), Fla. Stat.

13. The SBA is not authorized to depart from the requirements of Chapter 121, Florida Statutes, the statutes it is charged to implement, when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Its construction and application of those statutes 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 DCA1998). Respondent lacks the statutory authority to grant Petitioner's request.

RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that the Petition for Hearing filed in the instant action be dismissed and that a final order be entered finding that Petitioner received an invalid distribution and that the invalid distribution must be repaid within 90 days of issuance of the issuance of a final order in this case or Petitioner's FRS-covered employment must be terminated.

RESPECTFULLY SUBMITTED this 17th day of November, 2015.



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
mini.watson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Aja Arrindell



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent