

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

AMIRA ITZHAK HAYES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2015-3347
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

**FINAL ORDER**

On August 26, 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, Amira Itzhak Hayes, 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 September 11, 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's request to be allowed renewed membership in the Florida Retirement System (FRS) where she had terminated employment in 2012, had taken a distribution in 2013,

and was rehired by an FRS-participating employer in 2015 hereby is denied pursuant to Section 121.122, Florida Statutes.

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 21<sup>st</sup> day of October, 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 Amira Itzhak Hayes, [REDACTED]

[REDACTED] and by email transmission to Brian Newman, Esq. ([brian@penningtonlaw.com](mailto:brian@penningtonlaw.com))  
and Brandice Dickson, Esq., ([brandi@penningtonlaw.com](mailto:brandi@penningtonlaw.com)) at Pennington, Moore,  
Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this  
21<sup>st</sup> day of October, 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

AMIRA ITZHAK HAYES,

Petitioner,

vs.

Case No.: 2015-3347

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, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on June 24, 2015, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Amira Itzhak Hayes, pro se

  
Petitioner

For Respondent: Brian A. Newman, Esquire  
Pennington, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

**EXHIBIT A**

## **STATEMENT OF THE ISSUE**

The issue is whether the SBA should grant Petitioner's request for renewed membership in the Florida Retirement System (FRS).

## **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.

A transcript of the hearing was made, filed with the agency, and provided to the parties. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

## **MATERIAL UNDISPUTED FACTS**

1. In 2011, Petitioner was an employee of the Florida Department of Children and Families and was a member of the FRS Investment Plan.
2. Petitioner terminated her employment on November 8, 2012, and on August 1, 2013, took a distribution of her Investment Plan account.
3. Petitioner was rehired by the Office of the Guardian ad Litem on March 6, 2015.

## **CONCLUSIONS OF LAW**

4. Petitioner is not eligible for renewed membership in the Florida Retirement System because she is a "rehired retiree." During the 2009 legislative session, the Florida Legislature revised Section 121.122, Florida Statutes to exclude from renewed membership in

the FRS any retiree who becomes reemployed on or after July 1, 2010. That revised section states:

**121.122. Renewed membership in system**

(1) Except as provided in s. 121.053, effective July 1, 1991, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a regularly established position with a covered employer, including an elective public office that does not qualify for the Elected Officer's Class, shall be enrolled as a compulsory member of the Regular Class of the Florida Retirement System. Effective July 1, 1997, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a position included in the Senior Management Service Class shall be enrolled as a compulsory member of the Senior Management Service Class of the Florida Retirement System as provided in s. 121.055. A retiree is entitled to receive an additional retirement benefit, subject to the following conditions:

(a) Such member must resatisfy the age and service requirements as provided in this chapter for initial membership under the system, unless such member elects to participate in the Senior Management Service Optional Annuity Program in lieu of the Senior Management Service Class, as provided in s. 121.055(6).

(b) Such member is not 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.

(d) Upon renewed membership or reemployment of a retiree, the employer of such member shall pay the applicable employer contributions as required by ss. 112.363, 121.71, 121.74, and 121.76.

(e) Such member is entitled to purchase additional retirement credit in the Regular Class or the Senior Management Service Class, as applicable, for any postretirement service performed in a regularly established position as follows:

1. For regular class service prior to July 1, 1991, by paying the Regular Class applicable employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust Fund; or

2. For Senior Management Service Class prior to June 1, 1997, as provided in s. 121.055(1)(j).

The contribution for postretirement service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, shall be the difference between such contribution and the total applicable contribution for the period being claimed, plus interest. The employer of such member may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service the member claims must be the most recent service.

(f) No creditable service for which credit was received, or which remained unclaimed, at retirement may be claimed or applied toward service credit earned following renewed membership. However, service earned as an elected officer with renewed membership in the Elected Officers' Class may be used in conjunction with creditable service earned under this section, provided the applicable vesting requirements and other existing statutory conditions required by this chapter are met.

(g) Notwithstanding any other limitations provided in this section, a participant of the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who terminated employment and commenced receiving a distribution under the optional program, who initially renews membership as required by this section upon reemployment after retirement, and who had previously earned creditable Florida Retirement System service that was not included in any retirement benefit may include such previous service toward vesting and service credit in the second career benefit provided under renewed membership.

(h) A renewed member who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

**(2) A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, is not eligible for renewed membership.**

§121.122, Fla.Stat. (2009)(emphasis added)

5. Pursuant to Florida law, a “retiree” is defined as “a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions as provided in s. 121.591, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the Internal Revenue Code.” § 121.4501(2)(k), Fla.Stat. (2014).

6. Because Petitioner terminated her FRS employment and took a distribution from her Investment Plan account, she is considered a “retiree.” Since the 2009 statutory changes discussed above, a “retiree” who becomes reemployed with an FRS participating employer on or after July 1, 2010 is ineligible to participate in the retirement system. As such, Petitioner is prohibited by statute from further participation in the FRS.

7. Petitioner asserts that she should be allowed to repay the distribution she took in 2013 and rejoin the FRS. Because the legislature did not authorize a repayment option as an exception to the prohibition against renewed participation, the SBA is without authority to grant Petitioner’s request.

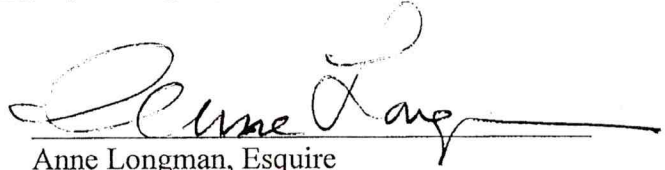
8. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System. *Balezantis v. Dep’t of Management Services, Div. of Retirement*, 2005 WL 517476 (Fla.Div.Admin.Hrgs. March 2, 2005). In this instance, Respondent is without the authority to grant Petitioner’s request.

#### **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 26<sup>th</sup> day of August, 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

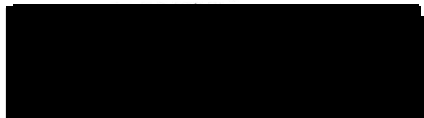
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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](mailto:Tina.joanos@sbafla.com)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Amira Itzhak Hayes



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
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215 S. Monroe Street, Suite 200  
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[slindsey@penningtonlaw.com](mailto:slindsey@penningtonlaw.com)

Counsel for Respondent