

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

YOLLA AOUN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	DOAH Case No. 22-2690
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On January 4, 2023, Administrative Law Judge Linzie F. Bogan (hereafter “ALJ”) submitted his Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Yolla Aoun, and upon counsel for the Respondent. Petitioner and Respondent both timely filed a Proposed Recommended Order. No exceptions 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, Defined Contribution Programs for final agency action.

**STATEMENT OF THE ISSUE**

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in Recommended Order as if fully set forth herein.

## **PRELIMINARY STATEMENT**

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

### **STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS**

The findings of fact of an Administrative Law Judge (“ALJ”) cannot be rejected or modified by a reviewing agency in its final order “...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence....” *See* Section 120.57(1)(I), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2<sup>nd</sup> DCA 1995); *Dietz v. Florida Unemployment Appeals Comm.*, 634 So.2d 272 (Fla. 4<sup>th</sup> DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1<sup>st</sup> DCA 1987). A seminal case defining the “competent substantial evidence” standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as “such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred” or such evidence as is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.”

An agency reviewing an ALJ’s recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1<sup>st</sup> DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4<sup>th</sup> DCA 1993). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the ALJ’s Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to “reject or modify [an administrative law judge’s] conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.” Florida courts have consistently applied the “substantive jurisdiction limitation” to prohibit an agency from reviewing conclusions of law that are based upon the ALJ’s application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the ALJ’s interpretation of a statute or rule over which the Legislature has provided the agency with administrative authority. *See Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140, 1141-42 (Fla. 2d DCA 2001); *Barfield v. Dep’t of Health*, 805 So.2d 1008, 1011 (Fla. 1<sup>st</sup> DCA 2001). When rejecting or modifying any conclusion of law, the reviewing agency must state with particularity its reasons for the rejection or modification and further must make a finding that the substituted conclusion of law is as or more reasonable than that which was rejected or modified.

#### **FINDINGS OF FACT**

The State Board of Administration adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

#### **CONCLUSIONS OF LAW**

The State Board of Administration adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

#### **ORDERED**

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request to be placed retroactively in the Florida Retirement System Pension Plan

hereby is denied. Petitioner presented no competent substantial evidence to show that she erroneously was placed in the Florida Retirement System Investment Plan in 2007. Petitioner was unable to rebut the statutory presumption set forth in Section 121.4501(8)(g), Florida Statutes, that her election into the FRS Investment Plan in 2007 was taken at her request and with her full knowledge and consent.

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 23rd day of February 2023, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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**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.

  
\_\_\_\_\_  
Tina Joanos,  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by email transmission to Yolla Aoun at Yolla\_12000@yahoo.com, by UPS to 2261 Ribbon Falls Parkway Orlando, FL 32824; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com), (jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 23rd day of February, 2023.

  
\_\_\_\_\_  
Ruth A. Smith  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

YOLLA AOUN,

Petitioner,

vs.

Case No. 22-2690

STATE BOARD OF ADMINISTRATION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference on October 11, 2022, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Yolla Aoun, pro se  
2261 Ribbon Falls Parkway  
Orlando, Florida 32824

For Respondent: Ruth E. Vafek, Esquire  
Ausley McMullen  
123 South Calhoun Street  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Petitioner should be retroactively enrolled in the Florida Retirement System (FRS) Pension Plan.

PRELIMINARY STATEMENT

Ms. Yolla Aoun, Petitioner, contacted the State Board of Administration (Respondent) and requested that she be retroactively placed in the FRS

Pension Plan because, unbeknownst to her, she had been enrolled in the FRS Investment Plan since 2007. By correspondence dated August 8, 2022, Respondent informed Petitioner that her request could not be honored. Petitioner timely filed a request for administrative hearing, and on September 8, 2022, Respondent referred the matter to DOAH for a disputed fact hearing.

At the hearing, Petitioner testified on her own behalf. Respondent presented testimony from its employee, Allison Olson. Petitioner did not request that any exhibits be received into evidence. Respondent's Exhibits 1 through 8 were admitted into evidence.

The one-volume Transcript from the disputed fact hearing was filed with DOAH on November 2, 2022. The parties' Joint Motion for Extension of Time to Submit Proposed Recommended Orders was granted, and on December 14, 2022, each party submitted a Proposed Recommended Order. The proposed orders were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner commenced employment with the Orange County Public School System in January 2007. The Orange County Public School System is a participating employer in the FRS. During all times relevant hereto, FRS offered an option where eligible employees could enroll in either the Investment Plan or the Pension Plan.

2. On or about May 23, 2007, an election to the FRS Investment Plan was submitted from Petitioner's account on the MyFRS.com website. Petitioner's election choice was processed by Respondent's authorized representative on May 24, 2007.

3. Subsequent to Petitioner enrolling in the Investment Plan, Respondent routinely provided her with quarterly "FRS Investment Plan Account

Statement[s]” that included information such as the account opening and closing balance, gains and losses experienced during the reporting period, and “[i]nvestment [f]und [c]hoices for [f]uture [c]ontributions” with a “chart [that] shows how you have chosen to invest future contributions by fund.” The account statements also instruct account holders that “[y]ou are responsible for timely notifying the FRS Investment Plan Administrator of any errors in the communication.”

4. On or about July 29, 2022, Petitioner contacted Respondent and requested that she be retroactively enrolled in the pension plan option because she was placed, without her knowledge, in the Investment Plan. Respondent denied Petitioner’s request.

5. Petitioner testified that she is not sophisticated in matters related to her retirement account and has no recollection of having elected the Investment Plan as her FRS retirement account option. Petitioner did not offer any documents or audio recordings as evidence to support her contention that she was erroneously placed in the Investment Plan.

#### CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.<sup>1</sup>

7. Section 121.4501(1), Florida Statutes, provides as follows:

The Trustees of the State Board of Administration shall establish a defined contribution program called the “Florida Retirement System Investment Plan” or “investment plan” for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program. The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code [footnote omitted] and related regulations. The employer and employee

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<sup>1</sup> All references to Florida Statutes will be to the 2022 version, unless otherwise indicated.



shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

8. Section 121.4501(8)(g) provides as follows:

The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

9. Petitioner complains that she was erroneously placed in the Investment Plan in January 2007. After more than 15 years of being enrolled in the Investment Plan, Petitioner initiated the instant proceeding wherein she now challenges her retirement plan election decision. Since the evidence establishes that it has been more than five years since Petitioner was placed in the Investment Plan, Respondent is entitled to the statutory presumption found in section 121.4501(8)(g).

10. Petitioner did not produce any documentary or audio recording evidence whatsoever which demonstrates that an error occurred with respect

to her placement in the Investment Plan. As a result of Petitioner's failure to produce such evidence, it is presumed that her placement in the Investment Plan occurred at her request and with her full knowledge and consent. Because Petitioner has not offered sufficient evidence to rebut the statutory presumption found in section 121.4501(8)(g), her request for relief must be denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the State Board of Administration enter a final order denying Petitioner Yolla Aoun's request to be retroactively enrolled in the FRS Pension Plan.

DONE AND ENTERED this 4th day of January, 2023, in Tallahassee, Leon County, Florida.



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LINZIE F. BOGAN  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of January, 2023.

COPIES FURNISHED:

Ruth E. Vafek, Esquire  
(eServed)

Yolla Aoun  
(eServed)

E. Lamar Taylor, Interim Executive  
Director & Chief Investment Officer  
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.