STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

SILVIA PULIDO,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2014-3110
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
______________________________	)	

FINAL ORDER

On December 12, 2014, the Presiding Officer submitted her 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, Silvia Pulido, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner filed a document that she entitled "Petitioner Requests." Exceptions were due December 27, 2014. Respondent did not file any exceptions. Petitioner sent the SBA an email on December 13, 2014, setting forth some arguments as to why she believed her termination date was incorrect. On January 6, 2015, Petitioner sent a document which she called a "Response to the Preliminary Order" (hereafter "Response"), containing further arguments surrounding her termination date and some documents that she believed supports her position. For purposes of this Final Order, both the Petitioner's email and Response will be treated as exceptions to the Recommended

Order, even though the Response was untimely, since both documents express Petitioner's disagreement with the Recommended Order.

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.

STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact set forth in a Recommended Order 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)(*l*), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley,* 510 So.2d 1122 (Fla. 1st 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."

Pursuant to Section 120.57(1)(*l*), Florida Statutes, however, a reviewing agency has the general authority to "reject or modify 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 this section's

"substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the presiding officer's application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the presiding officer's interpretation of a statute or rule over which the Legislature has provided the agency administrative authority. *See, Deep Lagoon Boat Club, Ltd. V. Sheridan,* 784 So.2d 1140, 1141-42 (Fla. 2nd DCA 2001); *Barfield v. Dept. of Health*, 805 So.2d 1008, 1011 (Fla. 1st DCA 2001).

Section 120.57(1)(k), Florida Statutes, provides that "...an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."

RULING ON PETITIONER'S EXCEPTIONS TO THE RECOMMENDED ORDER

While neither of Petitioner's email nor Response was denominated as "Exceptions" by Petitioner, they do appear to be generated in response to the Recommended Order and set forth arguments indicating that Petitioner is not in agreement with the findings in the Recommended Order. However, neither the email nor the Response clearly identifies the disputed portion of the Recommended Order by page number or paragraph, neither the email nor the Response identifies the legal basis for any exception Petitioner may have to the Recommended Order, and neither the email nor the Response includes appropriate and specific citations to the record. As such, the SBA is not required on that basis alone to rule on any of Petitioner's exceptions that are set forth in the email or the Response.

Petitioner's email seems to consist of an argument that because Petitioner was paid for eleven (11) hours of accrued vacation time when she was terminated, her termination date should be extended by one day, from June 18, 2014 to June 19, 2014, thereby making her second election, to switch from the Florida Retirement System Pension Plan to the Florida Retirement System Investment Plan, timely. There is clear record evidence that Petitioner's employer conclusively determined that June 18, 2014 at noon was the actual date of Petitioner's employment termination [*See,* Respondent's Exhibits R-5, R-6 and R-17, pg. 4, lines 12-21]. This information also shows that Petitioner was paid for accrued vacation time pursuant to her employer's policy. Petitioner has not provided any legal authority to demonstrate that if an employer has a policy to pay terminated employees for any accrued vacation time when they are terminated, that payment will serve to extend the employer-employee relationship for the number of hours of accrued time paid. Thus, this portion of Petitioner's exceptions hereby is denied *in toto*.

The Petitioner's Response again contains arguments by the Petitioner to the effect that she was paid for her accrued vacation time and thereby that payment served to extend the date of her termination. Petitioner's Response included a paragraph concerning vacation pay which Petitioner set forth under a heading: "Florida Vacations: What you need to know." Petitioner did not identify the source of this information, but this information fails to support her position and instead supports that of the SBA. The paragraph provided indicates that "...if an employee <u>leaves the payroll</u>, the person's accrued, <u>unused</u> vacation must be compensated in accordance with the employer's accrual plan." [emphasis added]. This is what occurred in Petitioner's situation: Petitioner "left her employer's payroll" on June 18, 2014 at noon, and she was

compensated by her former employer for eleven hours (11) of accrued vacation time in accordance with her employer's policy. Nothing in the paragraph set forth by Petitioner states that the employer has an obligation to keep an employee on the payroll for the amount of the accrued vacation for which the employee is compensated-it only states that the employer must compensate the employee for that accrued time when the employee leaves the payroll- i.e., is terminated.

Petitioner argues in her Response that for retirements effective after July 1, 2010, a "termination" cannot occur until six (6) months after the date an employee was last paid. Petitioner apparently is referring to the provisions in Section 121.021(39)(a)2., which indicate that if a member ceases all employment relationships with FRS-participating employers and retires, but is employed by any such employer within six (6) calendar months of the termination date, then the member is considered as not having terminated employment. This provision is not applicable in all situations. It only applies if a member is re-employed by an FRS-participating employer within six (6) calendar months of the date the member retired from the FRS. If a member is never re-employed by an FRS-participating employer, or if the member is re-employed after six (6) months from the date of retirement, the member is considered to have terminated employment. .

Petitioner states that she did not have a break in continuous serve when she made her second election. However, as indicated previously, there is record evidence to show that Petitioner was terminated by her employer at noon on June 18, 2014. The facts show Petitioner did not make the deadline to submit her second election by 4:00 PM of the day of her termination. Thus, at the time she made her second election, she was not engaged

in an employer-employee relationship as she already had been terminated effective noon on June 18, 2014.

Petitioner claims in her Response that when she telephoned the MyFRS Financial Guidance Line, she was informed that her second election would be valid and that her second election was "accepted by the FRS." However, the transcript of the June 18, 2014 telephone call to which Petitioner makes reference clearly shows that Petitioner was advised that if June 18, 2014 was her actual termination date, her second election would be invalid. However, if June 18, 2014 for some reason turned out not to be her last day of employment, but instead her last of work was actually June 19, 2014, she was further advised that her second election would be valid. [Respondent's Exhibit R-17, pp. 4-13].

Petitioner makes some assertions that Darla Ferguson, AVP of Human Resources of Petitioner's former employer, told her that she would be compensated through the end of the work week that ended June 19, 2014. However, Petitioner has failed to produce evidence to show that this conversation occurred. As noted previously, Ms. Ferguson clearly has indicted that Petitioner was terminated at noon on June 18, 2014 and that Petitioner was not authorized for any payments for any time after that date. So clearly Petitioner's employer determined that Petitioner was terminated effective at noon on June 18, 2014, and did not provide Petitioner with any compensation for any hours worked after this point in time.

As all the facts set forth in the Recommended Order are based upon competent substantial evidence that the Petitioner has been unable to refute, and as all of the conclusions of law have not been refuted by any legal arguments broached by Petitioner, all of Petitioner's exceptions contained in the Response hereby are denied.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner failed to make a valid and effective second election to switch from the Florida Retirement System Pension Plan to the Florida Retirement System Investment Plan because her second election form was submitted after 4:00 p.m. on the date of termination of her employment with an FRS-participating employer.

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 11th day of March, 2015, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

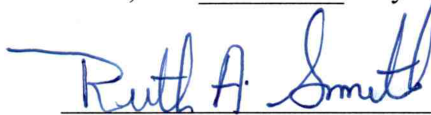
Joan B. Haseman
Senior Defined Contribution Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

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 Silvia Pulido, [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 11th day of March, 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

SILVIA PULIDO,

Petitioner,

vs. Case No.: 2014-3110

STATE BOARD OF ADMINISTRATION,

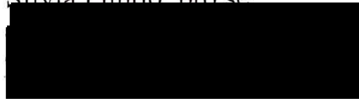
Respondent.

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 22, 2014, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Silvia Pulido, pro se



For Respondent: Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner made a valid and effective second election to switch from the Florida Retirement System (FRS) defined benefit Pension Plan to the defined contribution Investment Plan.

00411069-1

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing in person, testified on her own behalf, and offered the testimony of her husband, Rene Pulido. Respondent presented the testimony of Daniel Beard, SBA Director of Policy, Risk Management, and Compliance. Petitioner's Exhibits 1-6 were admitted into evidence without objection. Respondent's Exhibits 1-9 were admitted into evidence without objection. After the hearing, Respondent submitted Exhibits 10-16, which are .wav files of Petitioner's calls to the MyFRS Financial Guidance Line, and Exhibits 17-23 which are copies of transcripts of Petitioner's calls to the MyFRS Financial Guidance Line. Petitioner also submitted supplemental materials after the hearing, all of which have been made part of the record.

A transcript of the informal hearing was made, filed with the agency, and provided to the parties. At the conclusion of the hearing, the parties were given two weeks to consider whether they wished to assert that a disputed issue of material fact existed and that therefore the case should be transferred to the Division of Administrative Hearings. Based on the matters presented at hearing, and all supplemental materials filed after hearing, I concluded that there was no dispute of material fact determinative of this case (Order on Alleged Dispute of Material Fact, November 7, 2014.) This Order also gave the Petitioner until November 24 to file any additional legal arguments. Respondent had already filed its Proposed Recommended Order by that time. Petitioner submitted a document titled "Petitioner Requests," dated November 21, 2014, by hand delivery on November 24, 2014.

MATERIAL UNDISPUTED FACTS

1. Petitioner enrolled in the Florida Retirement System on March 13, 1992.

2. Petitioner had until August 31, 2002 to make an initial election to join the Investment Plan. Having not made an affirmative election to join the Investment Plan before this deadline expired, she defaulted to continued Pension Plan membership.

3. Petitioner was notified on June 18, 2014 that her position at her FRS employer, Eastern Florida State College, was being eliminated effective that same day. She was paid for time worked through 12:00 p.m. on June 18, 2014.

4. Petitioner did not receive any compensation for work performed after June 18, 2014. According to Darla Ferguson, AVP of Human Resources for Eastern Florida State College, "I met with [Petitioner] on [June 18, 2014] and informed her that she would be paid up to noon of [the] same day. She was not authorized payment for any time after this date." Petitioner's time records with Eastern Florida State College reflect that her last hours worked were three hours on June 18, 2014.

5. Petitioner has argued, in numerous different ways, that her employer did not treat her fairly or openly in the way that she was terminated. She was given no advance notice that her position would be eliminated. She was required to return without pay to clean out her room and retrieve her belongings, and she asserts that her time sheets showing her hours of work were manipulated to her employer's advantage and in a way that obscures her times and dates of actual work, and thereby obscuring that she actually worked after June 18, 2014.

6. Petitioner called the MyFRS.com Financial Guidance Line on June 18, 2014 at

6:39 p.m. Petitioner was advised that it was too late for her to submit a valid second election to switch to the Investment Plan (if June 18th was in fact her termination date), because the 4:00 p.m. deadline had passed by the time she called.

7. Nevertheless, Petitioner was given instruction on how to submit a second election form in the event it was determined that June 18th was not her last day of active employment. Petitioner was cautioned that the second election form would be invalid if June 18th was her reported termination date. Specifically, Petitioner was advised during the call:

> So if today was your last day, if there is a submitted termination date of today, then it's not going to be a valid election.

8. On June 18, 2014, Petitioner submitted her second election to transfer from the Pension Plan to the Investment Plan via facsimile. Respondent's Plan Choice Administrator received Petitioner's second election form on June 18, 2014 at 7:22 p.m.

9. Petitioner's second election choice was deemed invalid by Respondent because her second election form was received after 4:00 p.m. on the date of her termination.

10. Petitioner filed a request for intervention and later a petition for hearing to challenge this decision, thus initiating this administrative proceeding.

CONCLUSIONS OF LAW

11. To make a valid second election to move from the Pension Plan to the Investment Plan the member must be earning service credit "in an employer-employee relationship" with an FRS-covered employer when the second election is made. § 121.4501(4)(g), Florida Statutes (2014). Section 121.4501(4)(g) provides:

> After the period during which an eligible employee had the choice

> to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

(Emphasis added).

12. The timeliness of the submission of second election forms is governed by Rule 19-11.007(2), Florida Administrative Code:

> A member may make a valid 2nd election only if the 2nd election is made and processed by the Plan Choice Administrator while the member is actively employed and earning salary and service credit in an employer-employee relationship consistent with the requirements of Section 121.021(17)(b), F.S. Members on an unpaid leave of absence, terminated members, or employees of an educational institution on summer break cannot use their 2nd election until they return to covered FRS employment. In general terms, this means that the 2nd election must be made and processed while the member is actively working and being paid for that work. It is the responsibility of the member to assure that the 2nd election is received by the Plan Choice Administrator no later than 4:00 p.m. Eastern Time on the last business day the member is earning salary and service credit.

There are at least three sets of requirements embedded in the above rule:

1. be actively employed and earning salary and service credit; and

2. NOT be on unpaid leave, NOT be terminated and NOT be on summer breaks; and

3. submit the second election form to the Plan Choice Administrator before 4 p.m. on the last day of earning salary and service credit.

13. It is clear that Respondent has interpreted and applied its rule to require a second election to be submitted by 4 p.m. on the date of termination. Normally the day of termination, as shown on a form filled out by the employer, and the last day of earning service credit would be the same day. Here, Petitioner alleges that these were in fact not the same day in her case, because she actually worked and earned service credit after the June 18 date indicated on her termination papers. Respondent asserts this is not true. The parties are well aware that I cannot now and will not determine this fact dispute. But it is not necessary for me to do so because Respondent's interpretation of its rule, as reflected in information Petitioner received from the MyFRS Guuidance Line and in its actions, shows that the 4 p.m. deadline applies to the date of termination, and in this case there is no question that June 18 is that day.

14. Respondent is required to apply this rule uniformly in all cases unless – and until – it is amended or invalidated. Gadsden State Bank v. Lewis, 348 So. 2d 343, fn. 2 (Fla. 1st DCA 1977). A rule is deemed valid until determined to be invalid in a rule challenge proceeding initiated pursuant to section 120.56, Florida Statutes. Baillie v. Department of Nat. Resources, 632 So. 2d 1114 (Fla. 1st DCA 1994); Cross v. Department of Health and Rehabilitative Services, 658 So. 2d 1139, 1143 (Fla. 1st DCA 1995).

15. Regardless of whether or when Petitioner may have worked more hours or actually have been in attendance at her job, she was terminated on June 18. Her second election was received after 4:00 p.m. on that date. Under the termination provision of Rule 19-11.007(2), and consistent with the way this rule has been applied by Respondent, this alone means that she did not make a valid second election. If Petitioner's employer acted in a way that was illegal or actionable in a court of general jurisdiction, her remedy must be found in that forum.

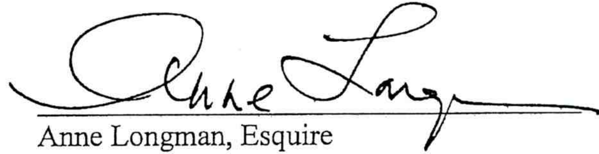
16. Section 121.4501(8)(a), Florida Statutes obligates the SBA to administer the Investment Plan, and it is not authorized to depart from the requirements of this statute when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). 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). Petitioner's request must be denied because Respondent lacks the statutory authority to place Petitioner into the Investment Plan without a timely election having been made with the Plan Choice Administrator.

17. It is unfortunate that her employer's actions made it difficult, if not impossible, for Petitioner to effectuate her wishes as to her FRS retirement assets. Petitioner has not lost her second election right to change plans, but she must return to FRS-covered employment to exercise it. Until then, she remains a member of the Pension Plan.

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 12th day of December, 2014.



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

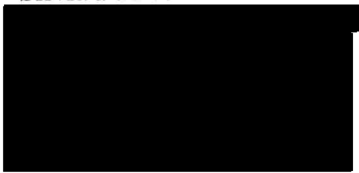
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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

This 12th day of December, 2014.

Copies furnished to:
Via U.S. Mail
Silvia Pulido



Via electronic delivery:
Brian A. Newman, Esquire
Brandice D. Dickson
Pennington, P.A.
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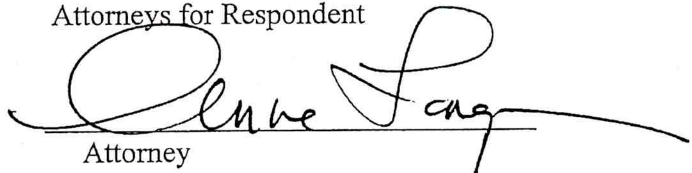
Tallahassee, FL 32302-2095
slindsey@penningtonlaw.com
Attorneys for Respondent



Attorney

Joanos_Tina Petitioner's Exceptions to Recommended Order

From: Silvia T. Pulido [redacted]
Sent: Saturday, December 13, 2014 10:40 AM
To: Linda Schneider
Cc: Joanos_Tina; Watson_Mini; Shannon K. Lindsey
Subject: Re: Silvia Pulido vs. SBA - Recommended Order attached for filing

Dear all,

The position taken by EFSC, to determine the last day and time of of employment, termination date: June 18th at noon time accommodates the eleven hours of vacation due and paid to the employee, Petitioner ending on June 19th.

It is on record that FRS acknowledges vacation time as hours and contribution paid to FRS and my last paid vacation time was June 19th.

Therefore, neither June 18th not June 19th are acceptable to make a second election or these two dates are valid because of the paid vacation hours on both of those two dates are valid for the same reason.

FRS recognizes paid vacation as paid hours of employment earning credits and in this case employment payment was up to: only noon time for date of June 18th the day of notification. However, one date is acceptable and the other one is not?

Regardless of what EFSC statement is FRS recognizes vacation hours and contribution payments as valid enrollment in the FRS plan of retirement.

To make a distinction between receiving earned vacation time hours paid as requested by the employer and the last day on the payroll of the employer makes it impossible for Petitioner to make a valid second election at all due to a "premeditated firing" called a termination of position as of June 18th noon time...but effective June 19th because of the paid employee's vacation hours earned.

Unfortunately, June 19th and June 18th both include termination dates/hours past the hour of noon time...The timeline of termination of the college position may be unclear. The cancellation of an approved college position (still on the records as of June 18th and 19th) is an action to be addressed and approved by the EFSC Board of Directors which had not taken place as of those dates as per EFSC Board minutes.

The termination of this position had not taken place taken prior to the termination date of the employee...on June 18th noon time (the time and date chosen as last day). June 19th is the same as June 18th past the hour of noon both dates the employee was actively earning and paying service credit.

The terminology used to make a distinction between these two dates is erroneous.

Sincerely,
Silvia T. Pulido

On Dec 12, 2014, at 10:19 AM, Linda Schneider <lschneider@llw-law.com> wrote:

Re: Silvia Pulido vs. SBA - Recommended Order is attached for filing.

Linda Schneider
Legal Assistant to:
Steve Lewis, Ed Steinmeyer and
Anne Longman
Lewis, Longman & Walker, P.A.
315 South Calhoun Street, Suite 830
Tallahassee, Florida 32301
lschneider@llw-law.com
(t) 850.222.5702
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vCard | Website
join us online

The information contained in this transmission may be legally privileged and confidential. It is intended only for the use of the recipient(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that you received this communication in error, and that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply email and delete the message and all copies of it.

<Recommended Order - Silvia Pulido (00428305xBA9D6).pdf>

TO WHOM IT MAY CONCERN:

Petitioner files this Response to the Preliminary Order and as grounds therefore states the following:

Petitioner was advised on at that her position was being eliminated for the next term. She was told she could take the rest of the week off and return at her convenience (9:00 A.M. Sat.) on the weekend to collect her personal items and that she would be paid vacation time for her time off. Importantly, Petitioner was paid through on vacation time. Significantly, an employee on vacation is considered to still be earning service credit. As such, Petitioner was "earning service credit" through.

.

Moreover, Per Florida Statutes, 121.021 (2014), "termination" occurs when a member ceases all employment relationships with participating employers. As it pertains to retirements effective on or after July 1, 2010, a termination cannot be said to have taken place until after 6 months from the date for which she was last paid.

Additionally, a break in "Continuous service" is defined in Florida Statutes, 121.021(38) as an absence of 1 calendar month or more from an employer's payroll. In the instant, case there was no break of continuous service when Petitioner made her 2nd selection to the FRS Investment Plan.

Therefore, Petitioner 2nd election was timely made while she was on vacation and while in continuous service with an FRS employer.

Silvia T. Pulido
Dec. 29, 2014

Also need partial [illegible] of this by fax 12/29/14. Check to see if IP & Pennington received.

(1)

Florida Vacations: What you need to know

Florida's statutory definition of wages includes all forms of remuneration for an employee's services, based on time worked or production output. The Florida Supreme Court has ruled that vacation pay, if promised by implied or express contract, is included in this definition. Thus, if an employee leaves the payroll, the person's accrued, unused vacation must be compensated in accordance with the employer's accrual plan (*FL Stat. Sec. 443.036(31)*; *FL Stat. Sec. 443.1217*; *Ferry v. XRG International*, 492 So. 2d 1101(1986)).

Member contributions mean: 121.021 (J)

Member contributions means *the sum of all amounts deducted from salary of a member by his or her employer in accordance with s. 121.71 (3) and credited to his or her individual account in the investment plan, plus any contributions made by the employer on his or her behalf.* (See attachment: The 2014 Florida Statues, Title X, Public Officers, Employees

The 2014 Florida Statutes

Title X PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

View Entire Chapter

Chapter 121 FLORIDA RETIREMENT SYSTEM

121.71 Uniform rates; process; calculations; levy.—

(1) In conducting the system actuarial study required under s. 121.031, the actuary shall follow all requirements specified to determine, by Florida Retirement System employee membership class, the dollar contribution amounts necessary for the next fiscal year for the pension plan. In addition, the actuary shall determine, by Florida Retirement System membership class, based on an estimate for the next fiscal year of the gross compensation of employees participating in the investment plan, the dollar contribution amounts necessary to make the allocations required under ss. 121.72 and 121.73. For each employee membership class and subclass, the actuarial study must establish a uniform rate necessary to fund the benefit obligations under both Florida Retirement System retirement plans by dividing the sum of total dollars required by the estimated gross compensation of members in both plans.

(2) Based on the uniform rates set forth in subsections (3), (4), and (5), employees and employers shall make monthly contributions to the Division of Retirement as required in s. 121.061(1), which shall initially deposit the funds into the Florida Retirement System Contributions Clearing Trust Fund. A change in a contribution rate is effective the first day of the month for which a full month's employer and employee contribution may be made on or after the beginning date of the change. Beginning July 1, 2011, each employee shall contribute the contributions required in subsection (3). The employer shall deduct the contribution from the employee's monthly salary, and the contribution shall be submitted to the division. These contributions shall be reported as employer-paid employee contributions, and credited to the account of the employee. The contributions shall be deducted from the employee's salary before the computation of applicable federal taxes and treated as employer contributions under 26 U.S.C. s. 414(h)(2). The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee. The employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the plan. Such contributions are mandatory, and each employee is considered to have consented to payroll deductions. Payment of an employee's salary or wages, less the contribution, is a full and complete discharge and satisfaction of all claims and demands for the service rendered by employees during the period covered by the payment, except their claims to the benefits to which they may be entitled under this chapter.

(3) Required employee retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2011
Regular Class	3.00%
Special Risk Class	3.00%
Special Risk Administrative Support Class	3.00%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys,	3.00%

Pulido, Silvia T.

On the 9th day of October, 2014, Presiding Officer Anne Longman, Esquire, stated..."At this point I still cannot determine if this case presents a dispute of material fact, and transcripts of the previously described telephone conversations have not yet been filed or provided to Petitioner." Also, transcripts of the previously described telephone conversations (with FRS employee, Kurt and others), who assisted Petitioner in submitting a 2nd election on June 18th 2014 and who stated to Petitioner that her petition would be valid as of June 19th at the time of 2nd Election change from Pension Plan to Investment Plan; and, Petitioner's request was accepted by FRS. As per audio tape of conversation recorded by FRS.

*Petitioner **was paid vacation time** for the hours entered on the EFSC payroll on **June 18th and June 19th** making both days "earned income, from employer: EFSC, for Petitioner". This paid income of salary and vacation time is to be reported to IRS to pay taxes on it; ...**and most importantly to pay FRS contributions** (which both: the employer , EFSC and Petitioner did pay) **on those two particular days**...as per EFSC records submitted, FAXED by Petitioner to Hearing Officer and Respondent as their records should show...Also to be included in this deliberation is Respondent's telephone call to Petitioner's home phone number to state: "Mrs. Pulido, I do not represent you!" immediately after receiving the Eastern Florida State College payroll information in regards to the EFSC payroll concerning June 18th and June 19th which was sent to Respondent by Hearing Officer who received it via Fax from Petitioner's telephone no. 321 383 0211 as it is recorded on both telephones' records of Respondent and Petitioner. This EFSC payroll information was provided for our use by the EFSC Accounting Department and it is a vital, accepted document as part of the 'findings' submitted by Petitioner as requested of her at the Hearing in Tallahassee which have been acknowledged receipt by both: Respondent via phone and Presiding Officer office FAX receipt.*

ORDER ON DEADLINE TO ASSERT DISPUTE OF MATERIAL FACT

At the conclusion of the hearing of September 22, 2014, I asked Petitioner to notify me by October 6, 2014 if she determined she wanted to assert a factual dispute in this matter.

On September 25th 2014 Petitioner Pulido, sent me an email, which I forwarded to council for Respondent. In this email, Petitioner asserted, for the first time, that she had submitted a valid second election electronically, and that her later fax only confirmed this telephone transaction.

On September 30, 2014 Petitioner Pulido sent an e mail which I also forwarded to Respondent's counsel, presenting "facts...viable evidence of paid hours of work as per the request of the employer," and citing provisions of wage and hour law with regard to what constitutes a workday. This communication also included a reference from a Dr. Smith.

On this same day, Respondent filed a notice of filing supplemental Exhibits, R-20 through R-16, consisting of wav files of recorded telephone conversations between Petitioner and MyFRS Financial Guidance Line which occurred between June 18th, 2014 and August 6, 2014, and stating that transcripts of the files would be provided when received.

Pulido, Silvia T.

Petitioner's termination of a held position after the employee's 22 yrs of employment with EFSC was incorrectly linked by some personnel of FRS to the termination of the position held by Petitioner. Also, Mrs. Ferguson from EFSC has urged Petitioner to apply to another opened opportunity with EFSC..and Petitioner did follow such recommendation without any success up to date.

On June 18th and June 19th petitioner was financially engaged with the employer; but, most importantly, Petitioner and her employer made payment of the regular Retirement contribution amount due for all days of that last week of EFSC employment from June 16th to June 19th from beginning to end of the regular scheduled week.)

Petitioner correctly stated: "I did not sign a termination form EVER!...I only signed a paper that showed I turned in the keys to the classroom and desk, as it is dated on Page 12. Present status is:

1. *An FRS member account frozen "under a process of deliberation called Hearing sponsored by the FRS as requested by Petitioner.*
2. *An Investment Plan Account choice made correctly on June 18th and validated on June 19th returned to Pension Plan after 'an FRS mandatory policy regarding age of Petitioner and mandatory withdrawal of funds from Petitioner's account was questioned by an FRS employee, promoted reversal and Petitioner requested Intervention review.*

Account Activity by Fund **For the period of July 1, 2014 through September 30, 2014**

MyFRS Current Asset Class Allocation – Account Activity by Fund

For the period of July 1, 2014 through September 30, 2014.

Fund

Asset Class Balance In/Out Rtrm Incm, $809.39 Total $809.39

Pulido, Silvia T.

On October 6, 2014, in an e mail addressed to Respondent, Petitioner asserts again that she was considered working (*being on the payroll of the employer earning credits and paying retirement fees together with her employer as per EFSC statements given to Petitioner by EFSC accounting Department at Petitioner's request)* when her second election was submitted and that her employer changed her time sheet so that (*therefore*) it did not reflect the hours or times she actually had entered previously ...*(Petitioner as well as employer (as per Ferguson's letter to Petitioner) expressed that they thought there were more hours of vacation time).* **However, Petitioner's employer: EFSC, did include: earned 11 hours of paid-vacation which counts in the State of Florida as Hours Worked. On June 18th and June 19th Petitioner and the Employer paid service credit to FRS as shown on employee's stub and also Bank Statements of both Employer and Petitioner as well as FRS records for those days.**

There is no ambiguity about the hours Petitioner was paid during the termination period of her employment on the month of June 2014.

There is no ambiguity that vacation hours are considered hours paid in the State of Florida as per

S 121.021 (j)

Member contributions means the sum of all amounts deducted from salary of a member by his or her employer in accordance with s.121.71 (3) and credited to his or her individual account in the Florida Retirement System.

Petitioner's position was terminated, on June 18th, hours passed noon-time and Petitioner herself was Separated from Employer as of June 19th; and eligible to come back. The last day Petitioner was in an employee/employer relationship and in the payroll of the employer, is: June 19th. A working day is same as vacation time in the State of Florida who received payment of service credit while actively serving/and paying retirement contributions together with EFSC and in compliance with the action taken by employer EFSC.

In regards to the statement: FRS Financial Guidance, Investment Department, has received notification from Darla Ferguson stating "the last day of employment (position) for Petitioner: Silvia T. Pulido was June 18th." *We do not know to what question Mrs. Ferguson was responding to. (Mrs. Ferguson may have been responding to Respondent's question: What was the last day of work on campus or date of notification to employee?)*

In addition, Mrs. Ferguson, *(representing the employer)* also had stated to Mrs. Pulido during their termination meeting: ***"You will be paid through the end of the week, June 19th! You do not need to return tomorrow, on June 19th; but, you will be paid through the end of the week!"...*** *during the notification of "cancellation of position occupied by Petitioner"*, on June 18th. Later, petitioner received an e mail from Darla Ferguson "Sorry Silvia, I thought you had more vacation hours; but, I was wrong..." (Perhaps this statement was in reference to Saturday, June 21st when Petitioner was asked to come and clean up the room and remove personal belongings (personal teaching resources in connection

Pulido, Silvia T.

with foreign languages). Florida employees must be paid for all hours that they work, are required to be at the workplace waiting to work or performing any assignment given by the employer. It certainly had nothing to do with June 18th and June 19th as both days were scheduled to be paid at the end of the pay-period (3 weeks later); and so it was! (as per Ferguson's e mail to payroll department and other EFSC employees) *(Also: note that one week remains always on hold and payments are received the third week.)*

(Mrs. Ferguson was certainly not making reference to the days that the college did pay Petitioner including Vacation Pay as per her written request and notification sent to the necessary payroll people: "Re: Silvia T. Pulido, she will be a cancellation of position" and "she has returned her keys and identification badge. D.F. " (The two days' hours on the regular work- scheduled were confirmed to be paid for time not spent at Petitioner's desk; but, as paid vacation hours , (as per Darla Ferguson request, were: noon to four o'clock pm for June 18th and 9:00 a.m. to 4:00 p.m. for June 19th), as it is required and approved by the State of Florida law).

(Mrs. Ferguson may have been referring the total vacation hours that might have been available to cover the second week of pay-period and/or the termination of the position to be documented and approved; and/or in reference to the mandate to the work- day of Saturday, when Petitioner worked to clean the classroom four hours...*Ferguson's remarks are important and relevant to the implementation of a decision taken by management that became effective immediately on June 18th and June 19th and used the 'vacation time' PAID to the employee successfully (made payment to the employee on the selected pay-period payroll) for that entire week days and on the appropriate payroll period as required by FRS and while still earning service credit and paying retirement fees.)*

(Mrs. Ferguson is actively monitoring 'EFRS'vacancies' and keeping Petitioner informed about decisions on those vacancies to which Petitioner had applied; some were filled by others, and others were opened at the time has sent the e mail. It must be on record that Mrs. Ferguson is the message giver as part of her duties, she is not the direct supervisor or Provost requesting the decision of the termination of a position on record and/or when it is approved by the ESF Board of Directors.)

In addition, EFSC's Mrs. Ferguson's statement does not change the fact that Petitioner did pay to the Retirement fund fees for four days, for the week ending on June 19th and also EFSC, the employer paid its share for those four days of the week ending on June 19th. More importantly, EFSC is the provider of the employee's pay-stub and bank statements showing that both: Petitioner and Employer had made payment while Petitioner was actively employed and on the payroll of the employer, which were demonstrated , sent and received by the Hearing Officer and the Respondent.

EFSC covered/paid its portion of retirement fees (just as Petitioner paid the employee's portion) for the entire last work-week ending on June 19th.

Pulido, Silvia T.

(5)
(6)

Earnings		-809.39	-809.39
Price 9 (NAV)	Per $9.763549		

It is important that you periodically review your asset allocation to maintain a well-balanced and diversified portfolio that fits your personal situation.

*Money earned after the June 19th enrollment; which was later reversed and became Money 'lost' for the personal investment and the personal earnings for the investment of personal retirement fund, as per the result of the proposed reversal to the Pension plan being discussed at the present Hearing as a proposed deliberation of disagreement recommended by Mr.Daniel Beard, representing FRS.

FAX

TO:	**Anne Longman**
FAX No.	**850 224 9242**
REI	**FRS Investment Plan, Account Statement**
	Also last correspondence from EFSC
	Activity from July 1, 2014 through September 30
FROM:	**Silvia T. Pulido**
FAX:	**321 383 0211**
PHONE;	**SAME**
DATE:	~~October 28, 2014 12-18~~ Dec. 29. 2014

Please Share with Ms. Dickson, attny FRS

Pulido, Silvia T.

FAX

TO: Anne Longman

FAX No. 850 224 9242

REI FRS Investment Plan, Account Statement

Also last correspondence from EFSC

Activity from July 1, 2014 through September 30

FROM: Silvia T. Pulido

FAX: 321 383 0211

PHONE; SAME

DATE: Monday December 29, 2014

Please Share with Ms. Dickson, attny FRS

Hard copy sent by US MAIL, SAME DATE

Silvia T. Pulido

Pulido, Silvia T.

PULIDO 1

FERRY v. XRG INTERN., INC. No. 83-2403.

492 So.2d 1101 (1986)

Wallace G. FERRY, Cross Appellant, v. XRG INTERNATIONAL, INC., et al., Cross Appellees.

District Court of Appeal of Florida, Fourth District.

On Motion for Rehearing and Clarification September 17, 1986.

Louis B. Vocelle, Jr., and George H. Moss of Moss, Henderson & Lloyd, P.A., Vero Beach, for cross appellant.

Edna L. Caruso and Philip M. Burlington of Edna L. Caruso, P.A., and Johnson & Bakst, West Palm Beach, for cross appellees.

[492 So.2d 1102]

GLICKSTEIN, Judge.

The parties agree that the main appeal in this case became moot upon payment by the appellant/cross appellee employer's insurance company of a final judgment, consisting of the jury's award in favor of the appellee/cross appellant employee of $132,000 in compensatory damages, $137,000 in punitive damages, or a total of $269,000, and the subsequent addition of $12,000 in prejudgment interest.

The basis for the award was the employee's claim against his former employer for wrongful breach of the parties' employment contract, as modified. The modification provided:

1. Paragraph 12(b) is hereby terminated. 2. The following clause is hereby substituted for paragraph 12(b): (a) The Company hereby agrees to pay the sum of $120,000.00 to Mr. Ferry in the event he leaves the Company for any reason other than for just cause, provided however that in the event the Company does not have such funds it shall forthwith establish that amount by making immediate payments to a trust account of $50,000.00 and to make monthly additions thereto together with interest up to the amount of $120,000.00 to be held on terms satisfactory to Mr. Ferry and his counsel; (b) Until the said $120,000.00 amount has been established and the full amount therefore has been paid into the account, Mssrs. Krebser, Arcaro and Webster hereby agree personally to be responsible for a one-third portion of the unpaid amount which guarantee shall be released pro rata accordingly to payments into the said account.

The cross appeal of the employee remains viable as it is based upon the trial court's denial of cross appellant's attorney's fees, which he sought pursuant to section 448.08, Florida Statutes (1983), which is entitled "Attorney's fees for successful litigants in actions for unpaid wages" and which provides:

The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee.

Pulido, Silvia T.

PULIDO -

The trial court, in rendering its order which formed the basis for the appeal, stated at the hearing thereon that it did not believe that the statute applied to this case. After oral argument, we relinquished jurisdiction in order to request clarification by the trial court of its conclusion. The subsequent order entered by the trial court which has been very helpful, says:

1. This court finds the following as relevant facts to the issue presented herein: a. The dispute between Wallace G. Ferry and XRG International, Inc. involves, in part, an employment contract for Mr. Ferry to act as President and Chief Operating Officer of XRG for three to five years from October 1, 1980. Mr. Ferry was to be paid a minimum salary of $10,000.00 per month. The contract provided if Mr. Ferry were terminated by the Board of Directors of XRG for other than just cause, he would "be entitled to be paid one year's salary in full satisfaction of such termination." b. During the pendency of the contract, Mr. Ferry was terminated, without his consent, and XRG refused to provide him one year's salary. Mr. Ferry then brought the instant suit to recover for wrongful termination. He recovered a jury verdict for both compensatory and punitive damages. 2. Based upon these facts, this court concludes as a matter of law: a. Chapter 448 of the Florida Statutes provides in section 448.08 that attorney fees may be awarded by the court to the prevailing party in an action for unpaid wages. Section 448.07(1)(c) defines: "'Wages' means and includes all compensation paid by an employer or his agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash."

[492 So.2d 1103]

b. The claim of Mr. Ferry in this case is not for wages within the above definition. He does not claim compensation for his services but rather his claim is for severance [sic] pay. c. Since this action is not one for unpaid wages within the definition of Chapter 448 of the Florida Statutes, section 448.08 does not apply, and Mr. Ferry's prayer for attorney fees is denied.

Section 448.07(1)(c), mentioned by the trial court in its order, defines wages as:

Wage rate discrimination based on sex prohibited. — (1) DEFINITIONS. — As used in this section, unless the context or subject matter clearly requires otherwise, the following terms shall have the meanings as defined in this section: ... . (c) "Wages" means and includes all compensation paid by an employer or his agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash.

The definition in this statute is not absolutely controlling, as by its terms its application is limited to section 448.07, dealing with sex discrimination and not chapter 448 in general.

* Nevertheless, section 448.07(1)(c) is somewhat similar to section 443.036(31)(a), Florida Statutes (1983), which defines "wages" as "all remuneration for employment, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash." Black's Law Dictionary 1416 (5th ed. 1979) defines "wages" as:

* Wages. A compensation given to a hired person for his or her services. Compensation of employees based on time worked or output of production. Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer

PULIDO 3

or directly with respect to work for him. *Ernst v. Industrial Commission,* 246 Wis. 205, 16 N.W.2d 867. Term should be broadly defined and includes not only periodic monetary earnings but all compensation for services rendered without regard to manner in which such compensation is computed. *Ware v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 24 Cal.App.3d 35, 100 Cal.Rptr. 791, 797.

In *Gulf Solar, Inc. v. Westfall,* 447 So.2d 363 (Fla. 2d DCA 1984), the court reversed the trial court's finding that a sales commission was not a wage within section 448.08. In doing so, the court utilized the definitions provided in section 443.036(31)(a) and Black's Law Dictionary. *Community Design Corporation v. Antonell,* 459 So.2d 343, 346 (Fla. 3d DCA 1984), used the same two definitions in finding that a bonus constituted "wages." In *Gulfstar Yacht Sales, Inc. v. Bissell,* 487 So.2d 31, 32 (Fla. 4th DCA 1986), this court said:

We turn then to the question of attorney's fees. The plaintiff sought attorney's fees pursuant to section 448.08, Florida Statutes (1985), which provides: "The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee." Here, as in *Gulf Solar, Inc. v. Westfall,* 447 So.2d 363 (Fla. 2d DCA 1984), the trial court denied attorney's fees on the basis that commissions are not wages. We adopt the rationale of our sister court and reverse the denial of attorney's fees on the authority of *Gulf Solar, supra.*

Using the definitions utilized in *Gulf Solar, Antonell* and by this court in *Bissell,* and looking at the definition contained in section 448.07, we hold that the compensation provided for in the contract does constitute "wages."[1] The one year's salary

[492 So.2d 1104]

provided for in the contract should the cross appellant be terminated without cause was an inducement to procure his services and to help ensure the continued quality of those services once he was employed. *See Hercules Powder Company v. Brookfield,* 189 Va. 531, 53 S.E.2d 804, 808 (1949).

Accordingly, we reverse and remand with direction to proceed in a manner consistent herewith.

FEDER, RICHARD Y., Associate Judge, concurs.

LETTS, J., concurs specially with opinion.

LETTS, Judge, specially concurring.

Pulido, Silvia T.

Check Detail Inquiry PHICHEK 8.0 (PROD) 14-OCT-2014 12:09 PM

ID: [redacted] Ms Silvia T Pulido

Year: 2014 **Payroll ID:** BW **Payroll Number:** 14 **Sequence Number:** 0

Gross: 405.72
Deductions: 50.06
Net Amount: 355.66

Disposition: 70 Complete
Unemployment Insurance Weeks:
Unemployment Insurance Exception Indicator:

Documents

Number	Type	Amount	Date
50500649	Direct Deposit	355.66	03-JUL-2014

Pulido, Silvia T.

STP

Earnings Information PHICHEK 8.0 (PROD) 14-OCT-2014 12:09 PM

Assignment		Earnings		Shift	Effective Date	Hours or Units	Rate	Amount
H00051	00	REG	Regular	1	19-OCT-2013	17.00	14.490000	246.33
H00051	00	VPO	Vac Term	1	19-OCT-2013	11.00	14.490000	159.39

Pulido Silvia T.

SMP

Deductions Information PHICHEK 8.0 (PROD) 14-OCT-2014 12:09 PM

Employer	Deductions		Employee Amount	Employer Amount	Applicable Gross
BCC	200	State Retirement	12.17	29.90	405.72
	405	PT Life Insur - Lincoln	.00	.98	405.72
	499	Taxable Life Ins (Over 50k)	.00	.00	.00
	500	Federal Withholding Tax	6.86	.00	393.55
	501	Fica Tax	25.15	25.15	405.72
	502	Medicare Tax	5.88	5.88	405.72

Pulido, Selina T.

slp

Employee Year To Date Totals PEIETOT 8.8 (PROD)

ID: [redacted] Ms Silvia T Pulido

Year: 2014 From: 01-JAN-2014 To: 31-DEC-2014

Type: Calendar Fiscal

Month	Hours	Gross	Net
JANUARY	125.75	2,133.65	1,796.36
FEBRUARY	112.00	1,622.88	1,357.63
MARCH	112.00	1,622.88	1,357.62
APRIL	94.00	1,477.98	1,242.21
MAY	112.00	1,622.88	1,357.62
JUNE	105.00	1,622.88	1,357.62
JULY	17.00	405.72	355.66

Quarterly Totals

	Hours	Gross	Net
Quarter 1:	349.75	5,379.41	4,511.61
Quarter 2:	311.00	4,723.74	3,957.45
Quarter 3:	17.00	405.72	355.66
Quarter 4:			

Yearly Totals

Hours:	677.75
Gross:	10,508.87
Net:	8,824.72

Pulido, Silvia T.

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Cocoa, Florida 32922-6598

Bank of America. Member F.D.I.C. Payroll Account
Positive Pay Verified
63-4
630

7/3 R19

50499300

Deposit Date	Deposit Amount
06/20/14	*******678.81

DEPOSIT ** DIRECT DEPOSIT ADVICE ** NOT A CHECK ** DIRECT DEPOSIT ADVICE ** NOT A CHECK **
TO THE ACCOUNT OF

Silvia T Pulido

YOUR NET PAY HAS BEEN TRANSMITTED ELECTRONICALLY TO YOUR FINANCIAL INSTITUTION IN ACCORDANCE WITH YOUR INSTRUCTIONS

Eastern Florida State College - Payroll

Employee	SSN	Pay #	Pay Period	Deposit #	Net Pay
Pulido,Silvia T			05/31/14 06/13/14		$678.81

Pay Type	Units	Rate	Amount	Deductions	Current	Year - to - Date
Regular	56.00	14.49	811.44	Fed W/H	46.21	558.08
				Fica	50.31	626.40
				Medicare	11.77	146.54
				Retire	24.34	303.07
		Current Gross:	811.44			
				Totals:	132.63	1,634.09

Direct Deposit Summary

Checking	678.81
Direct Deposit Totals:	$678.81

YTD Gross $10,103.15 Deposit Date 06/20/14

Leave Balances	VACATION	MILITARY	Filing Status
	11.00 H	.00 H	Fed: M

R 18

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Payroll Account
Positive Pay Verified
63-4
630

50497977

Deposit Date	Deposit Amount
06/06/14	*******678.81

DEPOSIT ** DIRECT DEPOSIT ADVICE ** NOT A CHECK ** DIRECT DEPOSIT ADVICE ** NOT A CHECK **
TO THE ACCOUNT OF

Silvia T Pulido

YOUR NET PAY HAS BEEN TRANSMITTED ELECTRONICALLY TO YOUR FINANCIAL INSTITUTION IN ACCORDANCE WITH YOUR INSTRUCTIONS

Eastern Florida State College - Payroll

Employee	SSN	Pay #	Pay Period	Deposit #	Net Pay
Pulido,Silvia T		12	05/17/14 05/30/14		$678.81

Pay Type	Units	Rate	Amount
Regular	49.00	14.49	710.01
Vacation	7.00	14.49	101.43
		Current Gross:	811.44

Deductions	Current	Year - to - Date
Fed W/H	46.21	511.87
Fica	50.31	576.09
Medicare	11.77	134.77
Retire	24.34	278.73
Totals:	132.63	1,501.46

Direct Deposit Summary

Checking	678.81
Direct Deposit Totals:	$678.81

YTD Gross: $9,291.71

Deposit Date: 06/06/14

Leave Balances	VACATION	MILITARY
	5.00 H	.00 H

Filing Status
Fed: M

R 17

50500649

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Bank of America.
Member F.D.I.C.
Payroll Account
Positive Pay Verified
63-4
630

Deposit Date	Deposit Amount
07/03/14	*******355.66

DEPOSIT ** DIRECT DEPOSIT ADVICE ** NOT A CHECK ** DIRECT DEPOSIT ADVICE ** NOT A CHECK **
TO THE ACCOUNT OF

Silvia T Pulido

YOUR NET PAY HAS BEEN TRANSMITTED ELECTRONICALLY TO YOUR FINANCIAL INSTITUTION IN ACCORDANCE WITH YOUR INSTRUCTIONS

Eastern Florida State College - Payroll

Employee	SSN	Pay #	Pay Period	Deposit #	Net Pay
Pulido,Silvia T		14	06/14/14 06/27/14		$355.66

Pay Type	Units	Rate	Amount	Deductions	Current	Year - to - Date
Regular	17.00	14.49	246.33	Fed W/H	6.86	564.94
Vac Term	11.00	14.49	159.39	Fica	25.15	651.55
				Medicare	5.88	152.42
				Retire	12.17	315.24
		Current Gross:	405.72			
				Totals:	50.06	1,684.15

Direct Deposit Summary

Checking	355.66
Direct Deposit Totals:	$355.66

YTD Gross $10,508.87

Deposit Date 07/03/14

Leave Balances	VACATION	MILITARY	Filing Status
	.00 H	.00 H	Fed: M

" ‡. a.

The Investment Plan contribution rates are as follows:

Investment Plan Contribution Rates

Membership Class	Paid by You	Paid by Your Employer	Total Paid by You and Your Employer
Regular Class	3%	3.30%	6.30%
Special Risk Class	3%	11.00%	14.00%
Special Risk Administrative Support Class	3%	4.95%	7.95%
Elected Officers' Class - (Judges)	3%	10.23%	13.23%
Elected Officers' Class - (Legislature/Cabinet/Public Defender/State Attorney)	3%	6.38%	9.38%
Elected Officers' Class - (County and Local)	3%	8.34%	11.34%
Senior Management Service Class	3%	4.67%	7.67%

Upon receipt of the blended contributions, the Division balances the payroll and transfers the data and the Investment Plan contributions to the Investment Plan Administrator for Investment Plan members. Payroll information is electronically transmitted to the Investment Plan Administrator daily. The Investment Plan Administrator posts contributions to members' accounts within two business days of receipt of the information. If the contributions are delayed from posting due to acts of God beyond the reasonable control of the Division of Retirement, SBA, or the Investment Plan Administrator, market losses will not be payable as a result of the delay.

The Internal Revenue Service imposes limits on the amount of your salary that may be used for contribution purposes, and the amount of contributions that may be made on your behalf. For the calendar year 2014, the contribution limit is the lesser of $52,000 or 100% of the salary actually paid to you. This limit includes employer contributions, employee salary reductions, and employee contributions, in aggregate, to 401(a) retirement plans, as well as to other plans such as a 401(k), 403(a), 403(b), and 408(k). Because these limits are high, very few members will be affected. Your employer will be notified if you approach these limits.

In addition to those contributions paid by your employer to fund your retirement benefit, your employer contributes additional amounts to fund your Health Insurance Subsidy benefit (1.26%), disability benefits (will vary depending on employment class), and FRS Investment Plan administration costs and educational program costs for all FRS members (.04%).

Reference: Sections 121.052(7), 121.055(3), 121.4501(1), (5) and (13), 121.71, 121.72, 121.73, 121.74, and 121.76, F.S.
Sections 19-11.001, 11.011, and 13.003, F.A.C.

Public Defenders	
Elected Officers' Class—Justices, Judges	3.00%
Elected Officers' Class—County Elected Officers	3.00%
Senior Management Service Class	3.00%
DROP	0.00%

(4) Required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2014
Regular Class	3.53%
Special Risk Class	11.01%
Special Risk Administrative Support Class	4.18%
Elected Officers' Class—Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.30%
Elected Officers' Class—Justices, Judges	10.10%
Elected Officers' Class—County Elected Officers	8.36%
Senior Management Class	4.80%
DROP	4.30%

(5) In order to address unfunded actuarial liabilities of the system, the required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2014
Regular Class	2.54%
Special Risk Class	7.51%
Special Risk Administrative Support Class	36.59%
Elected Officers' Class—Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	38.66%
Elected Officers' Class—Justices, Judges	21.77%
Elected Officers' Class—County Elected Officers	33.58%
Senior Management Service Class	15.04%
DROP	6.72%

(6) If a member is reported under an incorrect membership class and the amount of contributions reported and remitted is less than the amount required, the employer shall owe the difference, plus the delinquent fee, of 1 percent for each calendar month or part thereof that the contributions should have been paid. The delinquent assessment may not be waived. If the contributions reported and remitted are more than the amount required, the employer shall receive a credit to be applied against future contributions owed.

(7) The state actuary shall recognize and use an appropriate level of available excess assets of the Florida Retirement System Trust Fund to offset the difference between the normal costs of the Florida Retirement System and the statutorily prescribed contribution rates.

History.—s. 1, ch. 2002-177; s. 47, ch. 2002-402; s. 3, ch. 2003-260; s. 1, ch. 2004-293; s. 1, ch. 2005-93; s. 1, ch. 2006-35; s. 1, ch. 2007-84; s. 7, ch. 2008-139; s. 1, ch. 2009-76; s. 33, ch. 2011-68; s. 4, ch. 2012-146; s. 5, ch. 2013-53; s. 5, ch. 2014-54.

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Pulido, Silvia T.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

SILVIA PULIDO

Petitioner, CASE NO. 2014-3110

vs.

STATE BOARD OF ADMINISTRATION,

Respondent.

ORDER ON ALLEGED DISPUTE OF MATERIAL FACT

On October 9, 2014, I entered an Order directing the parties to notify me within two weeks after their receipt of the transcripts of telephone calls between the Petitioner and the MyFRS Guidance Line whether they asserted a dispute of material fact, and if so, what that dispute was.

On October 16, 2014, Respondent filed those transcripts. On October 23, 2014, Petitioner filed her "Undisputable Facts," and on October 24, 2014, Respondent filed a copy of an email from Petitioner to Shannon Lindsey, an administrative assistant in Respondent's attorneys' office. On October 28, 2014 Petitioner filed additional documents identified as "FRS Investment Plan, Account Statement, Also last correspondence from EFSC, Activity from July 1, 2014 through September 30."

On November 5, 2014, Respondent filed its Proposed Recommended Order, and also on that date, Petitioner sent another email to Shannon Lindsey stating, in toto:

> Lindsey,

20410646 1

> is
>
> Did you not receive a copy of the latest findings that according to EfSC bank account Ms Pulido herself and EFSC both paid Retitrment contributions to the Pension Plan. Also, it is FRS policy is that "vacation" time is considered payment by the employer.
>
> I'm sorry if you did not address these two indisputable facts as per the statues and law from Florida State. I'll be happy to resend it.
>
> Thank you,
>
> Silvia

Respondent has already filed a Proposed Recommended Order, from which I infer its position that there is no relevant dispute of fact here. I have reviewed all the record materials submitted to date and the record is now closed. I conclude that there is no dispute of material fact that is determinative of the outcome in this case. In an abundance of caution, Petitioner will have until November 24, 2014 to submit further legal arguments she wishes to make, although she is under no obligation to submit anything further.

DONE AND ORDERED at Tallahassee, Leon County, Florida, and this 7th day of

Public Pension, Labor & Employment

Group Members

- Jennifer R. Cowan
- James W. Linn
- Glenn E. Thomas

Pension benefits are one of the most important and costly fringe benefits for government employees. The operation and funding of public pension plans is subject to complex federal and state laws and regulations. Our attorneys work closely with plan sponsors, boards of trustees, actuaries and labor counsel to ensure compliance with relevant laws and regulations, and to implement effective cost-containment strategies. We also advise public employers on a wide range of pension issues, and prepare plan documents and amendments. We have represented numerous cities, pension boards and individuals in pension-related litigation and appeals.

Employee relations and benefits are critical to the success of any organization. Although Florida is an "at-will" employment state, employers must deal with many complex federal and state laws that govern nearly every aspect of the employer-employee relationship. Mistakes can be extremely costly, both in terms of resources and employee morale. Our areas of practice include:

- Avoidance of Employment Claims
- Compliance with Federal and State Regulations
- Defense Against Wrongful Termination, Discrimination, Sexual Harassment and Whistleblower Claims
- Governmental Retirement Issues, Including Plan Design, Evaluation of Compliance with Federal and State Laws, Plan Amendments, Legislative Representation and Litigation
- Workplace-Related Litigation

For more information on this practice area, please contact Glenn E. Thomas, Chair - Public Pension, Labor & Employment.

NEWS: Click Here to Read "Florida Retirement System Case - Circuit Court Holds 2011 Changes Unconstitutional" (March 2012)

The Investment Plan contribution rates are as follows:

Investment Plan Contribution Rates

Membership Class	Paid by You	Paid by Your Employer	Total Paid by You and Your Employer
Regular Class	3%	3.30%	6.30%
Special Risk Class	3%	11.00%	14.00%
Special Risk Administrative Support Class	3%	4.95%	7.95%
Elected Officers' Class - (Judges)	3%	10.23%	13.23%
Elected Officers' Class - (Legislature/Cabinet/Public Defender/State Attorney)	3%	6.38%	9.38%
Elected Officers' Class - (County and Local)	3%	8.34%	11.34%
Senior Management Service Class	3%	4.67%	7.67%

Upon receipt of the blended contributions, the Division balances the payroll and transfers the data and the Investment Plan contributions to the Investment Plan Administrator for Investment Plan members. Payroll information is electronically transmitted to the Investment Plan Administrator daily. The Investment Plan Administrator posts contributions to members' accounts within two business days of receipt of the information. If the contributions are delayed from posting due to acts of God beyond the reasonable control of the Division of Retirement, SBA, or the Investment Plan Administrator, market losses will not be payable as a result of the delay.

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Sections 19-11.001, 11.011, and 13.003, F.A.C.