

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

CATHERINE ALBALADEJO,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2017-0370
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On July 2, 2018, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, Catherine Albaladejo, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due by July 17, 2018, 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 of Defined Contribution Programs for final agency action.

ORDERED

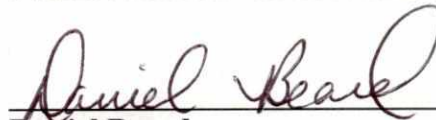
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she be allowed to rescind her second election by which she had transferred from the Florida Retirement System (“FRS”) Pension Plan to the FRS Investment Plan or otherwise be allowed to make a third election hereby is denied. While Petitioner claimed that she was an alcoholic at the time she made her second election, she did not produce any documentation that her second election was made without her

knowledge and consent. In fact, record evidence indicated that before Petitioner made her second election, she called the MyFRS Financial Guidance Line and stated she was interested in moving to the FRS Investment Plan since she was probably going to be terminating her employment shortly.

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 1st day of August, 2018, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

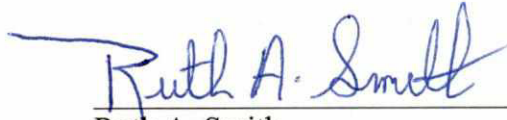
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Catherine Albaladejo, pro se, by email 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 15th day of August, 2018.



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

CATHERINE ALBALADEJO,

Petitioner,

vs.

Case No.: 2017-0370

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 March 28, 2018, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Catherine Albaladejo, pro se


Petitioner

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 the SBA should grant Petitioner's request to rescind her second election by which she transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan or otherwise allow her to make a third election.

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. Petitioner's exhibit P-1 and Respondent's exhibits R-1 through R-5 were admitted into evidence at the hearing without objection. By agreement of the parties, Respondent's exhibits R-6 and R-7 were submitted and accepted post-hearing.

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.

UNDISPUTED MATERIAL FACTS

1. Petitioner was a member of the FRS by virtue of her employment with the Miami-Dade County School Board beginning in 2002.
2. Petitioner had until November 30, 2002 to make an initial election between the defined benefit FRS Pension Plan and defined contribution FRS Investment Plan. Petitioner elected the FRS Pension Plan through the MyFRS website.
3. Petitioner spoke with the MyFRS Financial Guidance Line on August 25, 2005 and September 9, 2005 about moving from the Pension Plan to the Investment Plan.

4. On December 5, 2005 she again called and stated that she was probably terminating her employment, discussed filing a second election into the Investment Plan, and completed that election form.

5. On December 14, 2005, Petitioner again spoke with the MyFRS Financial Guidance Line to confirm that her second election had been processed.

6. Petitioner submitted a Request for Intervention on November 26, 2017 asking to return to the Pension Plan. Respondent denied the relief requested by Petitioner.

7. Petitioner filed a Petition for Hearing on January 2, 2018 requesting the same relief, and this administrative proceeding followed.

8. At the hearing, Petitioner admitted she made her second election, but contends that because she was an alcoholic at the time she made the election, it should be rescinded.

CONCLUSIONS OF LAW

9. Petitioner's request to rescind her second election must be denied because the request runs counter to the applicable statutes and rules governing the FRS. Movement between the Pension Plan and Investment Plan is governed by Section 121.4501(4)(g), Florida Statutes. That section states, in pertinent part:

(g) 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.

§ 121.4501(4)(g), Fla. Stat. (emphasis added).

10. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period. Petitioner's initial election period expired in 2002 when she elected the Pension Plan.

11. Petitioner then used her one-time second election in 2005 to move to the FRS Investment Plan, and so has exhausted her only opportunity to move between plans.

12. Nor can Petitioner rescind her second election, because she failed to do so before the deadline prescribed by Rule 19-11.007, Florida Administrative Code, is as follows:

(4) Grace Period.

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the SBA will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by a telephone call to the toll free MyFRS Financial Guidance Line at: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, or to the Division, no later than 4:00 p.m. Eastern Time on the last business day of the election effective month.

(b) If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election's being officially reversed. Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

13. Petitioner had until the time the present value of her Pension Plan benefit was transferred to her Investment Plan account to rescind her second election. That grace period expired over 12 years ago. Having failed to make such a request before this deadline, her request is now time-barred. *See* § 121.4501(8)(g), Fla.Stat.

14. Respondent records also demonstrate that the action complained of (Petitioner being placed in the Investment Plan), occurred more than five years prior to Petitioner's complaint at bar having been submitted. Pursuant to Section 121.4501 (8)(g), Florida Statutes, Respondent's action is therefore presumed to have been taken at Petitioner's request and with her full knowledge and consent:

(g) 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.**

§ 121.4501(8)(g), Fla.Stat.

15. Petitioner has not produced any documentary evidence or audio recording demonstrating that Respondent's action in 2005 was taken without her knowledge and consent. All of the documentary evidence, including Petitioner's 2nd Election Retirement Plan Enrollment Form and recorded call, demonstrate that Petitioner elected the Investment Plan, knew she was in the Investment Plan, and never took timely action to switch or undo her election. As such, Petitioner was correctly placed in the Investment Plan. *Marin Crowe v. State Board of Administration*, State

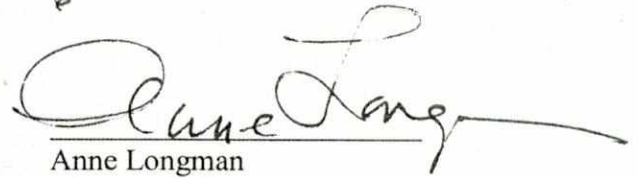
Board of Administration Case No.: 2017-0282 (Recommended Order March 14, 2018, Final Order April 4, 2018)(petition dismissed where petitioner in 2017 denied having made an election into the Investment Plan in 2009 despite having received quarterly statements and testifying she never opened the statements); *Trisha Fitzgerald v. State Board of Administration*, State Board of Administration Case No.: 2017-0384 (Recommended Order April 23, 2018, Final Order May 11, 2018).

16. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them are clear. *Balezentis v. Department of Management Services, Division of Retirement*, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Respondent'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). As discussed at hearing, it is not within this tribunal's jurisdiction to assess whether Ms. Albaladejo's state of mind at the time her second election was made rendered her incompetent to make that election. This hearing considers only whether Respondent followed the governing statutes and regulations in deciding her petition.

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 2d day of July, 2018.



Anne Longman
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
nell.bowers@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Catherine Albaladejo


Petitioner

and via electronic mail only to:

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Brandice D. Dickson, Esquire
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Counsel for Respondent