

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

LARRY MYERS,)

Petitioner,)

vs.)

SBA Case No. 2016-3537

STATE BOARD OF ADMINISTRATION,)

Respondent.)

FINAL ORDER

On May 3, 2016, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Larry Myers, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on May 18, 2016. 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 the nonvested Florida Retirement System ("FRS") benefits, that he earned during his Pension Plan membership from January through August 1984 and that were transferred to Petitioner's Investment Plan account established when Petitioner returned to FRS-covered employment in 2005, be distributed to him is denied. Petitioner

terminated his FRS-covered employment in 2008 and has not returned. Petitioner has never contended that these non-vested benefits were actually vested. Applicable law is clear that if an FRS member terminates employment before satisfying the vesting requirements, any nonvested accumulations will be forfeited if the member does not return to FRS-covered employment within five (5) years after termination.

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.

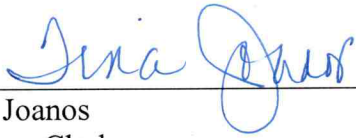
DONE AND ORDERED this 27th day of May, 2016, in
Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

Joan B. Haseman

Joan B. Haseman
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 Larry Myers, pro se, both by email transmission, [REDACTED] and by U.P.S. to [REDACTED] and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 27th day of may, 2016.



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

LARRY MYERS,

Petitioner,

v.

CASE NO.: 2016-3537

STATE BOARD OF ADMINISTRATION,

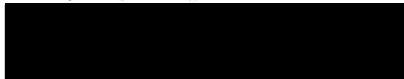
Respondent.

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 1, 2016, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Larry Myers, pro se


Petitioner

For Respondent: Brian A. Newman, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether nonvested Florida Retirement System (FRS) benefits which were earned during Petitioner's Pension Plan membership in 1984 and then transferred to his Investment Plan account when he became a member of the Investment Plan in 2005, should be disbursed to him.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-6 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties, who 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 began FRS-participating employment in January 1984 with Osceola County. At that time the FRS did not have a defined contribution plan, and Petitioner was a member of the defined benefit Pension Plan.
2. Petitioner resigned from his Osceola County employment in August of 1984.
3. Petitioner began his employment with the Florida House of Representatives, also an FRS-participating employer, on January 4, 2005.
4. Petitioner had until June 30, 2005 to make an initial election between the defined

benefit Pension Plan and the defined contribution Investment Plan.

5. On April 4, 2005, Petitioner spoke with the MyFRS Financial Guidance Line to discuss the pros and cons of the Pension Plan versus the Investment Plan. During the call, Petitioner was informed that FRS benefits for his eight months of service with Osceola County (accrued under the Pension Plan) would not count under the Investment Plan because he was not vested in those funds. Petitioner asked what would happen to the Osceola County money if he chose the Investment Plan. He was informed that those funds would automatically convert over to the Investment Plan but that his first quarterly statement would show two balances; one would be the nonvested Pension Plan account transfer amount and the other would show the employer contributions for the Investment Plan.

6. Petitioner elected the Investment Plan and thus transferred from the Pension Plan to the Investment Plan effective May 1, 2005.

7. Petitioner's employment with the Florida House of Representatives ended on December 4, 2008.

8. Petitioner called the MyFRS Financial Guidance Line on December 4, 2008, to ask how much it would cost to buy into the Pension Plan and get a regular pension benefit. Petitioner was informed that he could not buy into a plan without meeting the plan's vesting requirements.

9. On July 1, 2013, Respondent sent and Petitioner received a letter informing him that if he did not obtain state employment by December 4, 2013, then the nonvested portions of his FRS Investment Plan benefits would be forfeited.

10. Petitioner filed a request for intervention on January 12, 2016, seeking access to his

nonvested FRS benefits.

11. Petitioner's request for intervention was denied by Respondent on January 27, 2016, and a timely petition for hearing was filed that initiated this administrative proceeding.

12. At hearing, Petitioner did not contend that he was vested in the Pension Plan benefits that were transferred to the Investment Plan. Instead, he asserts that his nonvested benefits should revert back to him instead of the FRS.

CONCLUSIONS OF LAW

13. Petitioner initially enrolled in the Pension Plan in 1984 through his employment with Osceola County. He left that job later that same year, accruing only eight months of creditable service. The Pension Plan vesting period in 1984 was ten years, and therefore the benefits accrued during that period of employment were not vested. When Petitioner returned to work with the state in 2005, he opted to enroll in the Investment Plan and in doing so transferred the present value of his Pension Plan benefits (accrued in 1984) to his Investment Plan account. Three years later, Petitioner's employment with the state came to an end. Thus, he was subject to the terms of § 121.4501(6)(c)2 and (6)(d), Fla. Stat. which state:

(6)(c)2. If the member terminates employment before satisfying the vesting requirements, the nonvested accumulation must be transferred from the member's accounts to the state board for deposit and investment by the state board in the suspense account created within the Florida Retirement System Investment Plan Trust Fund. If the terminated member is reemployed as an eligible employee within 5 years, the state board shall transfer to the member's accounts any amount previously transferred from the member's accounts to the suspense account, plus the actual earnings on such amount while in the suspense account.

(6)(d) Any nonvested accumulations transferred from a member's

account to the state board's suspense account shall be forfeited, including accompanying service credit, by the member if the member is not reemployed as an eligible employee within 5 years after termination.

14. The applicable vesting period for the benefits transferred from Petitioner's Pension Plan account to the Investment Plan is now six years. Accordingly, after Petitioner was again employed by the state in 2005, he needed to work until he attained a total of six years of creditable service for his Pension Plan benefits to vest. Petitioner worked only three years before terminating FRS-covered employment on December 4, 2008. When Petitioner called the MyFRS Financial Guidance Line on December 4, 2008, he was informed that he could not buy into a plan without meeting the plan's vesting requirements, which he had not done. In a subsequent letter from Respondent dated July 1, 2013, Petitioner was again informed that his Pension Plan benefits had not vested, had been moved to a suspense account, and would be forfeited unless he returned to state employment on or before December 4, 2013, as required by section 121.4501(6)(d).

15. Petitioner does not contend that he is vested in the benefits that were forfeited; he argues that he should receive the nonvested benefits instead of the FRS either because Respondent has the discretion to do this or because he assumes that exceptions to the statutory requirements can be made in certain cases. "[T]o be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand...." Blaesser v. State Bd. of Admin., 134 So. 3d 1013, 1015-16 (Fla. 1st DCA 2012). Petitioner has had no legal or equitable right or title to his nonvested FRS benefits at any time. The law is clear that such nonvested funds must be forfeited because he did not return to FRS-covered employment within five years.

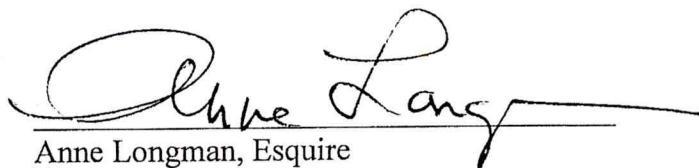
16. Petitioner also argues that the nonvested FRS benefits that were forfeited should be disbursed to him because they were his contributions. There was no mandatory employee contribution to the FRS until 2011. See 2011-68, Laws of Florida. Petitioner's FRS-covered employment predates 2011, and he made no employee contribution to either the Pension Plan or the Investment Plan.

17. The SBA is not authorized to depart from the requirements of Chapter 121, Florida Statutes, the statutes it is charged to implement, when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Further, the SBA's construction and application of those statutes are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA1998). Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements. Young v. Department of Community Affairs, 625 So.2d 837 (Fla. 1993); Department of Transportation v. J.W.C., 396 So.2d 778 (Fla. 1st DCA 1981). Because Respondent lacks the statutory authority to disburse nonvested, forfeited funds, Petitioner's request must be denied.

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 3^d day of May, 2016.



Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
315 South Calhoun Street, Suite 830
Tallahassee, FL 32301-1872

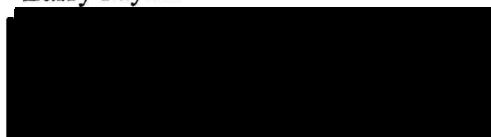
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed via electronic delivery with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
mini.watson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Larry Myers



Petitioner

and via electronic mail only to:

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Brandice D. Dickson, Esquire
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215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent