

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

FREDERICK ELLIS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2007-1060
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On July 29, 2008, 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, Frederick Ellis, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on August 13, 2008. 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.

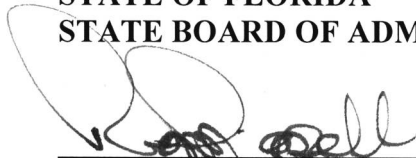
ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to allow him to access his employer contributions from his Investment Plan account is denied. His request is denied because the Respondent has no statutory authority to waive the one year vesting period which the Petitioner has not met.

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 200, 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 20th day of August, 2008, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

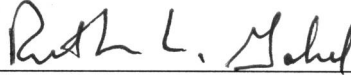
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Clerk TINA JOANOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Frederick Ellis, pro se, [REDACTED], and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 20th day of August, 2008.



Ruth L. Gokel
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

FREDERICK ELLIS,

CASE NO.: 2007-1060

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.


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RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned Presiding Officer on March 12, 2008, in Tallahassee, Florida. The appearances were as follows:


APPEARANCES

For Petitioner: Frederick J. Ellis, Pro Se


Petitioner

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

STATEMENT OF THE ISSUE

The issue is whether the State Board of Administration (SBA) should grant Petitioner's request to withdraw the approximately \$  in his Florida Retirement System (FRS) Investment Plan account, although he is not vested in that amount.

Exh. A

PRELIMINARY STATEMENT

On November 19, 2007, Petitioner filed a Request for Intervention seeking reconsideration of the Respondent's decision not to allow him to take a distribution from his FRS Investment Plan account. That request was denied, and Petitioner then filed a Petition for Hearing requesting the same relief. That Petition was transmitted to the undersigned for informal hearing.

Petitioner attended the informal hearing by telephone and testified on his own behalf. The Respondent presented the testimony of Dan Beard, Director of Policy, Risk Management and Compliance. Respondent's Exhibits R-1 through R-3 were admitted into evidence without objection.

A transcript of the informal hearing was made, filed with the agency and made available to the parties, who were invited to submit proposed recommended orders within 30 days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner was employed by Martin County on June 19, 2006.
2. On November 30, 2006, he timely elected to join the Investment Plan, which established an effective date of December 1, 2006 for his participation in this program.
3. Petitioner was unable to continue working and terminated his employment with Martin County on January 19, 2007.
4. Petitioner is a veteran currently receiving disability benefits from both the Veterans Administration and the Social Security Administration.
5. Petitioner is not on any type of leave from Martin County.

6. At the time of termination of his employment with Martin County, Petitioner had accumulated .67 years of creditable service.

CONCLUSIONS OF LAW

7. FRS eligible employees may elect to participate in either the FRS defined benefit program (the Pension Plan) or the Public Employee Optional Retirement Program, (the Investment Plan). The Pension Plan has a six year vesting requirement; the Investment Plan has a one year vesting requirement. It is undisputed that the Petitioner was a member of the FRS Investment Plan.

8. Section 121.4501(6)(a), Florida Statutes governs the vesting requirements of the Investment Plan. It states:

(6) Vesting requirements.—

(a) 1. With respect to employer contributions paid on behalf of the participant to the Public Employee Optional Retirement Program, plus interest and earnings thereon and less investment fees and administrative charges, a participant shall be vested after completing 1 work year, as defined in s. 121.021(54), with an employer, including any service while the participant was a member of the defined benefit retirement program or an optional retirement program authorized under s. 121.051(2)(c) or s. 121.055(6).

2. If the participant terminates employment prior to satisfying the vesting requirements, the nonvested accumulation shall be transferred from the participant's accounts to the state board for deposit and investment by the board in the suspense account of the Public Employee Optional Retirement Program Trust Fund of the board. If the terminated participant is reemployed as an eligible employee within 5 years, the state board shall transfer to the participant's account any amount of the moneys previously transferred from the participant's accounts to the suspense account of the Public Employee Optional Retirement Program Trust Fund, plus the actual earnings on such amount while in the suspense account.

§ 121.4501, Florida Statutes.

As a member of the FRS Investment Plan, the Petitioner was subject to the one year vesting requirement.

9. Mr. Ellis testified that he had not completed one work year for Martin County before he terminated his employment. He further testified that he understood the governing statutes required completion of one work year in order to vest in funds held in an FRS Investment Plan account, but believed there should be an exception made for those, like himself, who are disabled and cannot work.

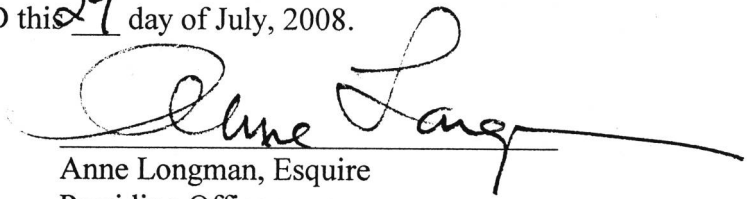
10. The testimony of Dan Beard, the Respondent's Director of Policy, Risk Management, and Compliance, confirmed that there are no exceptions to the statutory vesting requirement, and none has been cited to me. If Petitioner were able to return to any FRS-covered employment for as little as .33 years within the five year period, he could vest in the monies currently being held in a suspense account.

11. There does not appear to be any statutory authority under which Respondent SBA can legally grant the relief requested by the Petitioner, and agencies have only those powers conferred on them by statute. See e.g. East Cent. Regional Wastewater Facilities Operation Bd. v. City WPB, 659 So. 2d 402,404 (Fla. 4th DCA 1995); Gardinier Inc. v. Florida Dept. Pollution Control, 300 So. 2d 75,76 (Fla 1st DCA 1974).

RECOMMENDATION

Having considered the law and the undisputed facts of record, I can find no basis on which the relief requested by Petitioner can be granted. It is unfortunate that Petitioner cannot access this money when he needs it, but Respondent can act only in accord with its governing statutes. I therefore recommend that the State Board of Administration issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 29 day of July, 2008.



Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
P.O. Box 16098
Tallahassee, FL 32317

NOTICE: 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, which should be filed with the Agency Clerk of the State Board of Administration. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
(850) 488-4406

This 29th day of July, 2008.

Copies furnished to:

Frederick J. Ellis



Petitioner

Brandice D. Dickson, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095
Attorneys for Respondent