

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

EDWARD FLORES,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-2329
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On January 25, 2012, 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, Edward Flores, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner made no further filings. Neither party filed exceptions, which were due on February 9, 2012. 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 that he be allowed to make a withdrawal, for hardship reasons, from his Florida Retirement System (FRS) Investment Plan account before three calendar months have elapsed since he terminated employment hereby is denied.

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 10th day of February, 2012, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



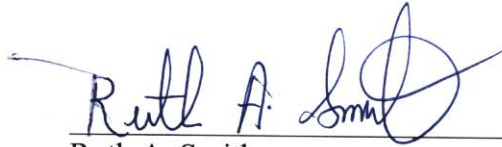
Ron Poppell, Senior Defined Contribution
Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

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 Edward Flores, 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 10th day of February, 2012.

A handwritten signature in blue ink that reads "Ruth A. Smith". The signature is written in a cursive style and is positioned above a horizontal line.

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

EDWARD FLORES,

CASE NO. 2012-2329

Petitioner,

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

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GENERAL COUNSEL'S OFFICE

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on January 18, 2012, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Edward Flores, pro se



For Respondent: Brian A. Newman, 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 SBA may allow Petitioner to make a withdrawal from his Investment Plan account before three calendar months have elapsed since his termination of

Florida Retirement System (FRS) covered employment.

PRELIMINARY STATEMENT

An informal hearing was held before the undersigned at the offices of the State Board of Administration, 1801 Hermitage Blvd., Suite 100, Tallahassee, Florida, on the Petition filed by Edward Flores. Petitioner attended the hearing by telephone and testified on his own behalf. Respondent presented testimony from Petitioner and Daniel Beard, SBA Director of Policy, Risk Management, & Compliance, Office of Defined Contribution Programs. Respondent offered three exhibits, which were received in evidence without objection.

A transcript of the hearing was made, and at Petitioner's request, the hearing and post-hearing processes were expedited to ensure the issue was not made moot due to passage of time before a decision was rendered. Respondent SBA submitted its proposed recommended order the day after the hearing was held. Petitioner was invited to submit any additional materials regarding his case as soon as possible; he has made no further submissions, and I submit this Recommended Order in keeping with his desire to expedite the matter.

MATERIAL UNDISPUTED FACTS

1. Petitioner is a member of the FRS Investment Plan.
2. Petitioner is 44 years of age and has 16 years of creditable service in the Florida Retirement System.
3. The Petitioner's son suffers from a rare and terminal health condition. He is confined to a wheelchair and is blind. He requires constant care for daily living.
4. Petitioner was employed by the Osceola County Sheriff's Office until December

31, 2011 when he terminated employment to care for his son.

5. Petitioner requires access to his Investment Plan account funds to pay for food, shelter, and medical costs for his son. Petitioner is concerned that he will lose his home if he is not provided immediate access to his Investment Plan account funds.

CONCLUSIONS OF LAW

6. Section 121.591, Florida Statutes (2011) governs when benefits are payable from an Investment Plan account. Section 121.591(1)(a)4. states:

(1) Normal benefits.--Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.

Distributions from Investment Plan accounts are also governed by Rule 19-11.003, Florida Administrative Code, which provides in pertinent part:

19-11.003. Distributions from FRS Investment Plan Accounts.

(1) Purpose. The purpose of this rule is to clarify the provisions regarding distributions from FRS Investment Plan accounts. Distributions from FRS Investment Plan accounts are made either after the account-holder terminates employment or at the account-holder's death.

* * *

(3) Distributions available after the member terminates FRS-covered employment.

(a) An FRS Investment Plan member shall not be entitled to a

distribution from his account unless he has been terminated from all FRS-covered employment, including temporary, part-time, Other Personal Services (OPS) and any regularly established position with an FRS employer, for three (3) calendar months following the month of termination. Example: If a member terminates on May 15, the three calendar months are June, July, and August. Therefore, the member cannot request a distribution until September.

* * *

(d) If a member has terminated employment from all FRS-covered employment for one calendar month and he has reached his normal retirement date, in accordance with Section 121.021(29), F.S., he may request a one-time distribution of up to 10 percent (10%) of his account balance. For example, if a member terminates on May 15, the one calendar month is June. Therefore, the member can request a one-time distribution of up to 10 percent (10%) in July.

7. Because Petitioner terminated employment on December 31, 2011, he is not eligible to receive a total distribution from his Investment Plan account until three calendar months after his termination, which is April 1, 2012.

8. Petitioner would be entitled to receive a ten percent distribution, pursuant to statute and rule, within one calendar month of his termination, if he had reached normal retirement age. Normal retirement age is defined by section 121.021(29)(b)1., Florida Statutes (2011) and requires Petitioner (who is in the Special Risk Class given his employment by a law enforcement agency) to either have attained the age of 55 with six years of service or to have accumulated 25 years of creditable FRS service. Unfortunately, Petitioner does not meet either of these criteria.

9. Petitioner argues that he should be able to withdraw funds from his Investment Plan account now due to the financial hardship he faces from his son's illness. While the hardship Petitioner faces cannot be disputed, the statutes governing the administration of the

Investment Plan do not authorize a hardship withdrawal. In fact, in 2011, the Florida Legislature amended section 121.591 to specifically provide that hardship withdrawals are not permitted.

The new language added in 2011 provides:

Before termination of employment, benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason prior to termination from all employment relationships with participating employers.

Ch. 2011-68, Laws of Florida.

Although the above language applies to distributions before termination and Petitioner has terminated FRS employment, it reflects the legislature's intention to continue to disallow payment of benefits based on hardship of any kind.

10. Finally, Petitioner contends that the agency's refusal to allow him to take an immediate distribution from his Investment Plan account violates federal law, namely the Americans with Disabilities Act (ADA). He has not asserted that Respondent SBA has denied him access to any benefits which are accessible to other FRS participants. Rather, Petitioner reasons that his son's disability (which is not questioned by the agency) qualifies him for a departure from the statutorily mandated three month waiting period, as a reasonable accommodation under the ADA. In the absence of citation of any applicable statutes or case law which would give the Respondent agency authority to adjudicate a claim under the ADA, I can find no jurisdiction in this proceeding to do so.

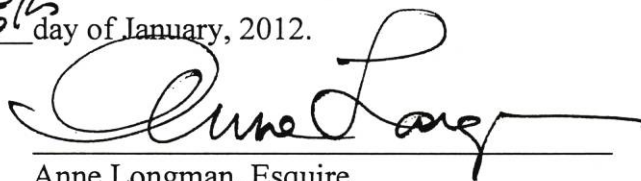
11. The SBA's construction and application of the statutes it administers is entitled to

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). It also must strive to administer the Investment Plan uniformly as to all participants, despite what are clearly very difficult circumstances in this case for Petitioner.

RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that the Respondent State Board of Administration issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 25th day of January, 2012.



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: 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 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 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 25th day of January, 2012.

Copies furnished to:

Edward Flores, pro se

[REDACTED]

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

A handwritten signature in cursive script, appearing to read "Anne Long", written over a horizontal line.