

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JOSEPH C. MEEK, III,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2010-1894
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On March 25, 2011, 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, Joseph C. Meek, III, 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 April 11, 2011. 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.

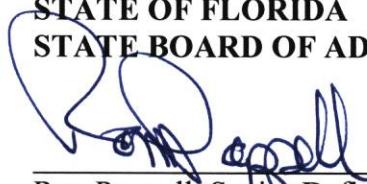
ORDERED

The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner's request that the State Board of Administration deem Petitioner's Second Election to be an Initial Election to enroll in the Florida Retirement System Investment Plan, 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 25th day of April, 2011, 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.


Agency 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 Joseph C. Meek, III, 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 25th day of April, 2011.



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

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JOSEPH C. MEEK, III,

Petitioner,

vs.

Case No.: 2010-1894


STATE BOARD OF ADMINISTRATION,

Respondent.

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 November 4, 2010, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Joseph C. Meek, III


For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether the Respondent should deem Petitioner's Second Election to be an Initial Election to join the Investment Plan.

PRELIMINARY STATEMENT

Joseph C. Meek, III filed a request for intervention with the SBA on September 6, 2010, requesting a "reinstatement" of his one-time second election to change retirement plans. In effect, Petitioner is requesting that his one-time second election, which he used to transfer to the Investment Plan, be deemed an initial election, thus providing him with the opportunity to buy-in to the Pension Plan at a later date. His request for intervention was denied. Mr. Meek filed a Petition for Hearing requesting the same relief. This administrative proceeding followed.

On November 22, 2010, an informal hearing was held in Tallahassee, Florida. The hearing was conducted in accordance with Section 120.57(2), Florida Statutes. Petitioner testified on his own behalf and did not offer any exhibits. Respondent was represented by counsel and presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance for the State Board of Administration. Respondent's exhibits R-1 through R-5 were admitted at the hearing with no objection from Petitioner.

A transcript of the hearing was filed with the agency and the parties were given thirty days to submit proposed recommended orders. Respondent submitted a timely proposed recommended order.

UNDISPUTED MATERIAL FACTS

1. Petitioner was elected to the Citrus County Board of County Commissioners in November of 2008. In accordance with section 121.4501, Florida Statutes, he was given a deadline of May 29, 2009, to make an Initial Election. Petitioner made no such election, and defaulted into Pension Plan membership.

2. On June 2, 2009, Petitioner called the MyFRS Financial Guidance Line and told the representative that he had missed the deadline to make an Initial Election. Petitioner was told

that he could make a Second Election to join the Investment Plan but would not be allowed to buy-in to the Pension Plan at a later date. Petitioner was also told that a buy-in after six years of employment can often be cost-prohibitive.

3. After this call, Petitioner completed and submitted a 2nd Election EZ Retirement Plan Enrollment Form (on June 2, 2009) indicating his desire to switch to the Investment Plan.

The form Petitioner signed states that:

-“I am exercising my one-time 2nd Election to:... Change from the FRS Pension Plan to the FRS Investment Plan. I understand I am transferring the present value, if any, of my FRS Pension Plan to the FRS Investment Plan.”

-“You understand that your one-time 2nd Election is irrevocable and that you must remain in the plan you chose on page 1 until your FRS-covered employment ends and you retire.”

4. On September 6, 2010, Petitioner submitted a Request for Intervention, stating his desire to have his “One-Time Second Election Reinstated.” In essence, Petitioner requested that he retain the option of buying into the Pension Plan at a later date. In his request, Petitioner states “[i]n the information I received, I was given notice that I must select an FRS retirement plan by 4 p.m. ET on 05/29/2009, or by default would be placed in a plan... I was incorrect and believed I would be in the FRS Investment Plan by default. That was my mistake, and I take full responsibility for the error.”

5. As of October 15, 2010, Petitioner’s Investment Plan account was vested in the amount of \$12,636.78. There remains, however, an unvested balance of \$1,892.81 representing the funds transferred from his Pension Plan account that are subject to the Pension Plan’s six year vesting requirement.

CONCLUSIONS OF LAW

6. Section 121.4501(4)(a)2.a, Florida Statutes, provides that FRS members will be enrolled in the Pension Plan by default at the commencement of employment and they have five months from their date of hire to elect in writing to participate in the Investment Plan. This election, if made, is considered the member's "initial" election.

7. After a timely initial election is made or if no initial election is made and the member defaults to the Pension Plan, section 121.4501(4)(e) provides a member with one opportunity to switch plans. Petitioner's deadline to make his initial election expired on May 29, 2009. Because he made no election, he defaulted into the Pension Plan. Petitioner acknowledges and takes responsibility for missing the deadline. He does not allege that he was provided any false information or that he was misled into taking no action before the deadline.

8. After realizing that he was participating in the Pension Plan by default, Petitioner used his one-time second election to transfer to the Investment Plan. The Second Election form Petitioner signed clearly states that his Second Election to transfer to the Investment Plan was irrevocable and that he must remain in the Investment Plan until he retires.

9. Unfortunately, under Florida law SBA lacks the authority to deem Petitioner's Second Election his Initial Election. Section 121.4501(4)(e) provides in pertinent part that:

After the period during which an eligible employee had the choice to elect the defined benefit program or the optional retirement program, 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 defined benefit program to the optional retirement program or from the optional retirement program to the defined benefit program. Eligible employees may elect to move between Florida Retirement System programs 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.

(Emphasis added).

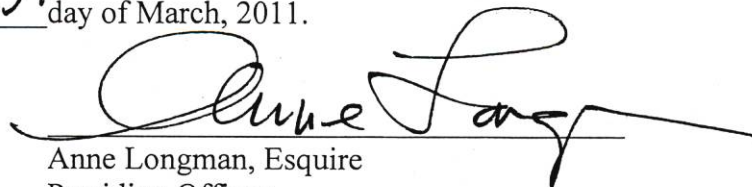
10. The SBA is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). The Respondent's construction and application of Chapter 121 are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. See, 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).

11. Petitioner filed his Second Election form to switch to the Investment Plan on June 2, 2009; past the deadline to make an Initial Election. Regrettably, the SBA has no statutory authority to provide Petitioner with another opportunity to switch back to 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 25th day of March, 2011.



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 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 March, 2011.

Copies furnished to:

Joseph C. Meek, III


Petitioner

Brian A. Newman, Esquire
Brandice D. Dickson
Pennington, Moore, Wilkinson Bell & Dunbar
Post Office Box 10095
Tallahassee, FL 32302-2095