

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JESTYN ALLEN,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2019-0421
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On March 11, 2020, 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, Jestyn Allen, 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. No exceptions to the Recommended Order, which were due by March 26, 2020, were filed by either party. The presiding officer issued her Recommended Order upon her consideration of the case record and all materials submitted by the parties. 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 for removal of the hold that had been placed on his Florida

Retirement System (“FRS”) Investment Plan account, pending resolution of the criminal charges that have been filed against him, hereby is denied. The criminal charges are for offenses that could allow forfeiture pursuant to Section 112.3173, Florida Statutes, if Petitioner eventually is convicted of, or pleads guilty or nolo contendere to, such charges and the SBA determines that the criminal charges have a nexus to his public employment. If the charges are dropped, the hold will be released. Therefore, the hold is appropriate.

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 22nd day of April, 2020, 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

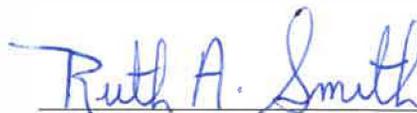
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Jestyn Allen, pro se, both by email transmission, [REDACTED] and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@ausley.com; jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 22nd day of April, 2020.



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

JESTYN ALLEN,

Petitioner,

vs.

CASE NO. 2019-0421

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 January 22, 2020, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Jestyn Allen, pro se (telephonically)

For Respondent: Ruth Vafek
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Respondent has a reasonable basis to continue to hold the employer contribution portion of Petitioner's Florida Retirement System (FRS) Investment Plan account pending the completion of criminal proceedings against him.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent attended the hearing in person and presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on February 7, 2020. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

UNDISPUTED MATERIAL FACTS

1. The Petitioner was employed in a Florida Retirement System (FRS)-qualifying position with the Department of Corrections (DOC), an FRS-participating employer, until his termination.
2. Petitioner is a vested member of the FRS defined contribution Investment Plan.
3. DOC made employer contributions to Petitioner's Investment Plan account during the term of his employment.
4. Respondent received information indicating that Petitioner was arrested and that criminal charges have been brought against him. According to the arrest warrant, Petitioner allegedly committed malicious battery with great bodily harm and perjury by false declaration. It is alleged that the referenced battery was committed by Petitioner against an inmate.

5. According to Respondent's January 24, 2020 Memorandum on Status of Criminal Proceedings, the criminal proceedings involving Petitioner are still in process.

6. Respondent's letter dated October 24, 2019, informed Petitioner of the hold on his FRS Investment Plan account and the reasons for that hold. That letter advised him that "[a] distribution of employer contributions from your account will not be permitted until [Respondent] receives and analyzes the final disposition on all relevant criminal charges." With that letter, Respondent included a blank Petition for Hearing (PFH) and offered Petitioner the option of requesting a hearing if he wanted to contest the hold.

7. On or about November 14, 2019, Petitioner filed a Petition for Hearing (PFH) requesting that he be allowed to receive distributions of funds from his Investment Plan account. This administrative proceeding followed.

CONCLUSIONS OF LAW

8. Article II, section 8 of the Florida Constitution, titled "Ethics in Government," states in pertinent part:

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

* * *

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

Section 112.3173, Florida Statutes, which implements this constitutional provision, is part of the statutory code of ethics for public officers and employees and sets out a number of "specified crimes" that result in the forfeiture of the member's retirement benefits, apparently including the offenses with which Petitioner is charged. Additional authority for the SBA's hold on Petitioner's account is found in section 121.091(5)(k), Florida Statutes, made applicable to the Investment Plan by section 121.012, Florida Statutes.

9. The SBA is not required to establish that the charges pending against Petitioner constitute a forfeitable offense in order to maintain a hold on his Investment Plan account. David Moran v. State Board of Admin., Case No. 2015-3304, Recommended Order July 31, 2015, Final Order October 21, 2015 (aff'd by PCA (Fla. 1st DCA September 20, 2016); see also, Sharonda Bennett v. State Board of Admin., Case No. 2016-3538, Recommended Order June 7, 2016, Final Order July 27, 2015.

10. The specific authority to place a hold pending the resolution of the criminal charges is found in Rule 19-11.008(2)(b), Florida Administrative Code:

(2) Forfeitures of Investment Plan accounts Due to Criminal Activity.--

(b) When the State Board of Administration (SBA), becomes aware of **any accusation of criminal wrong doing against any member of the Investment Plan**, the SBA will place a hold on the member's account to preclude the member from removing any money from the account, until a determination is made on whether charges have been filed and whether the charges are for a forfeitable offense.

(c) If the charges against the member are not pursued and are dropped by law enforcement officials, the hold on the member's account will be released upon receipt of notification from the proper law enforcement agency.

(d) If the member is indicted and convicted or pleads guilty, or pleads nolo contendere, the SBA will acquire a certified copy of the judgment and will contact the member to advise the member that the Investment Plan benefit is forfeited and that the member has the right to a hearing to contest the forfeiture. The hold on the member's account will remain in place until:

1. The time to request a hearing has passed and no request for a hearing is made, or
2. The conclusion of the hearing and any appeal of the final order issued after the conclusion of the hearing.

(Emphasis added.)

11. Respondent SBA is not required to establish all elements of forfeiture at this time in order to continue the hold on Petitioner's account. If Petitioner is convicted of a qualifying offense, or pleads guilty or *nolo contendere*, he will have the opportunity to contest forfeiture of his retirement benefits at that time. If the charges are dropped, the hold will be released. See, Rule 19-1.008(2)(c) and (d), F.A.C.

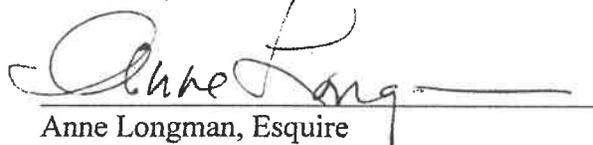
12. The hold currently in place does not constitute a final determination as to Respondent's rights. As provided by Rule 19-11.008(2), F.A.C., the hold will be lifted if the charges against Respondent are dropped. If those charges instead result in a conviction or a plea of guilty or *nolo contendere*, then Respondent will review the information brought to light in the criminal proceedings and, if Petitioner's offenses still appear to share a nexus with his employment warranting forfeiture, he will have another opportunity to contest this determination and be heard.

13. Accordingly, Respondent has adequate legal authority to maintain a hold on Petitioner's FRS Investment Plan account pending resolution of the criminal proceedings against him.

RECOMMENDATION

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

RESPECTFULLY SUBMITTED this 11th day March, 2020.



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
Nell.Bowers@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Jestyn Allen



Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
Ruth E. Vafek, Esquire
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