

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

ERA HUSKEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2019-0448
	)	
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, Era Huskey, and upon counsel for the Respondent. This matter was decided after an informal proceeding. 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 her Florida Retirement System (“FRS”) Investment Plan account, pending resolution of the criminal charges that have been filed against her, 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 her 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 9th day of April, 2020, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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**Daniel Beard**  
Chief of Defined Contribution Programs  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406



STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

ERA HUSKEY,

Petitioner,

vs.

CASE NO. 2019-0448

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding on January 28, 2020, in Tallahassee, Florida, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner: Era Huskey, 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 Investment Plan account pending the completion of criminal proceedings against her.

**PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone, testified on her 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 19, 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 her termination.
2. Petitioner is a vested member of the defined contribution FRS Investment Plan.
3. DOC made employer contributions to Petitioner's Investment Plan account during the term of her employment.
4. Respondent received information indicating that Petitioner was arrested and criminal charges were brought against her. According to the arrest warrant, Petitioner allegedly committed malicious battery, tampering with or harassing a witness, official misconduct, and perjury when not in an official proceeding. It is alleged that the referenced battery was committed by Petitioner against an inmate.
5. The criminal proceedings involving Petitioner are still in process.
6. Respondent sent Petitioner a letter dated November 19, 2019, informing Petitioner of the hold on her FRS Investment Plan account and the reasons for that hold. That letter advised her 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 and offered Petitioner the option of requesting a hearing if she wanted to contest the hold.

7. On or about December 11, 2019, Respondent received Petitioner's Petition for Hearing requesting that the hold on her Investment Plan account be removed. 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 (benefits may not be paid pending final resolution of relevant charges), made applicable to the Investment Plan by section 121.012, Florida Statutes.

9. 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.)

10. The SBA is not required to establish that the charges pending against Petitioner constitute a forfeitable offense in order to maintain a hold on her 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.

11. Respondent SBA is not required to establish all of the 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*, she will have the opportunity to contest the forfeiture of her 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*, Respondent will review the information brought to light in the criminal proceedings and, if Petitioner's offenses still appear to share a nexus with her employment warranting forfeiture, she 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 her.

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 11<sup>th</sup> 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](mailto:Tina.joanos@sbafla.com)  
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COPIES FURNISHED via mail and electronic mail to:

Era B. Huskey

  
Petitioner

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and via electronic mail only to:

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Counsel for Respondent