

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

WILLIAM HUTCHINSON,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2022-0090
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On June 6, 2022, the Presiding Officer submitted her Recommended Order to the State Board of Administration (hereafter “SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, William Hutchinson. Neither party filed exceptions to the Recommended Order, which were due June 21, 2022. 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) hereby is adopted in its entirety. Petitioner was a public employee who has been accused of a crime that would, if Petitioner is convicted of such crime, constitute a forfeitable offense under Section 112.3173, Florida Statutes. As such, there is a reasonable basis to maintain the hold on Petitioner’s FRS Investment Plan account until the criminal charges against Petitioner have been resolved.

If the charges are dropped, the hold will be released. Therefore, the Petitioner's request that the hold currently be removed 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 6th day of September, 2022, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

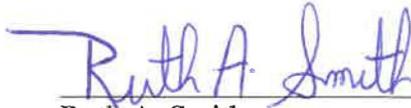
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos,
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to the *pro se* Petitioner, William Hutchinson, by email transmission to Seminole44@gmail.com and by U.S. mail to 623 Miccosukee Road, Tallahassee, Florida 32308; 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 6th day of September, 2022.



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

WILLIAM HUTCHINSON,

Petitioner,

vs.

CASE NO. 2022-0090

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on April 11, 2022, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: William Hutchinson, pro se

For Respondent: Deborah S. Minnis
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.

PRELIMINARY STATEMENT

Petitioner testified on his own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA 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 hearing was made, filed with the agency, and provided to the parties on April 29, 2022. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based on my consideration of the complete record in this case and all materials submitted by the parties.

UNDISPUTED MATERIAL FACTS

1. The Petitioner was employed in an FRS covered position with the Florida Department of Corrections (FDC), an FRS-participating employer, until late January, 2022.
2. Petitioner is a vested member of the FRS Investment Plan.
3. FDC made employer contributions to Petitioner's Investment Plan account during the term of his employment.
4. Respondent received information indicating that a Probable Cause Affidavit was filed against Petitioner on January 20, 2022. The Probable Cause Affidavit alleges that Petitioner knowingly entered institutional grounds with a Schedule II controlled substance and introduced contraband onto the grounds of the institution.
5. The criminal proceedings involving Petitioner are still in process, according to the information available to Respondent.
6. Pursuant to the above information, Respondent sent Petitioner a letter dated February 25, 2022, informing him 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 to contest the hold.

7. On or about March 16, 2022, Respondent received Petitioner’s Petition for Hearing which seeks to remove the hold on 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

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 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 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, he will have the opportunity to contest the forfeiture of his retirement benefits at that time. If the charges are dropped, the hold will be released. See, Rule 19-11.008(2)(c) and (d), F.A.C. 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.

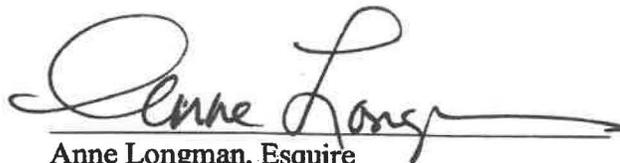
12. The hold currently in place does not constitute a final determination as to Respondent's rights. As provided by Rule 19-11.008(2), F.A.C., the hold will be lifted if the charges against Respondent are dropped. If those charges instead result in a conviction or a plea of guilty or nolo contendere, 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. Respondent has a reasonable basis under the law to maintain the 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.

DATED this 6th day of June 2022.



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 email and U.S. mail to:

William Hutchinson
623 Miccosukee Rd.
Tallahassee, FL 32308
Seminole44@gmail.com
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
Ruth E. Vafek, Esquire
123 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
dminnis@ausley.com
rvafek@ausley.com
jmcvaney@ausley.com