

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

RALPH MARTIN,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2018-0007
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On July 19, 2018, 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, Ralph Martin, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on August 3, 2018. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Chief of Defined Contribution Programs.

ORDERED

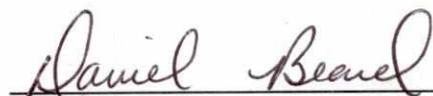
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner received an invalid distribution from his Florida Retirement System (FRS) Investment Plan account. Petitioner was a vested member of the FRS Investment Plan at the time he terminated his FRS-covered employment with Florida International University in July 2017. He took a total distribution of his FRS Investment Plan account in November 2017. He was hired by another FRS-participating employer about two

weeks after he took the total distribution, in violation of Section 121.091(9), Florida Statutes. Because he received an invalid in-service distribution, he is required either to terminate employment with all FRS-participating employers for 6 calendar months or to repay the invalid distribution within 90 days from the date of this Final Order. There are no provisions that would allow the 90 day repayment period to be extended even for a showing of hardship.

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 23rd day of October 2018, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief, 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 Ralph Martin, pro se, both by email transmission, [REDACTED]; and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 23rd day of October, 2018.



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

RALPH MARTIN,

Petitioner,

vs.

CASE NO. 2018-0007

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 April 25, 2018, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Ralph Martin, pro se

[REDACTED]
[REDACTED]

For Respondent: Brandice D. Dickson
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether Petitioner received an "in service" distribution and must either repay the distribution or terminate employment with all Florida Retirement System (FRS) participating employers.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1 through 3 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. On February 1, 2013, Petitioner joined the defined contribution Investment Plan when employed by the Florida International University, an FRS-participating employer.

2. Petitioner terminated employment with his FRS-participating employer on July 12, 2017 and then, on November 1, 2017, took a total distribution of his Investment Plan account.

3. Petitioner was hired by the Palm Beach State College, also an FRS-participating employer, into a regularly-established position on November 16, 2017, within six calendar months of his having taken his distribution.

4. On January 10, 2018, Petitioner was notified that he had taken an "in service" distribution and therefore had to either repay the distribution in full or terminate his FRS employment. To date, Petitioner has done neither.

CONCLUSIONS OF LAW

5. Benefits are not payable to Investment Plan account members who are actively employed in FRS-covered positions; rather, a member must be terminated from his employment prior to receiving a distribution. § 121.591(1)(a)3., Fla. Stat. Upon receiving a distribution, the

member is deemed "retired." §121.4501(2)(k), Fla.Stat.(2017)("Retiree" means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions as provided in s. 121.591, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided by s. 401(a)(9) of the Internal Revenue Code".)

6. A "retiree" is prohibited from re-employment with an FRS-participating employer if that re-employment is sooner than six calendar months following the distribution taken. §121.091(9), Fla.Stat. (2017). Section 121.091(9)(c)-(e) states:

(9) Employment after retirement; limitation.--

...

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive retirement benefits and compensation from that employer. However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination. However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

1. The reemployed retiree may not renew membership in the Florida Retirement System, except as provided in s. 121.122.

2. The employer shall pay retirement contributions in an amount equal to the unfunded actuarial liability portion of the employer contribution that would be required for active members of the Florida Retirement System in addition to the contributions required by s. 121.76.

3. A retiree initially reemployed in violation of this paragraph and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any retirement benefits paid to the retirement trust fund from which the benefits were paid, including the Florida Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. The employer must have a written statement from the employee that he or she is not retired from a state-administered retirement system. Retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retiree's 6-month

reemployment limitation period shall apply toward the repayment of benefits received in violation of this paragraph.

(d) This subsection applies to retirees, as defined in s. 121.4501(2), of the Florida Retirement System Investment Plan, subject to the following conditions:

1. A retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.

2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

(e) The limitations of this subsection apply to reemployment in any capacity irrespective of the category of funds from which the person is compensated.

§ 121.091(9), Fla.Stat. (2017)(emphasis added).

7. At hearing, Petitioner presented undisputed testimony that he was in difficult financial circumstances when he took his Investment Plan distribution, but Florida law makes this fact irrelevant here. Section 121.591, Florida Statutes states, in pertinent part:

Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. **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 except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. ...

§ 121.591, Fla. Stat. (2017)(emphasis added).

8. When an Investment Plan member takes a distribution (receives benefits) in contravention of Section 121.091 and/or 121.591, Florida Statutes, he is said to have taken an "invalid distribution," and Respondent SBA seeks return of the money. If the amount distributed is not returned, the member must terminate his employment. Rule 19-11.003, Florida Administrative Code governs invalid distributions and states:

(9) Invalid distributions.

(a) If a member or a former member of the FRS Investment Plan receives an invalid distribution, the member or former member is required to repay the entire invalid distribution within 90 days of the member's receipt of a final notification from the SBA, or in lieu of repayment, the member must terminate employment from all participating employers. If the member fails to repay the invalid distribution, or terminate employment, the employer is liable for the repayment of the invalid distribution even if the member signed a statement at the time the member was hired that no benefit had been received from the Plan.

1. If a member repays the entire distribution, the member's repayment will be deposited in the FRS Investment Plan account; the member will be returned to the Investment Plan; and all future employee and employer contributions will be deposited in the funds the member has chosen.

2. If the employer repays the entire distribution, the repayment will be deposited in the Investment Plan Trust Fund and allocated to the Investment Plan's forfeiture account to offset plan expenses. The member will be returned to the Investment Plan; and all future employee and employer contributions will be deposited in the funds the member has chosen.

3. If the member fails to repay the invalid distribution and terminates employment, the SBA will declare the member a retiree and will not pursue the repayment of the invalid distribution pursuant to paragraph (b) above. As a retiree, the member is subject to the provisions of Section 121.122, F.S., if the member is reemployed in the future with an FRS-covered employer in a regularly established position.

19-11.003, F.A.C.

9. "Final notification," in the context of Rule 19-11.003(9)(a), is entry of a final order in this case finding that Petitioner received an invalid distribution. If the invalid distribution is not repaid by Petitioner or his employer within 90 days of entry of the final order, his FRS-covered employment must be terminated.

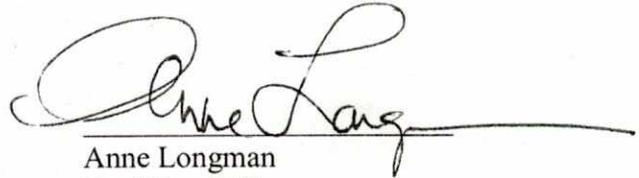
10. The SBA is not authorized to depart from the requirements of Chapter 121, Florida Statutes, the statutes it is charged to implement, when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Further, the SBA's construction and application of those statutes are 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).

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, as same would be in contravention of relevant statutes and rules.

RESPECTFULLY SUBMITTED this 19th day of July, 2018.



Anne Longman
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
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(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Ralph Martin



Petitioner

and via electronic mail only to:

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Counsel for Respondent