

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

TYRECKA STEELE,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2019-0500
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On August 14, 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, Tyrecka Steele, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Neither party filed exceptions to the Recommended Order, which were due on August 29, 2020. 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 North Bay Haven Charter Middle School, an FRS-participating employer. He took a total distribution of his FRS Investment Plan account in August 29, 2019. He was hired by another FRS-participating employer on June 17, 2019, several months before his request for a distribution. Thus, his

total distribution was in violation of Section 121.591, 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 ___9th___ day of November, 2020, 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 the Petitioner, Tyrecka Steele, both by email transmission to [REDACTED] and by U.P.S. to [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 9th day of November, 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**

TYRECKA STEELE,

Petitioner,

vs.

CASE NO. 2019-0500

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding on June 23, 2020 in Tallahassee, Florida. The hearing was held telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA).

The appearances were as follows:

APPEARANCES

For Petitioner: Tyrecka Steele, *pro se*



For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
123 South Calhoun Street
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner may continue employment with a Florida Retirement System (FRS) participating employer without repaying an in-service distribution received from his Investment Plan account on September 3, 2019.

EXHIBIT A

COPIES FURNISHED via mail and electronic mail to:

Tyrecka Steele



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

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on his own behalf. Respondent attended the hearing by telephone and presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-7 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on July 13, 2020. 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 FACTS

1. On August 29, 2019, Petitioner requested a distribution from his Investment Plan account effective September 3, 2019. At the time of his request, Petitioner confirmed that on May 23, 2019 he had terminated his employment with the North Bay Haven Charter Middle School, an FRS participating employer.

2. Based on these representations, Petitioner received a total distribution of his Investment Plan account in the amount of \$6,644.68.

3. During a required audit of Petitioner's account, Respondent found that at the time Petitioner submitted his request for distribution, he had in fact terminated his employment with the North Bay Haven Charter School, but he was employed with Gulf Coast State College, also an FRS participating employer.

4. A further review of the records showed that Petitioner's employment with Gulf Coast State College began on June 17, 2019, several months before his request for a distribution.

5. In addition, on August 12, 2019, prior to requesting the distribution, Petitioner placed a call to the MyFRS Guidance Line and spoke with a representative. During that conversation, he was advised that he could not take money from his account if he was employed by an FRS participating employer.

6. Section 121.591, Florida Statutes, states that benefits cannot be paid until a member has terminated all employment with any FRS-participating employer for at least three calendar months (or one calendar month if the member has met the age or service requirements for normal retirement).

7. On December 16, 2019, Respondent sent a letter to Petitioner advising him that he would need to either repay the \$6,644.68 distribution or terminate his employment with the Gulf Coast State College by March 16, 2020.

8. Petitioner submitted a petition for hearing on April 20, 2020. This administrative proceeding followed.

CONCLUSIONS OF LAW

9. Section 121.591, Florida Statutes reads in pertinent part:

121.591 Payment of benefits.—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....

(1) NORMAL BENEFITS.—Under the investment plan:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) are payable under this subsection in accordance with the following terms and conditions:

1. Benefits are payable only to a member, an alternate payee of a qualified domestic relations order, or a beneficiary.
2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.
3. The member must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).
4. Benefit payments may not be made until the member has been terminated for 3 calendar months, except that the state board may authorize by rule for the distribution of up to 10 percent of the member's account after being terminated for 1 calendar month if the member has reached the normal retirement date as defined in s. 121.021.
5. If a member or former member of the Florida Retirement System receives an invalid distribution, such person must either repay the full amount within 90 days after receipt of final notification by the state board or the third-party administrator that the distribution was invalid, or, in lieu of repayment, the member must terminate employment from all participating employers. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the investment plan by the state board and is subject to s. 121.122. If such person is deemed retired, any joint and several liability set out in s. 121.091(9)(d)2. is void, and the state board, the department, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the investment plan, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the state board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under s. 121.4501(9)(g)3. As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the investment plan which is taken in violation of this section, s. 121.091(9), or s. 121.4501.
(Emphasis added).

10. Petitioner was aware at the time he requested and accepted the distribution from his Investment Plan Account that the distribution was invalid and was not legally authorized. He acknowledged at hearing that the details of the case as presented by Respondent were correct but that he had encountered very difficult financial circumstances.

11. Respondent is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes when exercising its jurisdiction. Balezantis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476

(Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency “is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction”).

12. Respondent does not have authority to grant the relief requested by Petitioner. Respondent is required to seek repayment of the distribution made to Petitioner unless he terminates all FRS eligible employment as required by law.

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 14th day of August 2020.


/s/ Anne Longman
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
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