

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

TANISHA WILLIAMS,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2020-0181
)	
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On August 24, 2020, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Tanisha Williams, and upon counsel for the Respondent. Neither party filed exceptions to the Recommended Order, which were due on September 8, 2020. 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 to be allowed to transfer from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan, even though her second election form was not received by the Plan Choice Administrator prior to Petitioner’s termination date, hereby

is denied. Although it was clear that Petitioner intended to switch to the FRS Investment Plan prior to her termination date, she failed to ensure her second election form actually was received by the Plan Choice Administrator before she terminated employment.

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 20th day of November 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

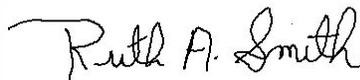
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Tanisha Williams, *pro se*, 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) and jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 20th 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

TANISHA WILLIAMS,

Petitioner,

vs.

CASE NO. 2020-0181

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on July 1, 2020 in Tallahassee, Florida, 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: Tanisha Williams, *pro se*



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

STATEMENT OF THE ISSUE

The issue is whether Petitioner's attempted use of her second election to move from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan was valid, despite the SBA Plan Choice Administrator having received Petitioner's second election form after her separation from FRS-eligible employment.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner testified on her 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-6 were admitted into evidence over Plaintiff's objection that she simply made a mistake as to her resignation date.

A transcript of the hearing was made, filed with the agency, and provided to the parties on July 16, 2020. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based on the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

UNDISPUTED MATERIAL FACTS

1. The Petitioner began employment with the Broward County School Board (BCSB), an FRS-participating employer, in April of 2005.
2. The SBA Plan Choice Administrator did not receive an election from Petitioner during her initial choice window, and she therefore was enrolled in the Pension Plan, the legislatively-prescribed default at the relevant time.
3. In January of 2020, Petitioner called the MyFRS Guidance Line on multiple occasions to discuss switching to the FRS Investment Plan prior to her planned separation from BCSB employment, which at one point she indicated was likely to occur in April of that year. During those conversations, Ernst and Young representatives reviewed the second election process with Petitioner and provided her with a copy of the form.
4. Although there were some inconsistencies regarding the effective date of Petitioner's resignation from BCSB, it is undisputed that her last day of employment as an FRS-

eligible employee, earning salary and service credit, was either February 3rd or 4th, 2020. BCSB reported to Respondent SBA that Petitioner's last day of employment was February 3, 2020. Petitioner testified that her last day "actually on the job working" was either February 3 or 4. She further testified that even though she intended to resign effective February 6 or 7, 2020, she took unpaid leave after, at latest, February 4, 2020.

5. On February 5, 2020, the Plan Choice Administrator received a second election form from Petitioner, seeking to transfer from the Pension Plan to the Investment Plan.

6. Upon receiving verification from BCSB that Petitioner's last day of employment had been February 3, 2020, Respondent declined to process Petitioner's attempted second election.

7. On or about May 4, 2020, Petitioner submitted a Request for Intervention asking that the value of her Pension Plan benefit be placed in an Investment Plan account. Petitioner stated she had put the "wrong date" on her resignation letter. This request was denied.

8. On or about May 18, 2020, Petitioner filed a Petition for Hearing requesting the same relief and asserting that she was "aware of rules [and] just made a simple mistake." This administrative proceeding followed.

CONCLUSIONS OF LAW

9. After initial enrollment, movement between the defined benefit Pension Plan and the defined contribution Investment Plan is controlled by Section 121.4501(4)(f), Florida Statutes, which provides in relevant part:

...the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. **Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.** Effective July 1,

2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator....

(Emphasis added.)

10. Pursuant to the express terms of this statute, Petitioner's Investment Plan election must have been received by the Plan Choice Administrator while she was employed in an eligible position.

11. Rule 19-11.007(2), Florida Administrative Code, reiterates the requirement of current employment:

A member may make a valid 2nd election only if the 2nd election is made and processed by the Plan Choice Administrator during the month in which the member is actively employed and earning salary and service credit in an employer-employee relationship consistent with the requirements of section 121.021(17)(b), F.S. **Members on an unpaid leave of absence or terminated members cannot use their 2nd election until they return to FRS-covered employment.** ...It is the responsibility of the member to assure that the 2nd election is received by the Plan Choice Administrator no later than 4:00 p.m. (Eastern Time) on the last business day of the month the member is actively employed and earning salary and service credit.

(Emphasis added).

12. The statute and the rule require that a second election be received and processed by the Plan Choice Administrator during the permitted time frame; since Petitioner's second election was not received while she was actively employed and earning salary and service credit, it was not effective.

13. The record shows that Petitioner intended to move to the Investment Plan prior to resigning from the BCSB employment in February of 2020, and spoke with Ernst and Young representatives via the MyFRS Financial Guidance Line several times in the weeks leading up to her resignation regarding this intent.

14. Petitioner argues that she should be enrolled in the FRS Investment Plan because she made a valid second election by submitting her 2nd Election Enrollment Form on February 5, 2020.

15. Petitioner unfortunately did not make a valid second election, as her last day earning salary and “service credit” in an FRS-eligible position was either February 3 or 4, 2020.

16. Although the evidence supports Petitioner’s intent to move to the FRS Investment Plan, the relevant date pursuant to Section 121.4501(4)(f), Florida Statutes, is when the Plan Choice Administrator received Petitioner’s election, and in this case her Investment Plan election form was not timely received by Respondent.

17. Wagner v. State Board of Administration, No. 19-4954 78PL (Fla. DOAH Jan. 8, 2020) (Recommended Order), a recent case before the State of Florida Division of Administrative Hearings, considered a strikingly similar issue. The Petitioner in Wagner attempted to make her second election through the FRS website, MyFRS.com, from her home computer. Ms. Wagner believed she had clicked all the required buttons to properly execute her election, and the Administrative Law Judge found:

The preponderance of the evidence establishes that Ms. Wagner **intended to make her second election on March 4, 2019**, and to move her retirement account from the Pension Plan to the Investment Plan. The preponderance of the evidence also establishes that Ms. Wagner failed to complete her second election and that Alright Solutions, the Plan Choice Administrator for the Investment Plan **did not receive** her election.

Page 14, Paragraphs 44 and 45. (Emphasis Added.)

The rule reiterates the statute’s admonition that the second election must be received by the Plan Choice Administrator to be effective. It also places a duty on the employee to assure that the Plan Choice Administrator has received the second election before the employee leaves active employment....Even if the server malfunctioned, Ms. Wagner still had a responsibility to follow up once she failed to receive a confirmation statement from the Plan Choice Administrator.

Page 17, Paragraph 52.

18. On February 5, 2020, when the Plan Choice Administrator received the second election form from Petitioner in this proceeding, she was either already separated from FRS-eligible employment or, at best, taking unpaid leave prior to separation. Either way, she was no longer eligible to make her second election, pursuant to Section 121.4501(4)(f), Florida Statutes.

19. Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear and Respondent cannot deviate from them. Balezentis 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").

20. Accordingly, Respondent does not have the authority to allow Petitioner to enroll in the FRS Investment Plan, and therefore cannot grant the relief requested.

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 24th 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
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(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Tanisha Williams



and via electronic mail only to:

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