

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

CHRISTIE EVENSON,)
)
Petitioner,)
)
vs.) SBA Case No. 2019-0161
)
)
STATE BOARD OF ADMINISTRATION,)
)
)
Respondent.)

FINAL ORDER

On August 11, 2019, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, Christie Evenson, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due by August 26, 2019, were filed by either party. 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 that she be allowed to use her second election to transfer from the Florida Retirement System ("FRS") Investment Plan to the FRS Pension Plan without having to pay the statutorily-required "buy-in" amount hereby is denied. Petitioner had claimed that she had been placed in the FRS Investment Plan without her knowledge and

consent. However, Respondent's records established that Petitioner had made an on-line election to be in the FRS Investment Plan. Petitioner received a confirmation of her election, as well as quarterly statements. Petitioner never took any action to switch or undo her initial election. Petitioner could not produce any evidence to demonstrate that her election was taken without her knowledge and consent.

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.

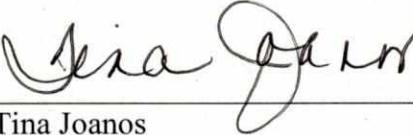
DONE AND ORDERED this 19th day of September, 2019, in Tallahassee, Florida.

**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 Christie Evenson, pro se, both by email transmission at both

_____ and _____ and by U.P.S.
to _____ and by email transmission to Deborah
Minnis, Esq. (dminnis@ausley.com) and Ruth Vafeck (rvafeck@ausley.com , Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301,
this 19th day of September, 2019.



Ruth A. Smith

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

CHRISTIE EVENSON,

Petitioner,

vs.

CASE NO. 2019-0161

0161 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 June 17, 2019, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Christie Evenson, pro se

For Respondent: Deborah S. Minnis
Ausley McMullen, P.A.
PO Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner is properly in the Florida Retirement System (FRS) Investment Plan, and if so, whether Respondent should grant her request to make a second election to transfer to the FRS Pension Plan without having to pay the "buy-in" amount as required by statute.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, 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-8 and 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 motion for extension of time for both sides to submit proposed recommended orders by July 31, 2019, which was granted. Respondent timely filed a proposed recommended order, Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner began employment with the Palm Beach County School Board, an FRS-participating employer, in August 2014. She received a New Employee FRS Benefit Comparison Statement, dated September 19, 2014, which provided her with a side-by-side comparison of the FRS Pension Plan and the FRS Investment Plan to aid her in making her initial election.

2. Petitioner had until January 30, 2015, to make an initial election between the defined benefit Pension Plan and the defined contribution Investment Plan. Petitioner logged into the MyFRS.com website on January 28, 2015, and submitted an election enrolling into the Investment Plan, with an effective date of February 1, 2015, and designating her spouse as a 100% beneficiary.

3. Respondent generated and sent to Petitioner a confirmation of enrollment into the Investment Plan dated February 2, 2015. This confirmation notice also informed Petitioner of her right to cancel her election of the Investment Plan by the last business day of the month following that election.

4. Petitioner was continuously employed with the Palm Beach County School Board from August 2014 until January of 2016. Petitioner took time off from work to earn school credit and returned later that year in a new position as a full-time teacher.

5. Petitioner testified that, when she returned to work with the Palm Beach County School Board as a pre-kindergarten teacher, she had a “shortened type” employment onboarding process with her employer.

6. Petitioner further testified that she “had no idea the teacher’s pension plan would be affected by [her] prior job as an [Early Childhood Professional]. Absolutely no idea.” She further testified that she did not realize she was enrolled in the Investment Plan until January of 2019.

7. During the first few months of 2019, Petitioner made and received a series of phone calls with representatives from the MyFRS Financial Guidance Line regarding her retirement account. During these calls, Petitioner admitted that she had been receiving quarterly statements documenting the performance of her investment account. She also testified at the hearing that she “did receive mail from FRS....”

8. On April 17, 2019, Petitioner filed a Request for Intervention asking to be enrolled in the Pension Plan without having to pay the “buy-in” payment. Petitioner stated that she assumed she was in the Pension Plan and she “did not sign anything to change plans,” when she returned to the Palm Beach County School Board in August 2016. That request was denied.

9. Petitioner filed a Petition for Hearing dated May 9, 2019, again requesting that she be enrolled in the Pension Plan without having to pay the buy-in. This administrative proceeding followed.

CONCLUSIONS OF LAW

10. Respondent's records demonstrate that the action complained of, Petitioner being placed in the Investment Plan, occurred effective February 1, 2015, due to Petitioner having logged into the MyFRS.com website and filled out the electronic form, and after Respondent had sent her a "Choice Kit" and Benefit Comparison Statement outlining the differences between the Investment and Pension Plans. Petitioner was sent a confirmation of her enrollment which provided information on the election cancellation option, as well as quarterly statements showing the activity in her Investment Plan.

11. Petitioner has not come forward with any documentary evidence or audio recording demonstrating that the action taken by Respondent in 2015, namely processing Petitioner's enrollment into the Investment Plan, was done without her knowledge and consent. Rather, all of the documentary evidence demonstrates that Petitioner elected the Investment Plan in January of 2015 via the MyFRS.com website, and never took action to switch or undo her initial election. Section 121.4501(a)1., Florida Statutes, which governs enrollment in the Investment Plan, provides that an eligible employee's election "must be made in writing *or* by electronic means and must be filed with the third-party administrator." (emphasis added). "Electronic means" is defined as "an enrollment or other member directive made on the MyFRS.com website, by telephone or other technology as specified by the SBA." R. 19-11.001(18), Florida Administrative Code.

12. An electronic signature on an online enrollment form is equivalent to a handwritten signature for purposes of validity, enforceability, and admissibility. Rule 19-11.006(2)(h), which sets out additional enrollment procedures for new hires, provides that "[a] member submitting an enrollment by electronic means with an electronic signature is deemed to have agreed that *the electronic signature is equivalent to a handwritten signature* for purposes of validity,

enforceability, and admissibility.” (emphasis added). An electronic signature can be “any symbols or other data in digital form attached to an electronically transmitted document as verification of the sender’s intent to sign the document.” R. 19-11.001(21), F.A.C. “By submitting an electronic signature, a member acknowledges that the electronic signature is the same as a handwritten signature for the purposes of validity, enforceability, and admissibility.” *Id.* Here, Respondent’s records reflect that Petitioner elected to enroll in the Investment Plan via “electronic means,” and her “electronic signature” accompanying that online enrollment has the same force and effect as a handwritten signature on a hard-copy election form.

13. Petitioner also contends that nobody informed her that she “would be automatically enrolled in the investment [plan] when [she] became a teacher with the county,” upon her return in August 2016. Nonetheless, Rule 19-11.001(38), Florida Administrative Code, defines a “member” to include an employee who elected to participate or defaulted into the Investment Plan “as a result of current *or previous employment* with an FRS-covered employer.” (emphasis added). Thus, even though Petitioner terminated (and subsequently returned to) employment with the same FRS-participating employer, she remained a “member” of the FRS Investment Plan. In addition, neither Chapter 121, Florida Statutes, nor the rules implementing Chapter 121, provide that switching from a part-time position to a full-time teaching position entitles a member to a new, initial election period. When Petitioner left her position with the Palm Beach County School Board as an Early Childhood Professional and then returned as a pre-kindergarten teacher, Respondent had no authority to require her employer to provide her with additional information regarding the potential impact of her job change on her retirement plans and options. Instead, Petitioner is entitled to utilize her remaining second election to transfer to the Pension Plan if she wishes to make the switch from the Investment Plan to the Pension Plan.

14. Movement between the two FRS plans is governed by Section 121.4501(4)(f), Florida Statutes. This section states, in pertinent part:

(f) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, 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 and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

§ 121.4501(4)(f), Fla. Stat. (emphasis added).

15. Section 121.021(10), Florida Statutes explicitly provides that “[e]mployers are not agents of the [Department of Management Services], the [State Board of Administration], or the Division of Retirement, and the department, the state board, and the division are not responsible for erroneous information provided by representatives of employers.” Thus, although Respondent does provide information, training, and resources to FRS-participating employers such as the Palm Beach County School Board, it has no authority to require such employers, for instance, to provide additional retirement information to its employees who are changing positions. Because Respondent has no such authority and must comply with the statutory requirements regarding enrollment and elections as set forth herein, Petitioner's assertion that she did not realize her election during her term as an Early Childhood Professional would impact her retirement options when she became a teacher simply does not provide any legal basis for the Respondent to accommodate her request to switch to the Pension Plan without a “buy-in” requirement.

16. Section 121.4501(4)(f)3. requires that Petitioner pay the required “buy-in” amount in the event she elects to switch from the Investment Plan to the Pension Plan. This section states:

Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

§ 121.4501(4)(f)3., Fla. Stat. (emphasis added).

17. Florida Statutes creating and governing the Florida Retirement System, and Petitioner’s rights and responsibilities under them, are clear and the SBA 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”).

18. Petitioner’s phone calls to the MyFRS Financial Guidance Line show that she recognized she might have submitted an initial election to the Investment Plan without fully understanding her choice. Nonetheless, at the time Petitioner made her initial election to join the Investment Plan in 2015, she had access to several educational resources including the Plan Choice Kit, toll-free MyFRS Financial Guidance Line, the MyFRS.com website, and her New Employee FRS Benefit Comparison Statement. These educational resources inform members that they have a one-time opportunity to switch from the Investment Plan to the Pension Plan, but that they must “buy-back” into the Pension Plan with the money in their Investment Plan account and

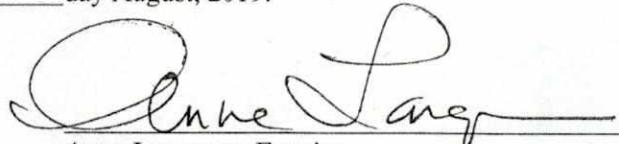
that if the buy-back cost exceeds the value of their Investment Plan account, they must make up the difference with other financial resources to complete the transaction.

19. It is unfortunate that Petitioner may not have fully understood the import of the choices she made, but there is no statutory provision authorizing a switch from the Investment Plan to the Pension Plan without using a second election and paying the “buy-in” amount. Pursuant to section 121.4501(4)(f)3., Florida Statutes, if Petitioner chooses to utilize her second election to switch to the Pension Plan, she must do so in accordance with the statutory requirement that she pay the “buy-in” amount associated with that switch. Respondent does not have the authority to waive this statutory requirement and grant Petitioner’s request in this case.

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 11th day August, 2019.



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
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