

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JERI KAUPP,)	
)	
Petitioner,)	
)	
vs.)	DOAH Case No. 23-2579
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
)	
)	

FINAL ORDER

On October 26, 2023, Administrative Law Judge Brandice D. Dickson (hereafter “ALJ”) 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, Jeri Kaupp and upon counsel for the Respondent. Petitioner and Respondent both timely filed a Proposed Recommended Order. No exceptions 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, Defined Contribution Programs for final agency action.

STATEMENT OF THE ISSUE

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

PRELIMINARY STATEMENT

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact of an Administrative Law Judge (“ALJ”) cannot be rejected or modified by a reviewing agency in its final order “...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence....” See Section 120.57(1)(l), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd.*, 652 So.2d 894 (Fla. 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm.*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1st DCA 1987). A seminal case defining the “competent substantial evidence” standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as “such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred” or such evidence as is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.”

An agency reviewing an ALJ’s recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4th DCA 1993). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the ALJ’s Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to “reject or modify [an administrative law judge’s] conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.” Florida courts have consistently applied the “substantive jurisdiction limitation” to prohibit an agency from reviewing conclusions of law that are based upon the ALJ’s application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the ALJ’s interpretation of a statute or rule over which the Legislature has provided the agency with administrative authority. *See Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140, 1141-42 (Fla. 2d DCA 2001); *Barfield v. Dep’t of Health*, 805 So.2d 1008, 1011 (Fla. 1st DCA 2001). When rejecting or modifying any conclusion of law, the reviewing agency must state with particularity its reasons for the rejection or modification and further must make a finding that the substituted conclusion of law is as or more reasonable than that which was rejected or modified.

FINDINGS OF FACT

The State Board of Administration adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The State Board of Administration adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner was properly defaulted into the FRS Investment Plan as she could not demonstrate that she made a timely election to remain in the FRS Pension Plan. As such, Petitioner's request for relief 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 20th day of January 2024, 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.



Nell Bowers,
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by email transmission to Jeri Kaupp, *pro se*, at [REDACTED] and by UPS to [REDACTED] and by email transmission to Deborah Minnis, Esq., dminnis@ausley.com and Ian C. White, iwhite@ausley.com; jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 30th day of January 2024.



Ruth A. Smith
Assistant General Counsel
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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

JERI KAUPP,

Petitioner,

vs.

Case No. 23-2579

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference on August 29, 2023, before Brandice D. Dickson, Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jeri Lynn Kaupp, pro se



For Respondent: Deborah Stephens Minnis, Esquire
Ausley McMullen, P.A.
Post Office Box 391
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

Whether Petitioner, Ms. Kaupp, was properly defaulted into the Florida Retirement System (“FRS”) Investment Plan upon the expiration of her initial election period after she was hired by the Pasco County Board of County Commissioners (“PCBCC”) in August 2022.

EXHIBIT A

PRELIMINARY STATEMENT

The State Board of Administration (“SBA”) referred Petitioner’s Petition for Hearing to the Division of Administrative Hearings on July 10, 2023. On August 21, 2023, the matter was transferred to the undersigned.

The final hearing was held on August 29, 2023, as noticed. Ms. Kaupp testified on her own behalf and presented the testimony of Shane Mason, Rebecca Walton, and Mary Padilla. Petitioner’s Exhibits 1 through 13 were admitted into evidence. The SBA presented the testimony of Allison Olson, its Director of Policy, Risk Management, and Compliance. Respondent’s Exhibits 1 through 5 were admitted into evidence.

On October 2, 2023, a one-volume Transcript of the proceedings was filed. The parties timely filed their proposed recommended orders which have been considered in the preparation of this Recommended Order.

All references to Florida Statutes are to the 2022 version unless otherwise stated.

FINDINGS OF FACT

1. The FRS offers two retirement plans to eligible employees: the Pension Plan, a defined benefit plan; and the Investment Plan, a defined contribution plan. §§ 121.091 and 121.4501, Fla. Stat.
2. Petitioner was employed by the PCBCC effective August 1, 2022.
3. Because the PCBCC is an FRS-participating employer, Petitioner was eligible to elect membership in either the Pension Plan or the Investment Plan and had until 4:00 p.m., Eastern Time, on April 28, 2023, to make that election.
4. Elections can be made by phone, fax, U.S. Mail, or electronically through FRS websites. Having received no election from Petitioner by

April 28, 2023, the expiration of her initial election period, the SBA's Plan Choice Administrator defaulted Ms. Kaupp into the Investment Plan.

5. Upon receiving notice of the default, Petitioner promptly submitted a Request for Intervention seeking a reversal of her default. Her complaint to the SBA stated she had filled out the election form, selected the Pension Plan, signed and dated it August 23, 2022, and gave it to a PCBCC Human Resources employee to effectuate her election within the initial election period.

6. Allison Olson is the SBA's Director of Policy, Risk Management, and Compliance and is tasked with, among other job duties, investigating FRS Investment Plan member complaints. Ms. Olson testified that during her investigation of Petitioner's complaint, she contacted the SBA's Plan Choice Administrator who confirmed that it had received no election for Ms. Kaupp after a search of its records.

7. Subsequently, Ms. Olson emailed Laura Weeks, the Senior Human Resources Employment Coordinator for the PCBCC and asked whether her office had a copy of Petitioner's completed enrollment form, and, if so, whether it had been "sent to the address or fax number listed on the form?" Ms. Weeks responded within the hour that her office "does not have any record of an election form being submitted by Ms. Kaupp. Her file has been checked and we do not have a copy."

8. Ms. Olson informed Petitioner that the SBA had completed its investigation and could find no record of an election having been made by, or on behalf of, Ms. Kaupp during the initial election period, thus her default into the Investment Plan would stand.

9. Ms. Kaupp timely filed a Petition for Hearing wherein she requested membership in the Pension Plan retroactive to her first day of employment based on her August 23, 2022, enrollment form being given to a PCBCC Human Resources representative and because, during her initial choice

period, she confirmed with her Human Resources representative(s) she was in the Pension Plan.

10. At the final hearing, Petitioner testified that she attended a benefits fair sponsored by the PCBCC on August 23, 2022. She filled out multiple onboarding forms for enrollment into various benefit programs (e.g., vision, health, life insurance) and gave them to a PCBCC Human Resources representative who entered "all of my information into the system" during the fair. Petitioner understood that she would not receive confirmations of enrollment into her chosen benefits until a later time due to the demands of the number of people attending the benefits fair.

11. Among the forms Petitioner filled out at the benefits fair and gave to a PCBCC Human Resources representative was the FRS EZ Retirement Plan Enrollment Form. It was Petitioner's intent that this form be used to enroll her in the FRS Pension Plan, and she completed the form correctly. On the face of the form, it advises enrollees to submit the completed form by fax (at a number provided), U.S. Mail (at an address provided) or through the websites ChooseMyFRSplan.com or MyFRS.com (using a Personal Identification Number). The form does not prohibit someone other than the enrolling employee from submitting the election, but it states:

Plan Choice Deadline - You are responsible for ensuring your election is received by the Plan Choice Administrator on or before 4:00 p.m. ET on the last business day of the 8th month following your month of hire.

* * *

Default Enrollment - If you do not submit a choice, the Investment Plan will be considered your initial election by default. Exception: If you are enrolled in the Special Risk Class, the Pension Plan will be considered your initial election by default.

* * *

Confirmation Statement – You will receive a confirmation statement once your Enrollment Form has been processed. The confirmation statement will be mailed to your address on file as supplied by your employer or delivered electronically through the MyFRS.com website. Allow 2 to 3 weeks to receive it. Notify your employer of any address change.

12. A few days after the benefits fair, Petitioner received an interoffice envelope with photocopies of her various benefit enrollment forms; as well as her original FRS EZ Retirement Plan Enrollment Form. The photocopies bear indicia of someone having taken the step to submit Petitioner's enrollment information; the returned FRS EZ Retirement Plan Enrollment Form bears no such indicia. *Compare* Petitioner's Exhibit 1 with Petitioner's Exhibit 10.¹

13. Petitioner acknowledges she received multiple reminders from the SBA to make her election during her initial election period. Because Ms. Kaupp believed she had effectively made her election, she disregarded them.

14. Petitioner did, however, follow up with PCBCC Human Resources three times by telephone during her initial election period to confirm she was in the Pension Plan. During that period, she also logged into the Pasco County employee self-service system which reflected her membership in the Pension Plan.

15. To her credit, Ms. Kaupp testified it was her ultimate responsibility to ensure the SBA's Plan Choice Administrator received her election during the initial election period. Petitioner also admits she knew the PCBCC Human Resources representative was not the administrator, but candidly testified that she assumed the representative made the election for her.

¹ The notations on Petitioner's enrollment forms are not taken for the truth of the matter asserted; rather, they are taken for the general purpose of showing some processing, or not, by PCBCC Human Resources. Some notations are handwritten dates of either September 8 or 14, 2022, along with handwritten initials/signatures. Two of the forms show a signature and date in a space reserved to indicate information was entered in a system.

16. There is no record evidence of anyone, including the PCBCC Human Resources representative to whom Petitioner gave her enrollment form, having submitted Petitioner's initial election information to the SBA's Plan Choice Administrator indicating her choice to be in the Pension Plan. Petitioner later utilized her "Second Election" to transfer from the Investment Plan to the Pension Plan effective June 1, 2023, and she received a confirmation statement at her mailing address to that effect.
§ 121.4501(4)(f), Fla. Stat.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes.

18. Petitioner bears the burden of proving by a preponderance of the evidence that she is entitled to enrollment into the FRS Pension Plan retroactive to her first day of employment.

19. Enrollment of employees into the FRS's Pension Plan is governed by application of section 121.4501(4)(b), Florida Statutes, which states, in pertinent part:

1. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position commencing on or after January 1, 2018, or who did not complete an election window before January 1, 2018, any such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the eighth month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election 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.

2. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

3.a. Except as provided in subparagraph 4., if the employee fails to make an election to either the pension plan or the investment plan during the 8-month period following the month of hire, the employee is deemed to have elected the investment plan and shall default into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

20. By operation of section 121.4501(4)(b)1., Petitioner was placed in the Pension Plan upon her first day of employment with the PCBCC and remained in that plan until her default into the Investment Plan some eight months later. As such, each time she confirmed her membership in the Pension Plan during her initial election period, such confirmations were accurate and did not affect Petitioner's obligation to make an effective election into the Pension Plan consistent with her desire to be in that plan. *Williams v. State Board of Admin.*, Case No. 21-0001 (Fla. DOAH Apr. 5, 2021; Fla. SBA Jun. 22, 2021).

21. At any time during her initial election period, Petitioner had the statutory right to elect to stay in the Pension Plan or to enroll in the Investment Plan. The filing of that choice *with the SBA's third-party administrator*, however, is statutorily required in order to make an effective election.

22. Florida Administrative Code Rule 19-11.006, the SBA's rule governing enrollment procedures, requires elections to be *received* by the Plan Choice Administrator in order to finalize an election. That rule states, in pertinent part:

(2) Specific Enrollment Procedures.

(a) All newly-hired employees enrolled in the FRS that are not filling a Special Risk Class position may make a plan choice and elect to enroll in the Investment Plan or Pension Plan no later than 4:00 p.m. (Eastern Time) the last business day of the 8th month following the employee's month of hire. If no plan choice is filed by 4:00 p.m. (Eastern Time) on the last business day of the month following 8th employee's month of hire, the employee will default to the Investment Plan and will be considered the employee's initial plan choice or first election.

* * *

(f)1. The enrollment by form or electronic means shall be complete and the election shall be final if all the required information is clearly indicated and if the enrollment is received by the Plan Choice Administrator by 4:00 p.m. (Eastern Time) on the last business day of the 8th month following the date of hire. The form shall be transmitted via mail, courier, online or by fax, as provided on the form. It is the responsibility of the member to ensure that the enrollment form is received by the Plan Choice Administrator no later than 4:00 p.m. (Eastern Time) on the last business day that the member is earning salary and service credit, or the last business day of the 8th month following the date of hire, whichever first occurs.

23. The submission by Petitioner of her election form to the PCBCC Human Resources representative was insufficient to effectuate her election because the PCBCC is not the SBA's Plan Choice Administrator. It is unfortunate that the PCBCC representative implied, and/or the Petitioner inferred, the election was, or would be, made on Ms. Kaupp's behalf at the benefits fair as it seems she relied on that erroneous representation. However, section 121.021(10), Florida Statutes, provides:

(10) "Employer" means any agency, branch, department, institution, university, institution of higher education, or board of the state, or any county agency, branch, department, board, district school board, municipality, metropolitan planning organization, or special district of the state which participates in the system for the benefit of certain of its employees, or a charter school or charter technical career center that participates as provided in s. 121.051(2)(d). Employers are not agents of the department, the state board, 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.

24. Because there is no evidence Petitioner's election was filed with, or received by, the SBA's Plan Choice Administrator prior to the expiration of her initial election period, Petitioner has failed to demonstrate she made a timely election to remain in the FRS Pension Plan.

25. The SBA does not have the authority to enroll Petitioner in the FRS Pension Plan retroactive to her first day of employment because its administrator did not receive her election during Petitioner's initial election period. *Buholz v. State Board of Admin.*, Case No. 21-0084 (Fla. DOAH Apr. 20, 2021; Fla. SBA Jun. 17, 2021).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the State Board of Administration enter a final order denying the relief requested.

DONE AND ENTERED this 26th day of October, 2023, in Tallahassee, Leon County, Florida.



BRANDICE D. DICKSON
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of October, 2023.

COPIES FURNISHED:

Deborah Stephens Minnis, Esquire
(eServed)

Jeri Lynn Kaupp
(eServed)

E. Lamar Taylor, Interim Executive
Director & Chief Investment Officer
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.