

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

EDWARD MOSES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2020-0146
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
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**FINAL ORDER**

On June 18, 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, Edward Moses, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent timely 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 July 3, 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 that he be fully vested in the funds in his Florida Retirement System ("FRS") Investment Plan account that had been transferred from his FRS Pension Plan account when he used his second election to switch plans, as well as in the investment income and interest that accrued on such transferred funds, is denied since Petitioner

terminated his FRS employment at a time when he had only a total of 5.16 years of the then required 6 year service credit vesting threshold.

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 28 day of August, 2020, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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**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.



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Tina Joanos  
Agency Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent to Edward Moses, pro se, both by email transmission at

  
and by email transmission to Deborah Minnis, Esq., [dminnis@ausley.com](mailto:dminnis@ausley.com) and Ruth Vafek [rvafek@ausley.com](mailto:rvafek@ausley.com), [jmcvaney@ausley.com](mailto:jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 28 day of August, 2020.



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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

EDWARD MOSES,

Petitioner,

vs.

CASE NO. 2020-0146

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding conducted by telephone on May 11, 2020, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner: Edward Moses, pro se (telephonically)

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

**STATEMENT OF THE ISSUE**

The issue is whether Petitioner is vested in, and therefore entitled to receive as a distribution, (1) the opening account balance that was deposited into his Investment Plan account as a result of his transfer from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan effective March 1, 2016, or (2) the investment income and interest that accrued to those transferred contributions.

**EXHIBIT A**

### **PRELIMINARY STATEMENT**

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. 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-5 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on May 18, 2020. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

### **UNDISPUTED MATERIAL FACTS**

1. The Petitioner was originally employed in an FRS-eligible position with the Hillsborough County Aviation Authority (HCAA) beginning in January of 1995. At that time, the Pension Plan was the only retirement program available for eligible employees. Petitioner terminated his employment with the HCAA in December of 1995.

2. In December of 2015, Petitioner became employed with the Pasco County Board of County Commissioners and had until May 31, 2016 to make an initial election between the Pension Plan and the Investment Plan.

3. On February 9, 2016, Petitioner made his initial election to enroll in the Investment Plan, via the MyFRS Financial Guidance Line, which was effective March 1, 2016. On March 31, 2016, the present value of Petitioner's Pension Plan benefit, in the amount of \$2,614.91, was transferred to his Investment Plan account.

4. On January 28, 2020, Petitioner terminated employment with the Pasco County Board of County Commissioners. At that time he had accumulated 5.16 years of FRS service credit.

5. On or about April 2, 2020, Petitioner submitted a Request for Intervention requesting that he be permitted to “roll over” the full \$10,458.00 balance of his Investment Plan account at that time, as he had learned that a portion of that sum, namely, \$3,416.42, was traceable to the Pension Plan present value deposit in 2016, and therefore not vested. Petitioner’s request was denied.

6. On or about April 11, 2020, Petitioner filed a Petition for Hearing, requesting that he be deemed fully vested in the Pension Plan deposit and resulting investment gains, or, at a minimum, the investment gains, totaling \$801.51 as of that date. This administrative proceeding followed.

#### CONCLUSIONS OF LAW

7. Petitioner asserts that his most recent employer caused him to terminate his employment prior to his intended retirement date, and requests that he be deemed fully vested in the funds transferred from the Pension Plan to his Investment Plan account in 2016, along with earnings from those funds.

8. Section 121.4501(6)(c), Florida Statutes, provides in relevant part:

With respect to amounts contributed by an employer and transferred from the pension plan to the investment plan, **plus interest and earnings**, and less investment fees and administrative charges, a member shall be vested in the amount transferred **upon meeting the vesting requirements for the member’s membership class as set forth in s. 121.021(45)**. The third-party administrator shall account for such amounts for each member. The division shall notify the member and the third-party administrator when the member has satisfied the vesting period for Florida Retirement System purposes.

(Emphasis added).

9. Section 121.021(45), Florida Statutes addresses **only** Pension Plan vesting, not Investment Plan vesting, which currently occurs after one year of employment service credit.

Section 121.021(45) provides in pertinent part as follows:

“Vested” or “vesting” means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee’s class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(a) Effective July 1, 2001, through June 30, 2011, a 6-year vesting requirement shall be implemented for the Florida Retirement System Pension Plan:

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2. Any member not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of **6 years of creditable service** if such member is employed in a covered position for at least 1 work year after July 1, 2001.

(Emphasis added).

10. Section 121.4501 clearly states that, for vesting purposes, transfers from the Pension Plan to the Investment Plan include interest and earnings thereon, and Section 121.021 mandates a six-year vesting period for employees such as Petitioner to be entitled to receive the benefits traceable to such transfers.

11. Petitioner here does not have the requisite six years employment required to vest in the amounts transferred to the Investment Plan.

12. If Petitioner’s former employer forced his termination earlier than he had planned, when he was so close to reaching the six year vesting requirement, this is very unfortunate for him, but outside of anything that can be considered in this proceeding. Petitioner did not complete the legislatively-mandated six years of service credit, and therefore is not vested in the amount transferred from the Pension Plan to his Investment Plan account, nor on interest or

earnings from that amount. The applicable statutes do not permit an alternative finding or recommendation.

**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 18<sup>th</sup> day June, 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](mailto:Tina.joanos@sbafla.com)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
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(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Edward Moses



and via electronic mail only to:

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Ruth E. Vafek, Esquire  
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