

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JESSICA DETRO,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-2341
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
_____)	

FINAL ORDER

On July 6, 2012, 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, Jessica Detro, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions, which were due on July 23, 2012. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

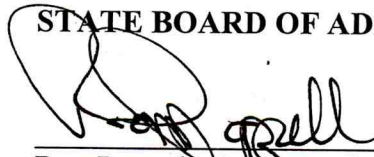
ORDERED

The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner's request that she be entitled to renewed membership in the Florida Retirement System (FRS), as retiree who was rehired by an FRS-participating employer in a regularly established position after July 1, 2010, hereby 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 30th day of July, 2012, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Ron Poppell, Senior Defined Contribution
Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

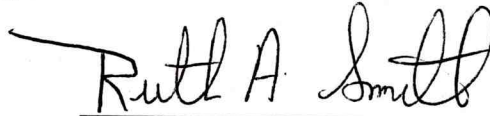
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Jessica Detro, pro se, [REDACTED] 32164, and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 30th day of July, 2012.



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

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GENERAL COUNSEL'S OFFICE

JESSICA DETRO,

Petitioner,

vs.

Case No.: 2012-2341

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 March 8, 2012, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Jessica Detro, *pro se*

[REDACTED]

For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to renewed membership in the Florida Retirement System (FRS).

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on her own behalf. The Respondent presented the testimony of Daniel Beard, SBA Director of Policy, Risk Management, and Compliance. Petitioner's Exhibit 1 and Respondent's Exhibits 1 through 4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency and provided to the parties, who were invited to submit proposed recommended orders within 30 days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner was a member of the FRS by virtue of her employment as a teacher with the Orange County School Board in 2004.
2. Petitioner terminated this employment in 2005, returned to school for an advanced degree, married, moved and sought further employment as a teacher. When she was unable to find work in the public schools, she took a teaching position in a private school.
3. In 2007, Petitioner took a total distribution from her FRS Investment Plan account in the form of a rollover to a private retirement account.
4. Before taking the distribution, Petitioner spoke with a MyFRS Financial Guidance Line representative and was led through a colloquy that set out the consequences of this action, including that she would be considered "retired" if she took a distribution from her Investment Plan account.
5. Petitioner eventually found a position with the Flagler County School Board for the 2011-2012 school year and relocated her family to that area to take the job. She then learned that, as a rehired retiree, she would not be eligible to participate in the FRS.

6. Petitioner filed a petition for hearing requesting that she be granted renewed membership in the FRS, and this administrative proceeding followed.

CONCLUSIONS OF LAW

7. An FRS participant enrolled in the Investment Plan who has terminated employment and taken a distribution as provided in Section 121.591, Florida Statutes is considered a “retiree” by operation of law. § 121.4501(2)(k), Fla. Stat. (2007).

8. During the 2009 legislative session, the Florida Legislature revised Section 121.122, Florida Statutes to exclude from renewed membership in the FRS any retiree who becomes reemployed on or after July 1, 2010. The amended statute states in pertinent part:

121.122. Renewed membership in system

(2) A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, is not eligible for renewed membership.

§ 121.122, Fla. Stat. (2009).

9. Petitioner was properly advised by the MyFRS Financial Guidance Line representative that she would be considered “retired” because she took a rollover distribution from her Investment Plan account after she terminated FRS-covered employment. See § 121.591(1)(c)2., Fla. Stat. (including “rollover” as one of the authorized Investment Plan distribution methods). Under the express terms of the applicable statute, a retiree who is initially reemployed with an FRS participating employer on or after July 1, 2010 is ineligible to participate in the retirement system. Petitioner in this case was reemployed in 2011, well after the statutory proscription took effect.

10. The Petitioner argues that application of the 2009 amendment to her is unduly harsh because she was not aware that she would be denied renewed FRS membership when she

made the decision to retire from the FRS in 2007, and this is manifestly true: neither she nor anyone else could have been aware that the legislature would change the law in this way. But the history of the passage of the 2009 amendment makes clear that the legislature was aware of the potentially harsh results the change in the law could have on early retirees. As the agency affected by a change in the statute it administers, Respondent submitted an analysis of House Bill 479 to the Full Appropriations Council on General Government & Health Case which stated:

HB 479 would also close the renewed membership class to retirees of a state-administered retirement system initially reemployed by a Florida Retirement System participating employer on or after January 1, 2010. However, this bill would require employer contributions to be paid on the salary of reemployed retirees who are not enrolled as renewed members to maintain the funding base for the Health Insurance Subsidy Program. In addition, this bill would require the employer to pay any unfunded actuarial liability portion of the employer contribution rate for active members if an unfunded actuarial liability cost reemerges. The bill does not provide for the paying of the Investment Plan administrative contribution.

Retirees initially employed before January 1, 2010, would continue their renewed membership and employers would continue to owe the total employer contribution rate for these renewed members. As the number of retirees who are enrolled as renewed members in the FRS is reduced over time, this would gradually reduce the overall cost to employers. In the longer-term, these changes could result in savings to the FRS Pension Plan by limiting future liabilities for renewed membership and by altering retirement patterns based upon plans for returning to work within a few months of terminating employment. The actual impact would have to be determined by an actuarial special study conducted by the Division of Retirement's consulting actuary.

Closing the Renewed Membership Class to future participation would impact not only those reemployed retirees who retired at normal retirement, but it would also impact those who retired early.

Under the FRS Pension Plan a member becomes vested with six years of service. A retiree may take an early retirement if vested and within 20 years of the normal retirement age. However, in

doing so the benefit is reduced by five percent for each year remaining before the retiree reaches normal retirement age. For retirees of the Special Risk Class, the earliest a member could receive an early retirement benefit would be at age 35 and one month. For retirees of the other membership classes, early retirement benefit would be at age 42 and one month if vested. These early retirement retirees would be ineligible for renewed membership should they return to FRS employment.

Under the FRS Investment Plan, a participant vests after only one year of service. If a member terminates and takes a distribution, he or she is considered a retiree and ineligible for renewed membership in the FRS. Conceivably, a retiree who participated in the Investment Plan for one year and took a distribution at the age of 24 could later return to work for an FRS employer for 30 years or more and never be eligible for a retirement benefit. This could impact the ability of FRS employer's (sic) to recruit employees in the future.

Florida State Board of Administration Report to Full Appropriations Council on General Government & Health Care on HB # 479, Feb. 16, 2009, p. 5 (Emphasis added). It appears that the Legislature was made aware of the harsh results which could be caused by absolutely precluding those deemed by operation of law to be retirees from ever again participating in the FRS, and with this awareness, enacted Section 121.122 as it currently reads.

11. Respondent SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450 (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA 1998).

12. Denial of the Petitioner's request in this case is consistent with the denial of a number of other similar petitions Respondent has received from former FRS members who were

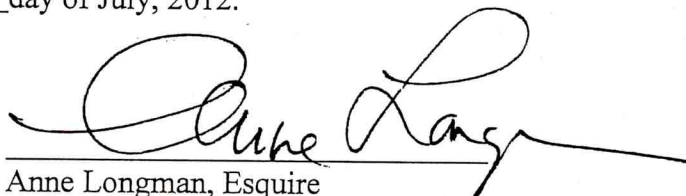
retired by operation of law before the 2009 amendment was enacted. See Blaesser v. State Board of Administration, Case No. 2011-2106 (Recommended Order, October 6, 2011; Final Order October 28, 2011).

13. It is unfortunate that in taking out the relatively small amount of money in her Investment Plan account, Petitioner became retired by operation of law, and because of intervening statutory changes is now precluded, absent further action by the legislature, from ever again participating in the FRS. Petitioner was warned in 2007 of the effect of taking a distribution, but that effect changed when Section 121.122 was amended in 2009 to preclude membership to rehired retirees.

RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 6th day of July, 2012.



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: 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, which 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 with:
Agency Clerk
Office of the General Counsel
Florida State Board of Administration
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
(850) 488-4406

This 6th day of July, 2012.

Copies furnished to:

Jessica Detro


Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301