

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

LAURA HAUSFELD,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2014-3147
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On April 23, 2015, 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, Laura Hausfeld, 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 May 8, 2015, were filed by either party. 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) is hereby adopted in its entirety. The Petitioner's request that she be allowed to rescind her second election that enabled her to transfer from the Florida Retirement System ("FRS") Pension Plan to the FRS Investment Plan, where such request was submitted almost two (2) years after her second election form was filed, 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.

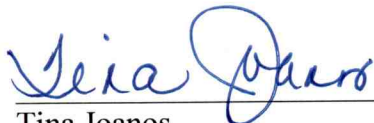
DONE AND ORDERED this 7th day of July, 2015, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman
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.

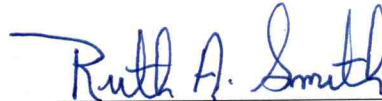


Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

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

_____ and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 7th day of July, 2015.



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

LAURA HAUSFELD,

Petitioner,

vs.

Case No.: 2014-3147

STATE BOARD OF ADMINISTRATION,

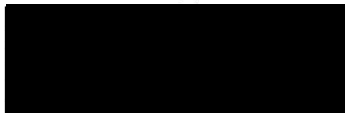
Respondent.

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 February 20, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:



For Respondent:

Brian A. Newman, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

EXHIBIT A

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to rescind her second election transfer from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1-9 were admitted into evidence without objection, and Petitioner's Exhibit 1 was admitted without objection. On April 17, 2015, I received supplemental materials provided by Petitioner. Respondent submitted a transcript of Petitioner's call to the MyFRS Financial Guidance Line on October 24, 2014 as Respondent's Exhibit 10.

A transcript of the informal 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 proposed recommended order on April 20, 2015. I have made all materials submitted to date a part of the record, reviewed and considered them in making this recommendation.

MATERIAL UNDISPUTED FACTS

1. Petitioner is employed with the Broward County School Board, an FRS-covered employer. She began her employment with the Broward County School Board in 1995 and was a member of the FRS defined benefit Pension Plan.

2. After the defined contribution Investment Plan was created, Petitioner was given a deadline of November 30, 2002 to make an initial plan election but defaulted to continued Pension Plan membership effective December 1, 2002, as did all FRS participants who did not make an affirmative election.

3. In 2012, Petitioner became interested in moving from the Pension Plan to the Investment Plan because she was considering leaving her employment with the Broward County School Board.

4. Petitioner called the MyFRS Financial Guidance Line on October 16, 2012, to get advice on the process to switch retirement plans. During the call, Petitioner was told by an Ernst and Young financial planner by the name of Eric that "the rule is, you must be employed and earning service credit when the second election... is made."

5. Petitioner executed and submitted a 2nd Election Retirement Plan Enrollment Form on October 16, 2012. The second election form Petitioner signed states in bold type:

I understand that my one-time 2nd Election is irrevocable and that I must remain in the plan I chose in Section 1 until my FRS-covered employment ends and I retire.

6. After submitting this form to the SBA, Petitioner received a second election confirmation notice. The confirmation notice advised Petitioner to call the MyFRS Financial Guidance Line no later than 4:00 p.m. on the last business day of the month following her election month if she wanted to cancel her move to the Investment Plan. Petitioner did not make any call to the MyFRS Financial Guidance Line in 2012 after submitting her second election form. Her next call to the MyFRS Financial Guidance Line was not until September of 2014. On September 18, 2014, Petitioner called the MyFRS Financial Guidance Line, spoke to an Aon

Hewitt representative by the name of Angel, and said that she wanted to rescind her second election. She was told it was too late to do so.

7. Petitioner states that she spoke with someone she contacted through the MyFRS Financial Guidance Line by the name of Tyrone before she made the call of October 16, 2012. Petitioner contends that Tyrone advised her erroneously that she had until the end of the month that she received a paycheck to make a second election, regardless of whether she was actively working at that time.

8. There is no way to verify this assertion. Calls to the Guidance Line can be routed to SBA third party contractors, who at this time were Ernst & Young and Aon Hewitt, or to the Division of Retirement. Telephone calls to the Division of Retirement are not recorded, and there is no recording of Petitioner's call to Tyrone.

9. Petitioner testified that she made the decision to submit her second election form when she did based on the advice she received from Eric on October 16, 2012, that she had to submit a second election form before she terminated employment with her FRS-covered employer. The advice Petitioner received from Eric is accurate and also is reflected on the second election form that Petitioner signed, which states, "this form must be received by the FRS Plan Choice Administrator prior to your date of termination or it will be invalid."

CONCLUSIONS OF LAW

10. Movement between the Pension Plan and Investment Plan is governed by Section 121.4501(4)(g), Florida Statutes. That section states, in pertinent part:

(g) After the period during which an eligible employee had the choice to elect the defined benefit program or the Public Employee Optional Retirement Program, 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 defined benefit program to the Public Employee Optional Retirement Program or from the Public Employee Optional Retirement Program to the defined benefit program. Eligible employees may elect to move between Florida Retirement System programs only if they are earning service credit in an employer-employee relationship consistent with the requirements under s. 121.021(17)(b), excluding leaves of absence without pay.

§ 121.4501(4)(g), Fla. Stat. (2012) (emphasis added).

11. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans. Because Petitioner used her one-time second election in 2012, she has exhausted her only opportunity to move between plans. Under certain circumstances a participant can rescind a second election if this is done before the deadline established by the applicable rule. The grace period provided under Rule 19-11.007, Florida Administrative Code, is as follows:

(6) Grace Period.

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, the SBA will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by a telephone call to the toll free MyFRS Financial Guidance Line at: (866)446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, or to the Division, no later than 4:00 p.m. Eastern Time on the last business day of the election effective month.

(b) If the request to reverse the election is made timely and the SBA finds the election was made in error, the member will be required to sign a release and return it to the SBA no later than 4:00 p.m., Eastern Time, on the last business day of the election effective month prior to the election's being officially reversed. Upon receipt of the release, the Division and the Plan Choice Administrator will be directed to do the following:

1. The Division will revise its database to reflect the election has been reversed.

2. The Plan Choice Administrator will send the member written confirmation that the election has been voided.

3. The member will make a new election consistent with subsections (3) and (4), above.

(c) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(9)(f) 3., F.S.

Rule 19-11.007(6), Fla. Admin. Code.

12. Under the above rule, Petitioner had until the time the present value of her Pension Plan benefit was transferred to her Investment Plan account, which in this case was October 30, 2012, to rescind her second election. Petitioner was advised of this deadline in the confirmation notice she received shortly after submitting her second election form. Petitioner made no attempt to reverse her second election in 2012, and the first record of her dissatisfaction with her switch to the Investment Plan is her call to the MyFRS Financial Guidance Line on September 18, 2014, almost two years later.

13. Petitioner contends she did not have as much time as she needed to make her second election decision in 2012 and that she received conflicting advice. All of the calls of which there is documentary evidence reflect her being given accurate advice. If she was told erroneously that she could wait until the end of the month of terminating her employment to switch plans, this is erroneous but irrelevant, as she did not follow this advice, did submit a timely effective second election, and apparently did not terminate her employment in any event.

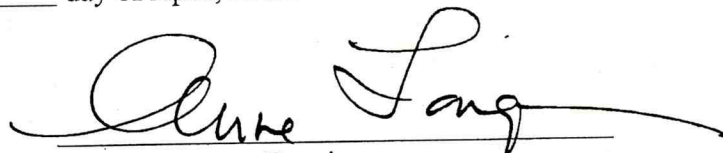
14. The SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System. Balezantis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, are entitled to great weight

and 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). Petitioner clearly has had a difficult situation during her last several years of employment and regrets having moved from the Pension Plan to the Investment Plan, but she has been unable to demonstrate entitlement to the relief she has requested under the applicable law.

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 23rd day of April, 2015.



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
(850) 488-4406

Copies furnished to:

Via U.S. Mail and electronic mail:



Via electronic mail only:

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