

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

TENA HATTON,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2015-3398
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On October 28, 2015, 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, Tena Hatton, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent filed a Proposed Recommended. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on November 12, 2015. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending, for final agency action, before the Senior Defined Contribution Programs Officer.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request to rescind her 2007 second election by which she transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan, or that she otherwise be allowed to return to the FRS Pension Plan, hereby is denied. While

Petitioner has alleged she was misled by a private investment entity into joining the FRS Investment Plan, the SBA bears no responsibility for any misinformation the Petitioner had received from this third party.

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.

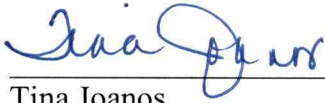
DONE AND ORDERED this 20th day of November, 2015, in Tallahassee, Florida.

**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

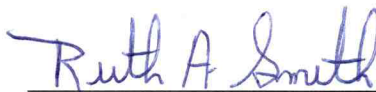
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Tena Hatton, pro se, both by email transmission, [REDACTED] by [REDACTED] 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 20th day of November, 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

TENA HATTON,

Petitioner,

vs.

Case No.: 2015-3398

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 September 9, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Tena Hatton, pro se



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 Respondent SBA should grant Petitioner's request to rescind a 2007 second election by which she transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan or otherwise allow her to return to the Pension 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 1-8 were admitted into evidence without objection.

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

MATERIAL UNDISPUTED FACTS

1. Petitioner was employed by the Miami-Dade County School Board, an FRS-covered employer, beginning in November of 1984.
2. After the defined contribution FRS Investment Plan was created, Petitioner was given the option of enrolling in that plan in 2003, but declined to do so and defaulted to continued membership in the defined benefit FRS Pension Plan.
3. On June 24, 2007, Petitioner completed and signed a second election form indicating her desire to transfer from the Pension Plan to the Investment Plan. Petitioner testified that this second election form was mailed to the FRS Investment Plan Choice Administrator by a representative of Primerica, a private investment firm that encouraged Petitioner and some of her

co-workers to transfer from the Pension Plan to the Investment Plan. Petitioner's second election form was received and processed by the FRS Plan Choice Administrator on July 16, 2007, which established an August 1, 2007 effective date for Petitioner's Investment Plan membership.

4. All FRS participants have access to various free educational resources to help them make decisions about their retirement plan options. The second election form Petitioner signed encouraged her to take advantage of the MyFRS Financial Guidance Program to help her understand the impact of changing from one plan to another, including the toll-free MyFRS Financial Guidance Line and the online resources available at MyFRS.com. The second election form states that a second election to change plans is irrevocable:

I understand that this election will constitute my one-time second election as provided under the FRS and that I must remain in this retirement plan until my retirement. I understand that my one-time second election is irrevocable.

5. Petitioner states in her Petition for Hearing that she was not aware that she had exercised her second election option to transfer from the Pension Plan to the Investment Plan, that she was under stress because of a divorce, and felt she had been tricked into signing a form. In recorded calls to the MyFRS Financial Guidance Line made in 2009, Petitioner stated that she was calling to find out about withdrawing money, or because she had been informed by letter that her Investment Plan portfolio was invested heavily in very aggressive funds. During a call Petitioner made to the MyFRS Financial Guidance line over six years ago on May 4, 2009, she was specifically advised that she was in the Investment Plan, and that she was unable to transfer back to the Pension Plan or to participate in the deferred retirement program (DROP):

Ms. Hatton: Well, if I retire when I get 30 years, I'll be too young, so I'm going to have to either keep working or get into the drop, so I would say –

E&Y Rep: Well, one thing is the drop is actually not available to you at all. It's only available under the pension plan.

Ms. Hatton: Oh, right, under the pension. That's right.

E&Y Rep: And you're in the investment plan now, so unfortunately you can never enter the drop program.

Ms. Hatton: Okay, Speaking of that, can you go back to the pension plan or are you – I'm just stuck there?

E&Y Rep: It's – unfortunately, it's a one-time only second election. And it's a second and final election. So you're now in the investment and you cannot switch back.

She also had an extensive conversation with the Guidance Line counselor about investment options, and ultimately adjusted her fund allocations.

6. Petitioner submitted a Request for Intervention on April 21, 2015 asking to be allowed to return to the Pension Plan. Her request was denied, and she then filed a Petition for Hearing requesting the same relief.

CONCLUSIONS OF LAW

7. 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 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.

§ 121.4501(4)(g), Fla. Stat. (2014) (emphasis added).

8. Members of the FRS are allowed only one opportunity to switch plans. Because Petitioner has already used her one-time second election, she has exhausted her only opportunity

to move between plans. Petitioner cannot rescind her second election because she failed to do so within the grace period provided under Rule 19-11.007, Florida Administrative Code, as follows:

(4) 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, or if the member has reconsidered his or her plan choice, 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: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, 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 take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), Fla. Admin. Code

9. Under this rule, Petitioner had until the time the present value of her Pension Plan benefit was transferred to her Investment Plan account to rescind her second election. This transfer occurred in 2007, and her request is now clearly time-barred.

10. Petitioner contends that she was misled into joining the Investment Plan by representatives of Primerica and that she did not understand the ramifications of her decision at the time she signed her second election form. This tribunal has no jurisdiction over the possible fraud that Petitioner alleges, and the SBA is not responsible for any misinformation Petitioner

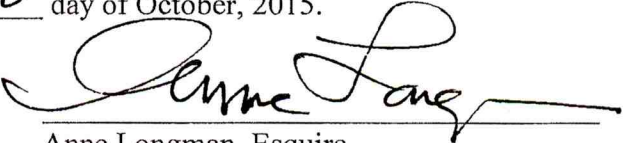
may have received from third parties that led her to make the choice to change retirement plans. Any remedy Petitioner may have against Primerica would have to come from a court of plenary jurisdiction.

11. The 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.). Further, the SBA's 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). I note that Section 121.4501(8)(g), Florida Statutes creates a presumption that all actions taken five years or more before a complaint is submitted were taken at the request of the member and with the member's full knowledge and consent. The actions at issue here are well beyond this five year threshold, and Petitioner has presented no evidence to rebut this presumption.

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 28th day of October, 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

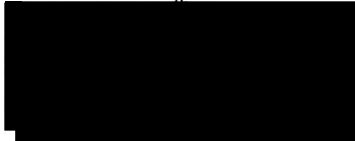
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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 via mail and electronic mail to:

Tena Hatton



and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, P.A.
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Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent