

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

DORANE LOCKHART JONES,)
)
 Petitioner,)
)
vs.)
)
STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
)
_____)

Case No. 2015-3205

FINAL ORDER

On May 5, 2015, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Dorane Lockhart Jones. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions which were due May 20, 2015.

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 to transfer from the Florida Retirement System Pension Plan to the Florida Retirement System Investment Plan,

or that she be allowed to return to the FRS Pension Plan, where Petitioner's request was submitted eight (8) years after her second election form was filed, is denied. While Petitioner has alleged she was not well informed, was under stress and did not have all pertinent information at the time she submitted the second election and asserts that a private investment entity did not advise her correctly between the two FRS plans, Petitioner does not contend that the SBA misled her into making the second election.

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.

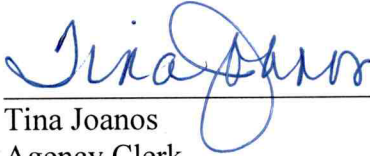
DONE AND ORDERED this 24th day of July, 2015, in Tallahassee, Florida.

**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 Dorane Lockhart Jones, 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 24th day of July, 2015.



Mindy K. Raymaker
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

DORANE LOCKHART JONES,

Petitioner,

vs.

Case No.: 2015-3205

STATE BOARD OF ADMINISTRATION,

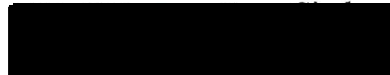
Respondent.

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 6, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Dorane Lockhart Jones, pro se



For Respondent: Brandice D. Dickson, 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 by which she transferred from the Florida Retirement System (FRS) defined benefit Pension Plan to the FRS defined contribution 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 1-5 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 thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings. The following recommendation is based on the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

MATERIAL UNDISPUTED FACTS

1. Petitioner has been employed with the Palm Beach County Sheriff's Office, an FRS-covered employer, since 1985, and was a member of the Pension Plan.
2. Petitioner had until February 28, 2003 to make an initial election between the FRS Pension Plan and the then-new FRS Investment Plan. On February 9, 2003 she executed her initial election to remain in the Pension Plan. Respondent's third party administrator received the election form on February 12, 2003.
3. On July 3, 2006, Petitioner executed a 2nd Election Retirement Plan Enrollment Form to transfer to the Investment Plan. This form was received by Respondent's third party

administrator on July 6, 2006, establishing an August 1, 2006 Investment Plan effective date.

[Id.]. That form stated:

I understand that I can find a description of my rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan in the respective Summary Plan Descriptions, Florida Statutes, and Administrative Rules available through the MyFRS Financial Guidance Line at 1-866-44-MyFRS (1-866-446-933; or TTY: 1-888-429-2160) or at MyFRS.com. **I understand that this enrollment will constitute my on-time second election as provided under the FRS; I will have to remain in this retirement plan until my retirement from the FRS.**

[emphasis in original].

4. Petitioner submitted a Request for Intervention on December 31, 2014, asking to rescind her July 2006 second election because she was not well-informed, was under stress, and did not have all pertinent information at the time she submitted it. That request was denied, Petitioner then filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

5. Petitioner asserts that a representative of Primerica, a private investment entity, did not advise her correctly as between the two FRS plans and/or took advantage of her health condition and divorce proceedings at the time she made a second election in 2006. Petitioner does not contend that Respondent SBA misled her into making the second election.

CONCLUSIONS OF LAW

6. 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).

7. Members of the FRS are allowed only one opportunity to switch plans. Because Petitioner used her one-time second election in 2006, she has exhausted her only opportunity to move between plans. There is no “third” election. Nor can Petitioner rescind her second election, because she failed to do so 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

8. 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 July 31, 2006, to rescind her second election. Petitioner was advised of this deadline in the confirmation notice she received shortly after submitting her second election form. The first record of Petitioner's dissatisfaction with her switch to the Investment Plan was her call to the MyFRS Financial Guidance Line on October 15, 2014, eight years after she submitted her second election form.

9. After reviewing the transcript of these proceedings, it is clear that Petitioner's main complaint regards Primerica, and is directed to a representative named Schrone Taylor. Respondent SBA has no relationship to this person or to Primerica, and this tribunal has no jurisdiction over them.

10. Petitioner has not shown, nor even alleged, that any SBA representative misled her with regard to her 2006 second election.

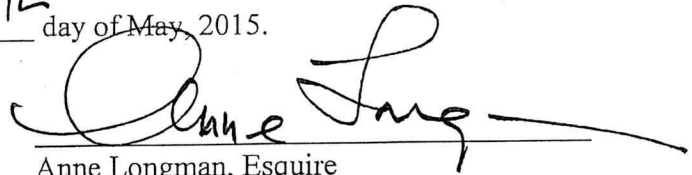
11. Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear and the SBA cannot deviate from them. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). Further, the 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).

12. It is unfortunate that Petitioner apparently made her second election at a difficult and stressful period in her life, and may have been influenced to do so by inaccurate or self-interested advice from persons not party to these proceedings, but Respondent SBA has no authority to rescind Petitioner's second election or return her to the Pension Plan.

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 5th day of May, 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:

Dorane Lockhart Jones



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301
slindsey@penningtonlaw.com
Counsel for Respondent