

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

AUBREY SERPAS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-3250
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On January 30, 2013, the Administrative Law Judge 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, Aubrey Serpas, 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 February 14, 2013. 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

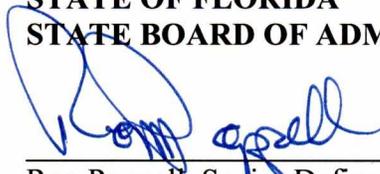
The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner’s request that he be deemed to have made a valid second election to transfer from the Florida Retirement System (“FRS”) Pension Plan to the FRS Investment Plan prior to the date he terminated FRS covered employment, where Petitioner could not demonstrate by a

preponderance of evidence that he had actually filed a second election form, 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 20th day of February, 2013, 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

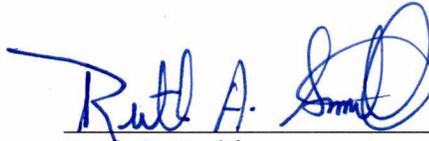
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



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 Aubrey Serpas, pro se, [REDACTED], 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 20th day of February, 2013.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AUBREY SERPAS,)
)
 Petitioner,)
)
 vs.) Case No. 12-3250
)
 STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on December 7, 2012, in Chipley, Florida, before Suzanne Van Wyk, duly-appointed Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Aubrey Serpas, pro se
825 Idlewild Court
Bonifay, Florida 32425

For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell and Dunbar, P.A.
215 South Monroe Street, Suite 200
Post Office Box 10095
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

Whether Petitioner transferred to the Florida Retirement System (FRS) Investment Plan from the FRS Pension Plan, pursuant to section 121.4501, Florida Statutes (2012).^{1/}

PRELIMINARY STATEMENT

On August 21, 2012, Petitioner, Aubrey Serpas, submitted to the State Board of Administration (SBA) a Request for Intervention requesting to enroll in the FRS Investment Plan. On September 7, 2012, the SBA notified Petitioner in writing that his Request for Intervention was denied. Petitioner timely filed a Request for Hearing with the Office of Defined Contribution Programs on September 20, 2012, which was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge.

Pursuant to notice, a final hearing was scheduled for December 7, 2012, in Chipley, Florida. The hearing commenced as scheduled. The parties stipulated to the introduction of Respondent's Exhibits R-1 through R-6. Petitioner testified on his own behalf. Respondent offered no testimony or additional evidence. Respondent submitted a Proposed Recommended Order on January 23, 2013, which has been considered in preparation of this Recommended Order. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. Petitioner is a 32-year-old former employee of the Florida Department of Corrections. Petitioner was employed as a correctional officer at the Northwest Florida Reception Center

in Washington County, Florida from June 14, 2004, until he resigned on July 23, 2012.

2. Petitioner is a fully vested member of the State of Florida Retirement System (FRS).

3. Respondent, State Board of Administration, is the agency with the duty and responsibility to administer the State of Florida Retirement System Investment Plan. See § 121.4501(8), Fla. Stat.

4. In mid-2011, Petitioner decided to look for other employment and began researching his retirement options. Petitioner discovered he needed to be employed by the State for six years to be fully vested in the FRS and have the option to transfer from the FRS Pension Plan (a defined benefit plan) to the FRS Investment Plan (a defined contribution plan).

5. Sometime between May 1 and 10, 2012, Petitioner accessed the FRS website, either downloaded or printed the FRS "second election form" -- the paperwork required to transfer his retirement account to the Investment Plan -- and completed the form.

6. Although Petitioner does not remember the exact date, Petitioner approached Ms. Charity Pleas, Secretary Specialist for the Chief of Security, and asked her to file his second election form for him by facsimile transmission (fax).

7. Ms. Pleas testified she faxed the document to the number on the form.

8. Petitioner observed Ms. Pleas place the paperwork into the fax machine, dial a fax number, complete the fax transmission, and retrieve a fax transmission confirmation report. Ms. Pleas handed the confirmation report to Petitioner.

9. Petitioner cannot be certain what became of the confirmation report or his original second election form.

10. Petitioner did not contact anyone with the Florida Retirement System to confirm receipt of his second election form.

11. Ms. Pleas often sends faxes on behalf of employees at the Reception Center where she has been employed since 2007.

12. Ms. Pleas occasionally receives complaints from employees that a fax she has sent on their behalf was not received by the other party. Sometimes this happens despite the fact that she has received a fax confirmation report.

13. Petitioner began employment in the private sector with Power South on July 30, 2012.

14. In early August 2012, Petitioner contacted the FRS to find out if the retirement funds were available to move into a 401K account with his new employer. He spoke with someone named "Jason" who said there was no record of a second election having been made by Petitioner. An investigation ensued.

15. Aon Hewitt is the Plan Choice Administrator for the FRS Investment Plan. Aon Hewitt provides services to the SBA in connection with the Investment Plan, including processing enrollments and second elections.

16. Lynette Murphy is Benefits Operations Manager for Hewitt Associates, LLC, a division of Aon Hewitt.

17. Ms. Murphy researched the issue of whether Petitioner's second election form was received by Aon Hewitt. She conducted several searches of the company's files, including a search by Petitioner's name (both first and last names) and social security number. In case the second election form had been received without a member name or social security number, Ms. Murphy also conducted a search on the numbers "99" and "90," the codes assigned to forms received which are unidentifiable.

18. Ms. Murphy's search included not only forms received between April 1, 2012 and July 30, 2012, but also all dates covering the life of Petitioner's eligibility and enrollment in the FRS.

19. Ms. Murphy was unable to find any record of a second election form filed by Petitioner.

CONCLUSIONS OF LAW

20. Petitioner has the burden of proof in this proceeding to prove his enrollment in the FRS Investment Plan by a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

21. FRS provides two retirement options: the Pension Plan, which is a defined benefit plan, and the Investment Plan, which is a defined contribution plan. See §§ 121.051 and 121.4501, Fla. Stat. With a few exceptions, state officers and employees are automatically enrolled in the Pension Plan on the date of employment. See § 121.051, Fla. Stat.

22. Members of the FRS have two opportunities to transfer from the Pension Plan to the Investment Plan.

23. The first election can be made during the first five months of employment by submitting the appropriate election form to the Plan Choice Administrator. See Fla. Admin. Code R. 19-11.006(2).

24. Section 121.4501(4)(g), Florida Statutes, governs the second election option, and provides as follows:

(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. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the

requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator.

25. The procedure for making a second election is governed by Florida Administrative Code Rule 19-11.007(2), which reads, in pertinent part, as follows:

A member may make a valid 2nd election only if the 2nd election is made and processed by the Plan Choice Administrator while the member is actively employed and earning salary and service credit in an employer-employee relationship consistent with the requirements of section 121.021(17)(b), F. S. It is the responsibility of the member to assure that the 2nd election is received by the Plan Choice Administrator no later than 4:00 p.m. Eastern Time on the last business day the member is earning salary and service credit.

26. Petitioner presented some evidence of his attempt to file a second election form. He printed or downloaded the form, completed it, and asked Ms. Pleas to fax it for him. He watched Ms. Pleas fax the form he provided to her, but he could not testify with confidence that Ms. Pleas faxed the second election form to the number provided on the form. Further, Ms. Pleas testified that although she received a fax confirmation report, the fax machine does, with some regularity, produce a fax confirmation report in error. Finally, Petitioner was unable to produce either his original completed form or the fax

confirmation report to determine the fax number to which the form was faxed. Petitioner has not carried his burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the State Board of Administration enter a final order denying the relief requested in Petitioner's Petition for Hearing.

DONE AND ENTERED this <day> day of <month>, <year>, in Tallahassee, Leon County, Florida.

Suzanne Van Wyk

SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this <day> day of <month>, <year>.

ENDNOTE

^{1/} All references to Florida Statutes are to the 2012 version.

COPIES FURNISHED:

Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell and Dunbar, P.A.
215 South Monroe Street, Suite 200
Post Office Box 10095
Tallahassee, Florida 32302

Aubrey Serpas
[REDACTED]
[REDACTED]

Ash Williams, Executive Director
and Chief Investment Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Post Office Box 13300
Tallahassee, Florida 32317

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

State of Florida
Division of Administrative Hearings

Rick Scott
Governor

Robert S. Cohen
Director and Chief Judge

Claudia Lladó
Clerk of the Division



David M. Maloney
Deputy Chief
Administrative Law Judge

David W. Langham
Deputy Chief Judge
Judges of Compensation Claims

January 30, 2013

Ash Williams, Executive Director
and Chief Investment Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Post Office Box 13300
Tallahassee, Florida 32317

Re: AUBREY SERPAS vs. STATE BOARD OF ADMINISTRATION,
DOAH Case No. 12-3250

Dear Mr. Williams:

Enclosed is my Recommended Order in the referenced case. Also enclosed is the one-volume Transcript, together with the Respondent's Exhibits numbered R-1 through R-6, to which the parties stipulated. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by section 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition. Any exceptions to the Recommended Order filed with the agency shall be forwarded to the Division of Administrative Hearings with the Final Order.

Sincerely,

SUZANNE VAN WYK
Administrative Law Judge

SVW/bdl

Enclosures

cc: Brian A. Newman, Esquire
Aubrey Serpas