

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JAMIL ORTIZ-KAMEL,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2010-1856
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On January 12, 2011, 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, Jamil Ortiz-Kamel, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Petitioner submitted a letter offering additional points pertaining to her case. Neither party filed exceptions, which were due on January 27, 2011. 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

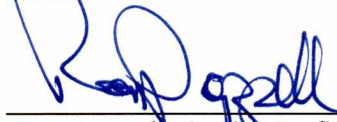
The Recommended Order (Exhibit A) is hereby adopted in its entirety. Petitioner's request that she be relieved from either terminating FRS-covered employment or repaying the invalid Investment Plan distribution because she had been re-employed with an FRS-covered employer within six (6) months of withdrawing all the

funds from her Investment Plan account hereby is denied. There is no statutory authority to grant Petitioner's request on the basis of hardship or due to the fact that Petitioner had been reinstated and re-employed by her employer pursuant to a settlement agreement resulting from her wrongful termination case against her employer.

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.

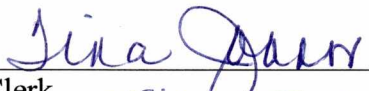
DONE AND ORDERED this 8th day of February, 2011, in
Tallahassee, Florida.

**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.


Clerk TINA JOANOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Jamil Ortiz-Kamel, pro se, 21 Slipper Trail, Palm Coast, Florida 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 8th day of February, 2011.



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

RECEIVED
STATE BOARD OF ADMIN
11 JAN 13 PM 3:04
GENERAL COUNSEL'S OFFICE

JAMIL ORTIZ-KAMEL,

Petitioner,

v.

CASE NO. 2010-1856

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on October 27, 2010 in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Jamil Ortiz-Kamel
21 Slipper Trail
Palm Coast, Florida 32164

For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether the Petitioner must terminate FRS-covered employment or repay an invalid Investment Plan distribution because she returned to FRS-covered employment within six months of withdrawing funds from her Investment Plan account.

EXHIBIT A

PRELIMINARY STATEMENT

On July 19, 2010, the SBA issued a notice to Petitioner Jamil Ortiz-Kamel advising her that she had to either repay a distribution she took from her Investment Plan account or terminate Florida Retirement System (FRS) covered employment because she had returned to FRS covered employment within six calendar months of retirement. Petitioner filed a Petition for Hearing on August 23, 2010 requesting that she not be required to repay the Investment Plan distribution due to financial hardship, and this proceeding ensued.

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management and Compliance for the SBA. Respondent's exhibits R-1 through R-5 and Petitioner's exhibits submitted by letter of October 15, 2010 were admitted into evidence without objection. A transcript of the informal hearing was filed with the agency and provided to the parties, who were invited to submit proposed recommended orders. Petitioner submitted a letter making additional points regarding her case, and Respondent filed a proposed recommended order, both of which were timely and were considered in my recommendation.

UNDISPUTED MATERIAL FACTS

1. Petitioner joined the FRS Investment Plan effective February 1, 2005.
2. Petitioner's employment with FRS participating employer Flagler County Sheriff's Office was terminated on or about September 10, 2009.
3. Petitioner withdrew all funds, a total of \$15,800.36, from her Investment Plan account on January 4, 2010.
4. Pursuant to a settlement agreement entered in May, 2010 with the Flagler County Sheriff's Office, Petitioner was reinstated and reemployed by that office effective June 7, 2010.

5. On July 19, 2010, the SBA notified Petitioner that her Investment Plan distribution was invalid because she had returned to FRS covered employment within six months of her retirement. The SBA gave Petitioner the option of repaying the invalid distribution or terminating FRS-covered employment by August 23, 2010. Petitioner had done neither as of the date the hearing held in this case.

CONCLUSIONS OF LAW

6. Section 121.091(9)(d), Florida Statutes (2009), states that a retired Public Employee Optional Retirement Plan (known informally as the Investment Plan) member cannot be reemployed with an FRS covered agency until six calendar months after retirement. A retired member for purposes of this provision means an Investment Plan participant who has terminated employment and taken a distribution. §121.4501(1)(k), Fla. Stat. A member who violates this provision and the agency that reemploys the member are jointly liable for repaying the invalid distribution:

(d) The provisions of this subsection apply to retirees, as defined in s. 121.4501(2), of the Public Employee Optional Retirement Program, subject to the following conditions:

1. The retirees may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.
2. A retiree employed in violation of this subsection and an employer that employs or appoints such person are jointly and severally liable for reimbursement of any benefits paid to the retirement trust fund from which the benefits were paid, including the Retirement System Trust Fund and the Public Employee Optional Retirement Program Trust Fund, as appropriate. The employer must have a written statement from the retiree that he or she is not retired from a state-administered retirement system.

§121.091(9)(d), Fla. Stat.(2009).

7. In this case, under the applicable statutes, the Petitioner was deemed retired in January of 2010, when she took a distribution from her Investment Plan account. She returned to

FRS-covered employment before six calendar months had elapsed after taking her distribution and becoming a retiree by law – that is, she returned to FRS-covered employment before August 1, 2010, and thus violated Section 121.091(9)(d).

8. Respondent SBA is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes when exercising its jurisdiction, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), even if the result causes Petitioner financial distress. The Respondent's construction and application of Chapter 121 are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. See 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).

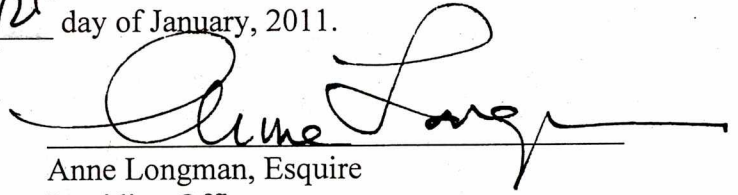
9. The timing of the Petitioner's re-employment by the Flagler County Sheriff's Office unfortunately caused her to violate the reemployment provision of Section 121.091(9)(d), Florida Statutes. The SBA lacks the authority to waive this statutory requirement, despite any financial hardship to Petitioner.

10. Petitioner contends that she was wrongfully terminated from her position in September of 2009, thus placing her in this predicament. The settlement agreement between Petitioner, the Coastal Florida Public Employees Association, and the Flagler County Sheriff appears to address and settle this issue, but whether Petitioner's contention is true is immaterial to this case, as it does not change or enlarge the authority and obligation of the SBA to administer the Investment Plan according to the applicable statutes.

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 12th day of January, 2011.



Anne Longman, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
P.O. Box 16098
Tallahassee, FL 32317

NOTICE: THIS IS NOT A FINAL ORDER

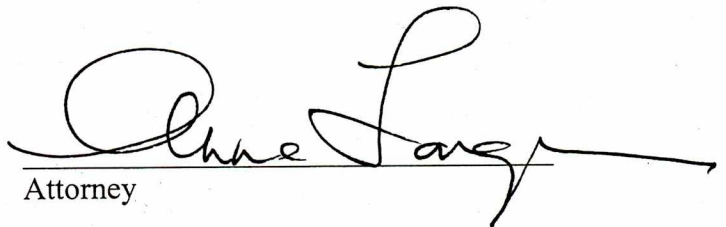
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order, which must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will 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 12th day of January, 2011.

Copies furnished to:
Jamil Ortiz-Kamel
21 Slipper Trail
Palm Coast, FL 32164
Petitioner

Brian A. Newman, Esquire
Brandice D. Dickson
Pennington, Moore, Wilkinson Bell & Dunbar
Post Office Box 10095
Tallahassee, FL 32302-2095
Attorneys for Respondent



Attorney