

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

LAVADA KING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-2535
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
)	
)	
)	

FINAL ORDER

On December 4, 2012, 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, Lavada King, 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 December 19, 2012. 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.

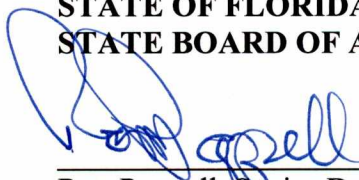
ORDERED

The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner's request that she be entitled to renewed membership in the Florida Retirement System ("FRS") as a retiree who was rehired by an FRS-participating employer after July 1, 2010, 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 15th 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 Lavada King, 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 15th 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
STATE BOARD OF ADMINISTRATION

LAVADA KING,

Petitioner,

vs.

Case No.: 2012-2535

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 6, 2012, at the SBA offices, 1801 Hermitage Blvd. Suite 100, Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Lavada R. King



For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to renewed membership in the Florida Retirement System (FRS).

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent presented the testimony of Dan Beard, Director of Policy, Risk Management & Compliance, Office of Defined Contribution Programs, State Board of Administration of Florida. Respondent's Exhibits R-1 through R-3 were admitted into evidence at the hearing 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 30 days. Respondent filed a proposed recommended order; Petitioner made no further filing.

UNDISPUTED MATERIAL FACTS

1. Petitioner was hired by the Department of Children and Families in July of 2000 and participated in the defined benefit Pension Plan, the only option at that time. She elected to enroll in the defined contribution Investment Plan effective August 31, 2002, when it began.

2. Petitioner terminated employment with the Department of Children and Families on August 8, 2003.

3. Petitioner requested and later received a total distribution from the vested portion of her Investment Plan account on December 6, 2004. Petitioner was not fully vested at that time because the portion of her Pension Plan assets that were transferred to the Investment Plan in 2002 remained subject to the Pension Plan six year vesting requirement, which she never attained.¹

¹ Section 121.4501(6)(b)(1), Florida Statutes provides:

A participant shall be vested in the amount transferred from the defined benefit program, plus interest and earnings thereon and less administrative charges and investment fees upon meeting the

4. Petitioner returned to FRS-covered employment when she was re-employed with the Department of Children and Families on December 23, 2011.

5. Petitioner was informed upon her return to FRS-covered employment that she was not eligible to participate in the FRS as a rehired retiree due to the 2009 amendments to Section 121.122, Florida Statutes.

6. Petitioner filed a petition for hearing requesting that she be allowed to participate in the FRS and this administrative proceeding followed.

CONCLUSIONS OF LAW

7. Petitioner is not eligible for renewed membership in the FRS because she was not reemployed by an FRS-participating employer in a regularly established position prior to July 1, 2010. During the 2009 legislative session, the Florida Legislature revised Section 121.122, Florida Statutes to exclude from renewed membership in the FRS any retiree who becomes reemployed on or after July 1, 2010. The 2009 amendment provides impertinent part that:

121.122. Renewed membership in system

(2) A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, is not eligible for renewed membership.

§121.122, Fla. Stat. (2009)(emphasis added).

8. A "retiree" is defined as "a former participant of the optional retirement program who has terminated employment and has taken a distribution as provided in Section 121.591,

service requirements for the participant's membership class as set forth in s. 121.021(29).

Section 121.021(29)(a)1., Florida Statutes defines the vesting requirement as "6 or more years of creditable service."

Florida Statutes, except for a mandatory distribution of a de minimis account authorized by the state board. § 121.4501(2)(k), Fla. Stat. Because the Petitioner terminated FRS employment and took a total distribution from her Investment Plan account, she is considered a “retiree.”

9. The Petitioner argues that application of the 2009 amendment to her is unduly harsh and that she should be “grandfathered” in because she was not told that she could not re-enter the FRS when she took her distribution in 2004. The legislative history of the passage of the 2009 amendment makes clear that the Legislature was aware of the potentially harsh results the change in the law could have as to existing early retirees. As the agency affected by a change in the statute it administers, Respondent submitted an analysis of House Bill 479 to the Full Appropriations Council on General Government & Health Case which stated:

HB 479 would also close the renewed membership class to retirees of a state-administered retirement system initially reemployed by a Florida Retirement System participating employer on or after January 1, 2010. However, this bill would require employer contributions to be paid on the salary of reemployed retirees who are not enrolled as renewed members to maintain the funding base for the Health Insurance Subsidy Program. In addition, this bill would require the employer to pay any unfunded actuarial liability portion of the employer contribution rate for active members if an unfunded actuarial liability cost reemerges. The bill does not provide for the paying of the Investment Plan administrative contribution.

Retirees initially employed before January 1, 2010, would continue their renewed membership and employers would continue to owe the total employer contribution rate for these renewed members. As the number of retirees who are enrolled as renewed members in the FRS is reduced over time, this would gradually reduce the overall cost to employers. In the longer-term, these changes could result in savings to the FRS Pension Plan by limiting future liabilities for renewed membership and by altering retirement patterns based upon plans for returning to work within a few months of terminating employment. The actual impact would have to be determined by an actuarial special study conducted by the Division of Retirement’s consulting actuary.

Closing the Renewed Membership Class to future participation would impact not only those reemployed retirees who retired at normal retirement, but it would also impact those who retired early.

Under the FRS Pension Plan a member becomes vested with six years of service. A retiree may take an early retirement if vested and within 20 years of the normal retirement age. However, in doing so the benefit is reduced by five percent for each year remaining before the retiree reaches normal retirement age. For retirees of the Special Risk Class, the earliest a member could receive an early retirement benefit would be at age 35 and one month. For retirees of the other membership classes, early retirement benefit would be at age 42 and one month if vested. These early retirement retirees would be ineligible for renewed membership should they return to FRS employment.

Under the FRS Investment Plan, a participant vests after only one year of service. If a member terminates and takes a distribution, he or she is considered a retiree and ineligible for renewed membership in the FRS. Conceivably, a retiree who participated in the Investment Plan for one year and took a distribution at the age of 24 could later return to work for an FRS employer for 30 years or more and never be eligible for a retirement benefit. This could impact the ability of FRS employer's (sic) to recruit employees in the future.

Florida State Board of Administration Report to Full Appropriations Council on General Government & Health Care on HB # 479, Feb. 16, 2009, p. 5 (emphasis added). It appears that the Legislature was made aware of the harsh results which could be caused by absolutely precluding those deemed by operation of law to be retirees from ever again participating in the FRS, and with this awareness, enacted section 121.122 as it currently reads.

10. Denial of the Petitioner's request in this case is consistent with the denial of other similar requests the Respondent has received by former FRS members who made the decision to retire before the 2009 amendment was enacted. See Blaesser v. State Board of Administration, Case No. 2011-2106 (Recommended Order, October 6, 2011; Final Order October 28, 2011) affirmed, 2012 WL 4094804 (Fla. 1st DCA 2012).

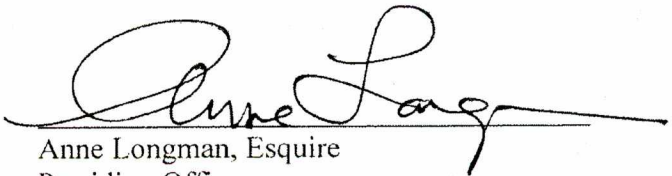
11. The SBA cannot deviate from the statutes creating and governing the FRS, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla. Div. Admin. Hrgs.), and its construction of the statutes it is charged to implement is entitled to great weight and will be followed 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 the applicable statutes changed after Petitioner took a distribution in 2004, and that neither she, nor anyone else, could have foreseen that the law would be amended in this way. But it is clear that Petitioner meets the definition of a "retiree" and that she returned to work with an FRS-covered agency well after the 2009 amendment became effective. The SBA lacks the authority to grant Petitioner the relief she seeks in this proceeding.

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 4th day of December, 2012.



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: THIS IS NOT A FINAL ORDER

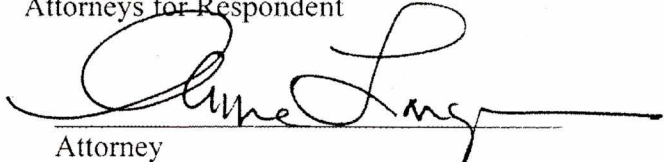
All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order, which must be filed with the Agency Clerk of the State Board of Administration and served on opposing counsel at the addresses shown below. The SBA then will enter a Final Order which will set out the final agency decision in this case.

Filed 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
(850) 488-4406

This 4th day of December, 2012.

Copies furnished to:
Via U.S. Mail
Lavada R. King
[REDACTED]
Petitioner

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


Attorney