

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

EVA S. JALLAH,)

Petitioner,)

vs.)

Case No. 2012-2358

STATE BOARD OF ADMINISTRATION,)

Respondent.)

FINAL ORDER

On June 14, 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, Eva S. Jallah, 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 June 29, 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.

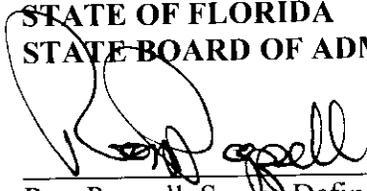
ORDERED

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 retiree who initially was rehired in an OPS position by an FRS-participating employer in September 2008, and then in a regularly established (career service) position 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.

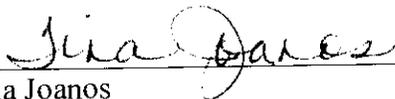
DONE AND ORDERED this 10th day of July, 2012, in Tallahassee, Florida.

**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

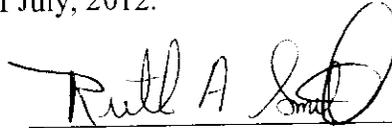
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



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 Eva S. Jallah, pro se, [REDACTED], [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 10th day of July, 2012.



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

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GENERAL COUNSEL'S OFFICE

EVA S. JALLAH,

Petitioner,

vs.

Case No.: 2012-2358

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to 120.57(2), Florida Statutes, before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on March 8, 2012, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Eva Jallah
[REDACTED]
[REDACTED]

For Respondent:

Brandice D. Dickson, 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 Daniel Beard, Director of Policy, Risk Management, and Compliance, Defined Contribution Programs, State Board of Administration. Respondent's Exhibits R-1 through R-3 were admitted into evidence without objection. After the hearing, a transcript of a telephone call of July 19, 2004 between Petitioner and the MyFRS Financial Guidance Line was made and filed at my request and is admitted into evidence as Exhibit R-4.

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 filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner became a member of the Florida Retirement System (FRS) in 1999 when she began employment with the Department of Children and Families (DCF). In 2002, she elected to enroll in the Investment Plan.
2. Petitioner's employment with DCF terminated in 2003, and she became employed in the private sector.
3. On July 19, 2004, Petitioner took a total distribution from her Investment Plan account.
4. Petitioner was re-hired by DCF in September 2008 in an OPS position.
5. On July 22, 2011, Petitioner's OPS position with the DCF was reclassified as a regularly established (career service) position.

6. Petitioner was notified that she is not eligible for renewed membership in the FRS because she is deemed to be a retiree, and she was not reemployed in a regularly established position prior to July 1, 2010, and so is precluded from renewed membership in FRS.

CONCLUSIONS OF LAW

7. An FRS participant enrolled in the Investment Plan who has terminated employment and taken a distribution as provided in s.121.591, Florida Statutes is considered a “retiree” by operation of law. §121.4501(2)(k) Fla.Stat. (2004).

8. During the 2009 legislative session, the Florida Legislature revised Section 121.122, Florida Statutes with respect to rehired “retirees.” If a retiree was reemployed by an FRS participating employer into a “regularly established position” before July 1, 2010, that retiree could rejoin the FRS. §121.122(1), Fla.Stat. But if reemployed on or after July 1, 2010, in any position, the retiree was prohibited from renewed membership in the FRS. The pertinent section, as revised, states:

121.122. Renewed membership in system

(1) Except as provided in s. 121.053, effective July 1, 1991, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a regularly established position with a covered employer, including an elective public office that does not qualify for the Elected Officer's Class, shall be enrolled as a compulsory member of the Regular Class of the Florida Retirement System. Effective July 1, 1997, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a position included in the Senior Management Service Class shall be enrolled as a compulsory member of the Senior Management Service Class of the Florida Retirement System as provided in s. 121.055. A retiree is entitled to receive an additional retirement benefit, subject to the following conditions:

(a) Such member must resatisfy the age and service requirements as provided in this chapter for initial membership under the system, unless such member elects to participate in the Senior Management Service Optional Annuity Program in lieu of the Senior Management Service Class, as provided in s. 121.055(6).

(b) Such member is not entitled to disability benefits as provided in s. 121.091(4).

(c) Such member must meet the reemployment after retirement limitations as provided in s. 121.091(9), as applicable.

(d) Upon renewed membership or reemployment of a retiree, the employer of such member shall pay the applicable employer contributions as required by ss. 112.363, 121.71, 121.74, and 121.76.

(e) Such member is entitled to purchase additional retirement credit in the Regular Class or the Senior Management Service Class, as applicable, for any postretirement service performed in a regularly established position as follows:

1. For regular class service prior to July 1, 1991, by paying the Regular Class applicable employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust Fund; or

2. For Senior Management Service Class prior to June 1, 1997, as provided in s. 121.055(1)(i).

The contribution for postretirement service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, shall be the difference between such contribution and the total applicable contribution for the period being claimed, plus interest. The employer of such member may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service the member claims must be the most recent service.

(f) No creditable service for which credit was received, or which remained unclaimed, at retirement may be claimed or applied toward service credit earned following renewed membership. However, service earned as an elected officer with renewed membership in the Elected Officers' Class may be used in conjunction with creditable service earned under this section, provided the applicable vesting requirements and other existing statutory conditions required by this chapter are met.

(g) Notwithstanding any other limitations provided in this section, a participant of the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who terminated employment and commenced receiving a distribution under the optional program, who initially renews membership as required by this section upon reemployment after retirement, and who had previously earned creditable Florida Retirement System service that was not included in any retirement benefit may include such previous service toward vesting and service credit in the second career benefit provided under renewed membership.

(h) A renewed member who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

(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)

9. Under the express terms of the applicable statute, a retiree who is initially reemployed with an FRS participating employer on or after July 1, 2010 is ineligible to participate in the retirement system.

10. Petitioner in this case was reemployed by DCF in September 2008 (prior to July 1, 2010), but in an OPS position, not in a regularly established position. Then on July 22, 2011, this position was reclassified to career service.

11. Petitioner is not eligible for renewed membership in the Florida Retirement System because she is a rehired retiree who was not reemployed by an FRS-participating employer in a regularly established position prior to July 1, 2010. See *Tori Alexander v. SBA*, Case No.: 2011-2034, Recommended Order July 13, 2011 (retiree rehired into OPS position prior to July 1, 2010 whose position reclassified to career service after July 1, 2010 prohibited from renewed membership in FRS). Under both the FRS Pension Plan system and the Investment Plan, participation is limited to those holding regularly established positions. §121.122(1), Fla.Stat. (2009). Likewise in this case, it is undisputed that when Petitioner was reemployed by an FRS-participating employer in 2008, she was not eligible to participate because she was an OPS employee. When she became an employee in a regularly established

position (on July 22, 2011) the law forbidding renewed membership to retirees hired after July 1, 2010 was then in effect and precludes her from further FRS participation.

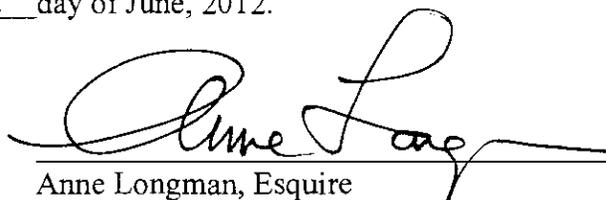
12. Respondent SBA cannot deviate from the Florida Statutes creating and governing the Florida Retirement System, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of Chapter 121, Florida Statutes, the statute it is charged to implement, 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).

13. It is unfortunate that in taking out the relatively small amount of money in her Investment Plan account, Petitioner became retired by operation of law, and because of intervening statutory changes is now precluded, absent further action by the legislature, from ever again participating in the FRS. Petitioner was warned in 2004 of the effect of taking a distribution, but that effect changed when section 121.122 was amended in 2009 to preclude membership to rehired retirees.

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 14th day of June, 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 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 14th day of June, 2012.

Copies furnished to:

Eva Jallah


Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301