

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

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|--------------------------------|---|--------------------|
| SUSAN FRANKLIN, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. 2012-2619 |
| |) | |
| STATE BOARD OF ADMINISTRATION, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |
| |) | |
| _____ |) | |

FINAL ORDER

On April 1, 2013, 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, Susan Franklin, 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 April 16, 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 she be allowed to rescind her second election by which she transferred from the Florida Retirement System ("FRS") Pension Plan to the FRS Investment

Plan based on an erroneous belief that she would be immediately vested in all funds in her FRS Investment Plan account 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.

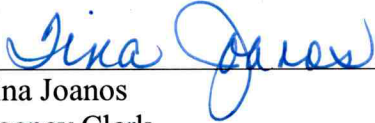
DONE AND ORDERED this 18th day of April, 2013, in Tallahassee, Florida.

**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

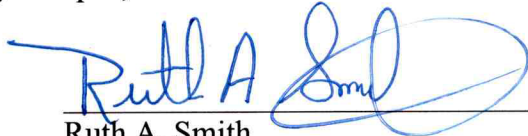
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



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 Susan Franklin, 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 18th day of April, 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

SUSAN FRANKLIN,

Petitioner,

vs.

Case No.: 2012-2619

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 January 29, 2013, at the SBA offices, 1801 Hermitage Blvd. Suite 100, Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Susan Franklin, Pro Se



For Respondent: Brian A. Newman, Esquire
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 may grant Petitioner's request to rescind her second election, by which she transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone. She testified on her own behalf and also presented testimony by telephone from Wendy Wells, a coworker. Respondent presented the testimony of Daniel Beard, Director of Policy, Risk Management, and Compliance, State Board of Administration. Respondent's Exhibits R-1 through R-7 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 30 days. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. Petitioner is employed with the Town of Palm Beach Shores, an FRS-covered employer.
2. Petitioner enrolled in the FRS on October 1, 2007 and chose the defined benefit Pension Plan with her initial election.
3. In 2012, Petitioner's situation at work caused her to feel uncertain about her future employment there. A co-worker advised that she should transfer to the Investment Plan,

so that she would be vested immediately instead of having to wait until September of 2013, when she would meet the six year Pension Plan vesting requirement.

4. Petitioner executed a second election form indicating her desire to transfer to the defined contribution Investment Plan which was received by Respondent's third party administrator on August 20, 2012, establishing a September 1, 2012 effective date for Petitioner's enrollment in the Investment Plan.

5. Petitioner later learned that she would not be immediately vested in her entire FRS account. Although the Investment Plan has a one year vesting period, funds transferred from a Pension Plan account are still subject to the requirements of that plan, which for Petitioner includes a six year vesting period.

6. Petitioner had until September 30, 2012 to rescind her second election. Petitioner did not contact the SBA regarding rescission of her second election until late in October 2012, after the September 30, 2012 deadline had expired, and the present value of her Pension Plan assets had been transferred to her new Investment Plan account.

7. Petitioner submitted a request for intervention on November 11, 2012, asking to rescind her second election. That request was denied by letter of November 14, 2012. Petitioner then filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

CONCLUSIONS OF LAW

8. Movement between the Pension Plan and Investment Plan is governed by Section 121.4501(4)(e), Florida Statutes. That section states, in pertinent part:

(e) 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)(e), Fla. Stat. (2012)

9. Because Petitioner has used her one-time second election, she has exhausted her only opportunity to move between plans. The applicable rules do provide for a grace period for mistaken elections. Rule 19-11.007, Florida Administrative Code, states:

(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 (emphasis added.)

10. Under the rule, 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 September 30,

2012, to request that her second election be reversed. Because her request was not made before this deadline, it is now time-barred. Petitioner stated that she did not receive a statement from the SBA showing the actual monetary effect of her second election until after the grace period had run, which makes this remedy illusory. Respondent points out correctly that the second election form itself contains notice of availability of a grace period and states when it must be exercised, as does the confirmation of second election sent out the day after Petitioner made her second election. This confirmation also explained in some detail what would happen if Petitioner terminated employment and referred to the applicable vesting periods.

11. It is unfortunate that Petitioner received erroneous advice from a co-worker, but that advice was not given by the SBA or anyone associated with the Investment Plan. The applicable law expressly states that FRS-covered employers are not agents of the SBA, and the SBA is not responsible for erroneous information provided by representatives of FRS-covered employers. § 121.021(10), Fla. Stat. (2012).

12. The SBA cannot deviate from the Florida law creating and governing the Florida Retirement System. Balezantis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and 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). Here, Petitioner cannot demonstrate entitlement to the relief she has requested under the applicable law, and her Petition for Hearing must therefore be dismissed.

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 1st day of April, 2013.



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

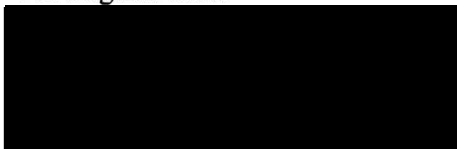
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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
Daniel.Bead@sbafla.com
(850) 488-4406

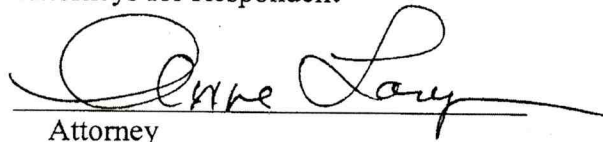
This 1st day of April, 2013.

Copies furnished to:
Via Regular Mail



Petitioner

Via electronic mail:
Brian A. Newman, Esquire
Brandice D. Dickson
Pennington, P.A.
Post Office Box 10095
Tallahassee, FL 32302-2095
slindsey@penningtonlaw.com
Attorneys for Respondent



Attorney