

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JOHN F. QUINN,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-2486
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
_____)	

FINAL ORDER

On November 12, 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, John F. Quinn, 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 November 27, 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.

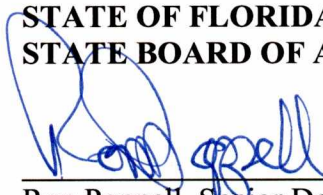
ORDERED

The Recommended Order (Exhibit A) hereby is adopted in its entirety. The Petitioner's request that he be deemed vested in his Florida Retirement System ("FRS") Investment Plan account even though he failed to meet the vesting requirement of one year of service credit, 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 1st day of February, 2013, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Ron Poppel, Senior Defined Contribution
Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

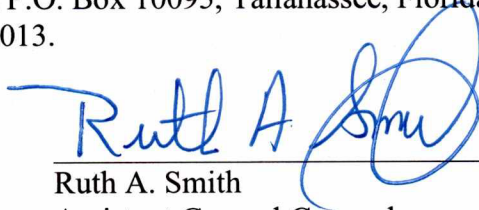
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



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 John F. Quinn, pro se, [REDACTED] a [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 1st 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

JOHN F. QUINN,

Petitioner,

vs.

Case No.: 2012-2486

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 August 16, 2012, at the SBA offices, 1801 Hermitage Blvd. Suite 100, Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

John F. Quinn


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 the Petitioner is vested in his Florida Retirement System (FRS) Investment Plan account.

EXHIBIT A

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on his 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-7 were admitted into evidence without objection.

A transcript of the hearing was filed with the agency and provided to the parties, who were invited to submit proposed recommended orders within 30 days after the transcript was filed. The following recommendation is based on the hearing and my consideration of all materials submitted by the parties.

MATERIAL UNDISPUTED FACTS

1. Petitioner was employed by the Florida Department of Corrections, an FRS participating employer, for 15 years and was enrolled in the Pension Plan, a defined benefit plan.
2. Petitioner terminated employment with the Department of Corrections and applied for and started receiving a monthly benefit under the Pension Plan.
3. Subsequently, on February 23, 2007, Petitioner became a rehired retiree when he was hired by another FRS participating employer, the Columbia County Sheriff's Department.
4. When he once again began FRS covered employment, Petitioner became eligible to participate again in the FRS and had the opportunity to elect between the FRS Pension Plan and the FRS Investment Plan, a defined contribution plan.
5. Petitioner was advised via the New Hire Toolkit mailed to him prior to his election date about the attributes of each plan, including vesting periods. Page two of the *Choose Your Retirement Plan* portion of the Enrollment Kit states "You must have **1 year of FRS**

service to own the money in your Investment Plan account. If you leave FRS-covered employment before completing 1 year, you will not be entitled to your account balance.”

6. Petitioner also had available to him the Summary Plan Description via the MyFRS.com website that explained the vesting periods of the two plans.

7. On August 14, 2007, Petitioner spoke with a representative of the MyFRS Financial Guidance Line, who explained that the FRS Investment Plan had a one year vesting requirement before any benefit was earned. Petitioner responded that he understood and elected to enroll in the FRS Investment Plan that day.

8. On October 18, 2007, Petitioner terminated employment with the Columbia County Sheriff's Department, having earned only .67 years of service credit.

9. On May 2, 2012, Petitioner was advised that the unvested portion of his FRS Investment Plan account that had been held in a suspense account since his resignation from FRS covered employment in 2007, would be forfeited unless he secured FRS covered employment prior to October 18, 2012 (the date when five years would have elapsed).

10. Petitioner advised Respondent that he had attempted to secure FRS covered employment, but had to date been unsuccessful in doing so.

11. Petitioner requested he be fully vested in his FRS Investment Plan account and a distribution of the account be made to him irrespective of not having met the vesting requirement of one year of service credit.

12. Respondent advised Petitioner that his request for a distribution was denied because he had not completed at least one year of service credit in his second term of employment. Petitioner was further advised by Respondent that he would not be eligible for a distribution from his FRS Investment Plan account unless he returned to FRS covered

employment for a minimum of three months so that he could be fully vested in his FRS Investment Plan account.

CONCLUSIONS OF LAW

13. Section 121.4501(6), Florida Statutes states, in pertinent part:

(6) VESTING REQUIREMENTS. –

(a)1. With respect to employer contributions paid on behalf of the participant to the Public Employee Optional Retirement Program (Investment Plan), plus interest and earnings thereon and less investment fees and administrative charges, a participant shall be vested after completing 1 work year, as defined in s. 121.021(54), with an employer, including any service while the participant was a member of the defined benefit retirement program or an optional retirement program authorized under s. 121.051(2)(c) or s. 121.055(6).

2. If the participant terminates employment prior to satisfying the vesting requirements, the nonvested accumulation shall be transferred from the participant's accounts to the state board for deposit and investment by the board in the suspense account of the Public Employee Optional Retirement Program Trust Fund of the board. If the terminated participant is reemployed as an eligible employee within 5 years, the state board shall transfer to the participant's account any amount of the moneys previously transferred from the participant's accounts to the suspense account of the Public Employee Optional Retirement Program Trust Fund, plus the actual earnings on such amount while in the suspense account.

...

(c) Any nonvested accumulations transferred from a participant's account to the suspense account shall be forfeited by the participant if the participant is not reemployed as an eligible employee within 5 years after termination.

§ 121.4501(6)(a) and (c), Fla.Stat. (2007).

14. Section 121.021(54), Florida Statutes provides that "work year" means the period of time an employee is required to work during the plan year to receive a full year of retirement credit, as provided by rule. § 121.021(54), Fla.Stat. (2007).

15. Benefits under the Investment Plan are payable only if the participant has vested in them and terminated employment. Section 121.591(1)(a), Fla.Stat. (2007). Petitioner here

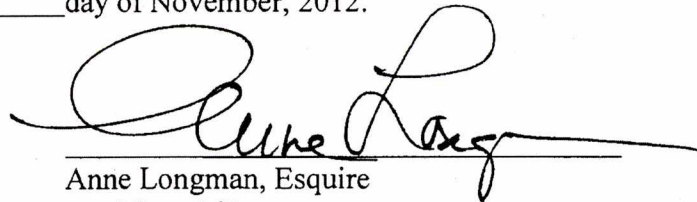
worked from February 23, 2007 through October 18, 2007 during his second career, and thus earned only .67 years of service credit. As such, he worked less than the one year required for vesting under the FRS Investment Plan. Because he is not vested in his Investment Plan account, he is ineligible for a distribution of benefits from it. If he does not return to FRS-covered employment before five years have elapsed on October 18, 2012, the amount accrued in his Investment Plan account is subject to forfeiture pursuant to statute.

16. 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, 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). There is no statutory provision that would authorize Respondent to allow Petitioner to take a distribution from his FRS Investment Plan account after earning only .67 years of service credit, and I see no indication that he received erroneous or inadequate information or advice with regard to his retirement plan choices.

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 November, 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 12th day of November, 2012.

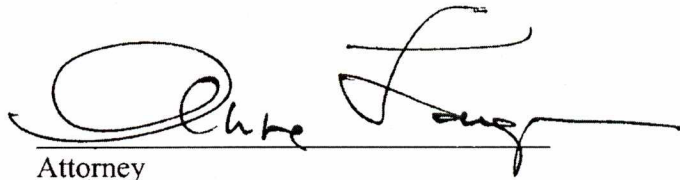
Copies furnished to:

John F. Quinn

[REDACTED]

Petitioner

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



Attorney