

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

JACQUEZ ABRAMS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2006-633
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On January 7, 2008, 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, Jacquez Abrams, and upon counsel for the Respondent. Neither party filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on January 22, 2008. 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. The Petitioner's request to be exempted from the requirement that he terminate employment

and wait three months in order to receive a distribution from his FRS Investment Plan account 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 200, 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 24<sup>th</sup> day of January, 2008, in Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



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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.

*Lina Jones*  
Clerk

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by U.S. mail (confirmation requested) to Jacquez Abrams, 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 24<sup>th</sup> day of January, 2008.

*Ruth L. Gokel*  
Ruth L. Gokel  
Assistant General Counsel  
State Board of Administration of Florida  
1801 Hermitage Boulevard  
Suite 100  
Tallahassee, FL 32308

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

JACQUEZ ABRAMS,

CASE NO.: 2006-633

Petitioner,

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STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding before the undersigned Presiding Officer for the STATE BOARD OF ADMINISTRATION (SBA) on September 5, 2007, in Tallahassee, Florida.

The Petitioner appeared by telephone and the Respondent in person as follows:

For Petitioner: Jacquez Abrams

  
Petitioner

For Respondent: Brian A. Newman, Esquire  
Brandice D. Dickson, Esquire  
PENNINGTON, MOORE, WILKINSON,  
BELL & DUNBAR, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

## **STATEMENT OF THE ISSUE**

Whether the Petitioner may receive funds he transferred to the Investment Plan despite the provisions of section 121.4501(7)(c), Florida Statutes requiring an employee to terminate all Florida Retirement System (FRS) covered employment before a distribution of benefits.

## **PRELIMINARY STATEMENT**

On July 26, 2006, Petitioner submitted a Request for Intervention asking that he be exempted from the requirement to terminate his employment and wait three months in order to receive a distribution from his FRS Investment Plan account. He requested the exemption due to a need for funds to pay for medical expenses. Respondent conducted an investigation and provided notice to Petitioner on August 24, 2006, of its intent to deny this request. Petitioner filed a Petition for Hearing on September 18, 2006 to contest the intended agency action, which was ultimately transmitted to the undersigned for informal hearing.

Respondent and its counsel appeared in person at the hearing; Petitioner appeared by telephone. Petitioner did not file any exhibits; Respondent's exhibits R-1-7, consisting of official agency records and communications by and to the Petitioner were admitted into evidence without objection. Petitioner did state that he did not agree with the transcripts of several calls he made to the FRS telephone guidance line (R-1), because although he remembers making the referenced calls, he did not remember hearing some of the things reflected in the transcripts. A transcript of the informal hearing was made, filed and made available to the parties. Respondent filed a Proposed Recommended Order, Petitioner made no further filings.

## UNDISPUTED MATERIAL OF FACTS

The parties have agreed that the following facts are undisputed:

1. Petitioner is employed by an FRS participating employer and was duly enrolled in the Pension Plan. On May 8, 2006, Petitioner used his second election to switch to the Investment Plan because he thought this would allow him to access his retirement funds, even though he was still employed. His enrollment in the Investment Plan was effective June 1, 2006.
2. Respondent SBA is responsible for establishing and operating the Public Employee Optional Retirement Program (the Investment Plan) for the State of Florida.
3. The SBA contracts with third parties Ernst & Young and CitiStreet to provide an educational component to employees and FRS plan participants seeking information about, among other things, the Investment Plan. The third party contractors provide this information by telephone through what is known as the "My FRS Financial Guidance Line." The Division of Retirement is also a participant in the My FRS Financial Guidance Line and provides information as needed when calls are routed to its employees.
4. Prior to filing his second election form, Petitioner utilized the My FRS Financial Guidance Line to speak with counselors regarding this action. The Petitioner needed funds to pay for his medical expenses. Even after talking with the My FRS Financial Guidance Line counselors, Petitioner believed he could switch plans, wait three months, and then access his retirement funds.
5. Petitioner did not understand that he could not access his Investment Plan funds unless he also severed employment with all FRS-covered employers.

6. All telephone calls made through the My FRS Financial Guidance Line between Ernst & Young and CitiStreet counselors and FRS members and are recorded. Those recordings are saved into a ".wav" file and transmitted electronically to the Respondent upon request.

7. Daniel Beard is employed by the Respondent as its Director of Policy, Risk Management and Compliance. In that position, Mr. Beard is charged with investigating Requests for Intervention filed by FRS plan participants. In this capacity, he requested all .wav files evidencing recordings of telephone conversations between the Petitioner and My FRS Financial Guidance Line counselors.

8. The .wav files received by Mr. Beard were transcribed by a court reporter and submitted as Respondent's exhibits R-1 (A)-(F) during the September 5, 2007 hearing. They reflect that Petitioner was informed that he would have to be terminated from employment before receiving any funds.

9. The Petitioner acknowledges that he made several telephone calls to the My FRS Financial Guidance Line and recalls being told that he would have to be off payroll three full calendar months prior to taking any distribution from his Investment Plan account, but stated that he either didn't understand what he was being told or just heard what he wanted to hear. He testified that he did not understand, at the time of the telephone calls, that he would have to terminate his employment in order to receive a distribution.

10. The Petitioner continues to be employed by the Florida Department of Revenue and thus has not severed his employment with all FRS-covered employers.

## CONCLUSIONS OF LAW

11. The Respondent is charged with implementing certain parts of Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of those statutes when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). 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). Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being allowed to take a distribution from his Investment Plan account. See Young v. Department of Community Affairs, 625 So.2d 837 (Fla. 1993); Department of Transportation v. J.W.C., 396 So.2d 778 (Fla. 1st DCA 1981).

12. Section 121.4501(7), Florida Statutes provides:

(7) Benefits.--Under the Public Employee Optional Retirement Program:

(a) Benefits shall be provided in accordance with s. 401(a) of the Internal Revenue Code.

(b) Benefits shall accrue in individual accounts that are participant-directed, portable, and funded by employer contributions and earnings thereon.

**(c) Benefits shall be payable in accordance with the provisions of s. 121.591.**

§ 121.4501(7), Fla.Stat. (2006)(emphasis added).

13. Section 121.591, Florida Statutes provides, in pertinent part:

Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed in the manner prescribed by the state board or the department.

§ 121.591, Fla.Stat. (2006).



14. Section 121.021(39)(a), Florida Statutes provides, in pertinent part:

(39)(a) "Termination" occurs, except as provided in paragraph (b), when a member ceases all employment relationships with employers under this system, as defined in subsection (10), but in the event a member should be employed by any such employer within the next calendar month, termination shall be deemed not to have occurred.

§ 121.021(39)(a), Fla.Stat. (2006).

15. Rule 19-11.003, Florida Administrative Code states, in pertinent part:

(1) Purpose. The purpose of this rule is to clarify the provisions regarding distributions from FRS Investment Plan accounts and how that interacts with reemployment provisions for FRS-covered employers. Distributions from FRS Investment Plan accounts are made either after the account-holder terminates employment or at the account-holder's death.

(3) Distributions available when the participant terminates FRS-covered employment.

(a) An FRS Investment Plan participant shall not be entitled to a distribution from his account unless he has been terminated from all FRS-covered employment for three calendar months. Example: If a participant terminates on May 15, the three calendar months are June, July, and August. Therefore, he shall not receive a distribution until September.

Rule 19-11.003, F.A.C.

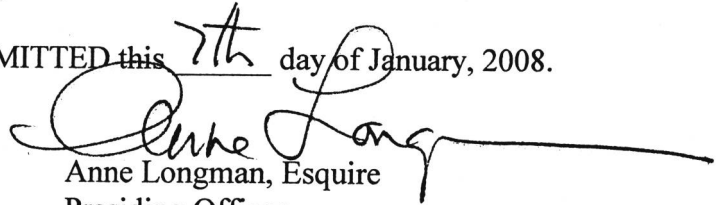
16. It is undisputed that the Petitioner remains employed with an FRS-covered employer and was so employed at the time he sought to access funds from his Investment Plan account. There appears to be no provision in the applicable statutes or rules for exemption from the requirement that Petitioner be terminated from all FRS employment before receiving funds from his Investment Plan account. Accordingly, the Respondent SBA lacks authority to grant Petitioner the relief he seeks.

### **RECOMMENDATION**

There appears to be no mechanism by which a Pension Plan or Investment Plan participant may withdraw or borrow from retirement funds without terminating employment, regardless of the

hardship this may create. It is entirely understandable that a person in Petitioner's position might misunderstand the information he received, but this does not change the provisions of Florida law applicable to his situation. It therefore appears that there is no way the relief Petitioner seeks can be granted in this forum, and I must recommend that a final order be entered by the State Board of Administration denying Petitioner the relief requested.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January, 2008.



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

#### **NOTICE OF RIGHT TO SUBMIT EXCEPTIONS**

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to the Recommended Order should be filed with the Agency Clerk of the State Board of Administration.

#### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been provided via U.S. Mail this 7<sup>th</sup> day of January,

2008 to:

Filed with:  
Agency Clerk  
Office of the General Counsel  
Florida State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308

Copies Furnished:

Jacquez Abrams

[REDACTED]  
(Petitioner)

Brian A. Newman, Esq.  
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Pennington Moore Wilkinson Bell & Dunbar  
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Tallahassee, FL 32302-2095  
(for Respondent)