

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

FAITH TISDALE,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2010-1888
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
)	
_____)	

FINAL ORDER

On December 21, 2010, 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, Faith Tisdale, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order, but Petitioner did not. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

ORDERED

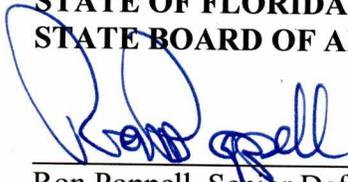
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that she be permitted to withdraw funds from her Investment Plan account before she has been separated from Florida Retirement System covered employment for the statutorily-required three (3) calendar months 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 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 21st day of January, 2011, 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.


Clerk TINA JOANOS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Faith Tisdale, 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 21st day of January, 2011.



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

FAITH TISDALE,

Petitioner,

vs.

Case No.: 2010-1888

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA) on September 21, 2010 in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Faith Tisdale


For Respondent:

Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

STATEMENT OF THE ISSUE

The issue is whether Petitioner may be allowed to withdraw funds from her Investment Plan account before she has been separated from FRS-covered employment for three calendar months.

PRELIMINARY STATEMENT

On August 27, 2010, Petitioner Tisdale filed a Request for Intervention, asking to be

allowed to withdraw funds from her Investment Plan account before she had separated from Florida Retirement System (FRS) employment for three calendar months. By letter of August 30, 2010 from Daniel Beard, SBA Director of Policy, Risk Management & Compliance, this request was denied. Ms. Tisdale then filed a Petition for Hearing requesting the same relief, and this proceeding ensued.

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent presented the testimony of Mr. Beard, and Respondent's exhibits R-1 through R-5 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 filing of the transcript. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner began employment with the Florida Department of Corrections, an FRS participating employer, on May 19, 2006, and became a member of the Investment Plan. Petitioner is presently 29-years-old, and her Investment Plan account was valued at approximately [REDACTED] as of September 10, 2010.
2. On August 25, 2010, Petitioner's position with the Department of Corrections was terminated.
3. On August 27, 2010, Petitioner requested that she be allowed to immediately withdraw funds from her Investment Plan account, based on hardship. She cited the fact that she had been wrongly terminated, was pregnant, and had no other resources. The SBA denied this request, based on the statutory prohibition against Investment Plan members taking a distribution

from their account until they have been terminated for three calendar months, apart from certain exceptions not applicable here. Respondent also pointed out that the FRS Public Employee Optional Retirement Program (informally known as the Investment Plan), does not include any provision for hardship distributions.

CONCLUSIONS OF LAW

4. Section 121.591(1), Florida Statutes, prohibits Petitioner from taking a distribution from her Investment Plan account until three calendar months following the termination of all FRS-covered employment. The only exception to this prohibition allows a distribution of up to 10% of the member's Investment Plan assets after one calendar month of termination if the member is at least 62-years-old with 6 years of service or has 30 years of service.

5. Petitioner does not meet the criteria for early withdrawal from her Investment Plan account. There is no statutory provision authorizing an Investment Plan distribution any sooner due to financial hardship. Accordingly, Petitioner cannot withdraw any funds from her Investment Plan account until December 1, 2010, assuming she does not return to FRS-covered employment before this date.

6. The SBA is not authorized to depart from the requirements of the statutes it is charged to implement when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). The SBA's construction and application of those statutes 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.

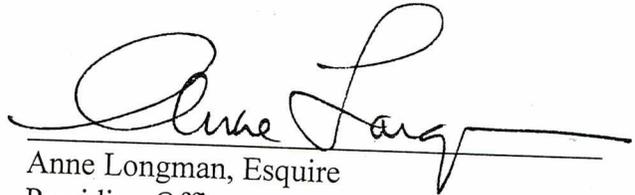
Collins, 726 So.2d 775 (Fla. 1st DCA1998).

7. No matter how urgent Petitioner's need for funds, Respondent lacks the statutory authority to grant her request.

RECOMMENDATION

Having considered the law and the undisputed facts of record, I recommend that the Respondent, State Board of Administration issue a final order denying the relief requested.

RESPECTFULLY SUBMITTED this 21st day of December, 2010.



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

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

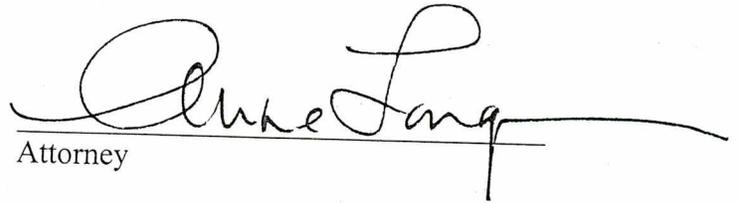
This 21st day of December, 2010.

Copies furnished to:

Faith Tisdale



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


Attorney