

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

IZELANDE CHARLES,)	
)	
Petitioner,)	
)	
vs.)	Case No. 2012-2357
)	
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
)	
)	
)	
)	
)	

FINAL ORDER

On July 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, Izelande Charles, and upon counsel for the Respondent. Both Petitioner and Respondent filed a Proposed Recommended Order. Neither party filed exceptions, which were due on July 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.

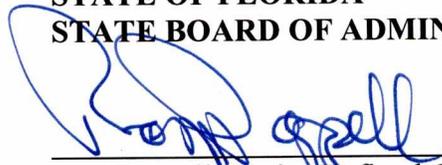
ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's request that she be entitled to renewed membership in the Florida Retirement System (FRS), despite being an FRS Investment Plan retiree initially rehired in a regularly-established 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 8th day of August, 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

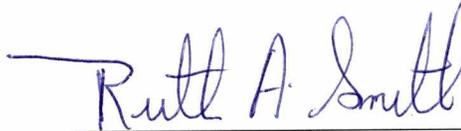
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



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 Izelande Charles, pro se, 411 Addison Place, Crestview, Florida 32536, 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 8th day of August, 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

RECEIVED
STATE BOARD OF ADMIN
12 JUL 13 PM 1:38
GENERAL COUNSEL'S OFFICE

IZELANDE CHARLES,

Petitioner,

vs.

Case No.: 2012-2357

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 April 12, 2012, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Izelande Charles, *pro se*
411 Addison Place
Crestview, Florida 32536

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) as a rehired retiree.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone and testified on her own behalf. Respondent presented the testimony of Daniel Beard, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-4 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 after the transcript was filed. Petitioner filed a proposed recommended order, and Respondent filed a proposed recommendation.

MATERIAL UNDISPUTED FACTS

1. On September 12, 2003, Petitioner was employed by the Florida Department of Children and Families, an FRS participating employer. In 2004, Petitioner elected to be enrolled in the FRS Investment Plan.
2. On January 19, 2005, Petitioner terminated all FRS covered employment.
3. On September 12, 2005, Petitioner called the MyFRS Financial Guidance line and stated that she wanted to take a complete distribution from her Investment Plan account. During this call, Petitioner was told that if she took a distribution from her Investment Plan account, she would not be eligible for special risk class membership, disability benefits, or the DROP program if she returned to FRS-covered employment. Petitioner requested and received a total distribution from her Investment Plan account of approximately \$3500.
4. Petitioner was subsequently hired by the Florida Department of Elder Affairs, which is an FRS participating agency, but did not return to work with any FRS-covered entity until after July 1, 2010.

5. Petitioner has been notified that she is not eligible for renewed membership in the FRS because she was not reemployed in a regularly established position prior to July 1, 2010.

6. Petitioner requested a hearing to contest this determination, and this administrative proceeding followed.

CONCLUSIONS OF LAW

7. An FRS participant enrolled in the Investment Plan who has terminated employment and taken a distribution as provided in Section 121.591, Florida Statutes is considered a "retiree" by operation of law. §121.4501(2)(j), Fla. Stat. (2005).

8. During the 2009 legislative session, the Florida Legislature revised Section 121.122, Florida Statutes to exclude from renewed membership in the FRS any retiree who becomes reemployed on or after July 1, 2010. The amended statute states in pertinent part that:

121.122. Renewed membership in system

(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).

9. Under the express terms of the applicable statutes cited above, Petitioner is ineligible to participate in the FRS because she is retired and was not initially reemployed before July 1, 2010.

10. Petitioner asserts that the law in effect when she was rehired should not affect a decision she made in 2005 to take a distribution from her retirement account, and that she is being penalized for not being rehired before July 1, 2010.

11. Petitioner was told when she made the decision to take a distribution in 2005 that she would not be eligible for special risk class membership, disability benefits, or the DROP

program if she returned to FRS-covered employment. She was not told she would be ineligible to rejoin the FRS system upon return to FRS-covered service, because that was not the state of the law in 2005, and no one could have known that the law would subsequently be amended to read as it now does.

12. The history of the passage of the 2009 amendment makes clear that the legislature was aware of the potentially harsh results the change in the law could have on existing early retirees. As the agency affected by a change in the statute it administers, Respondent submitted an analysis of House Bill 479 to the Full Appropriations Council on General Government & Health Case which stated:

HB 479 would also close the renewed membership class to retirees of a state-administered retirement system initially reemployed by a Florida Retirement System participating employer on or after January 1, 2010. However, this bill would require employer contributions to be paid on the salary of reemployed retirees who are not enrolled as renewed members to maintain the funding base for the Health Insurance Subsidy Program. In addition, this bill would require the employer to pay any unfunded actuarial liability portion of the employer contribution rate for active members if an unfunded actuarial liability cost reemerges. The bill does not provide for the paying of the Investment Plan administrative contribution.

Retirees initially employed before January 1, 2010, would continue their renewed membership and employers would continue to owe the total employer contribution rate for these renewed members. As the number of retirees who are enrolled as renewed members in the FRS is reduced over time, this would gradually reduce the overall cost to employers. In the longer-term, these changes could result in savings to the FRS Pension Plan by limiting future liabilities for renewed membership and by altering retirement patterns based upon plans for returning to work within a few months of terminating employment. The actual impact would have to be determined by an actuarial special study conducted by the Division of Retirement's consulting actuary.

Closing the Renewed Membership Class to future participation would impact not only those reemployed retirees who retired at

normal retirement, but it would also impact those who retired early.

Under the FRS Pension Plan a member becomes vested with six years of service. A retiree may take an early retirement if vested and within 20 years of the normal retirement age. However, in doing so the benefit is reduced by five percent for each year remaining before the retiree reaches normal retirement age. For retirees of the Special Risk Class, the earliest a member could receive an early retirement benefit would be at age 35 and one month. For retirees of the other membership classes, early retirement benefit would be at age 42 and one month if vested. These early retirement retirees would be ineligible for renewed membership should they return to FRS employment.

Under the FRS Investment Plan, a participant vests after only one year of service. If a member terminates and takes a distribution, he or she is considered a retiree and ineligible for renewed membership in the FRS. Conceivably, a retiree who participated in the Investment Plan for one year and took a distribution at the age of 24 could later return to work for an FRS employer for 30 years or more and never be eligible for a retirement benefit. This could impact the ability of FRS employer's (sic) to recruit employees in the future.

Florida State Board of Administration Report to Full Appropriations Council on General Government & Health Care on HB # 479, Feb. 16, 2009, p. 5 (Emphasis added). It appears that the legislature was made aware of the harsh results which could be caused by absolutely precluding those deemed by operation of law to be retirees from ever again participating in the FRS, and with this awareness, enacted section 121.122 as it currently reads.

13. 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).

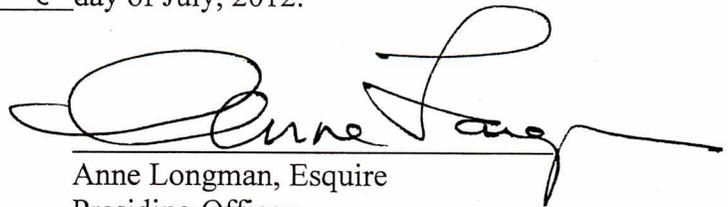
14. Denial of the Petitioner's request in this case is consistent with the denial of a number of other similar petitions Respondent has received from former FRS members who were retired by operation of law before the 2009 amendment was enacted. See Blaesser v. State Board of Administration, Case No. 2011-2106 (Recommended Order, October 6, 2011; Final Order October 28, 2011)(2009 amendment does not contravene any contract right and is not deprivation of a vested right).

15. 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 2005 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 12th day of July, 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 12th day of July, 2012.

Copies furnished to:

Izelande Charles
411 Addison Place
Crestview, Florida 32536

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


Attorney