

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

DAVID OLDFIELD,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2018-0129
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On August 29, 2018, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the pro se Petitioner, David Oldfield, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. No exceptions to the Recommended Order, which were due by September 13, 2018, were filed by either party. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that he be allowed to rescind his second election by which he had transferred from the Florida Retirement System (“FRS”) Pension Plan to the FRS Investment Plan hereby is denied. While Petitioner claimed that he was unaware that there is a thirty day grace period for members to reverse a plan election, the record evidence demonstrated that Petitioner previously had submitted an erroneous second

election and that he had rescinded that particular election within the 30-day grace period. Petitioner also claimed he was unaware that by selecting the Investment Plan, he would not be eligible for DROP. However, there is record evidence that MyFRS Financial Guidance Line representatives discussed DROP with Petitioner extensively.

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 October, 2018, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

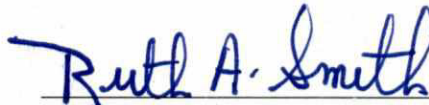
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to David Oldfield, pro se, by email to: [REDACTED] and by UPS to: [REDACTED]; and by email transmission to Brian Newman, Esq. (brian@penningtonlaw.com) and Brandice Dickson, Esq., (brandi@penningtonlaw.com) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 8th day of October, 2018.



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

DAVID OLDFIELD,

Petitioner,

vs.

Case No.: 2018-0129

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 June 5, 2018, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: David Oldfield, pro se

[REDACTED]

For Respondent: Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to rescind a second election by which he transferred from the Florida Retirement System (FRS) Pension Plan to the FRS Investment Plan, thereby returning him to the Pension Plan.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Petitioner's exhibits P-1 through P6 and Respondent's exhibits R-1 through R-10 were admitted into evidence at the hearing without objection, but with Petitioner's statement that he does not remember some of the documented telephone calls.

A transcript of the hearing was made, filed with the agency, and provided to the parties, although no Notice of Filing the transcript was filed until July 24, 2018. The parties were invited to submit proposed recommended orders within thirty days after the Notice was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

UNDISPUTED MATERIAL FACTS

1. Petitioner became a member of the FRS in July 1995 when employed with the Florida Department of Transportation. He left that employment in September 1995 and was hired with the Collier County School Board, also an FRS employer, in September 1997. He was a member of the defined benefit Pension Plan.

2. When the defined contribution Investment Plan began in 2002, Petitioner made an affirmative initial election to remain in the Pension Plan effective October 1, 2002.

3. On March 13, 2017, Petitioner called the MyFRS Financial Guidance Line requesting an estimated benefit for each of the plans. He stated he was weighing his options including how the Pension Plan coordinated with the Deferred Retirement Option Program (DROP.) He was given an explanation of each plan, as well as estimates that included a DROP calculation with the Pension Plan estimate. The planner stated it would be to Petitioner's best advantage to participate in DROP, in the context of an extensive conversation about investment planning and available resources.

4. On March 29, 2017, Petitioner and his financial advisor called the MyFRS Financial Guidance Line to learn his opening balance if he were to change from the Pension Plan to the Investment Plan. The FRS Financial Guidance Line Planner gave them this figure and the requirements for making a second election. Petitioner indicated during this call that he did not want an estimate of his Pension Plan benefit and did not have any additional questions.

5. On April 6, 2017 Petitioner submitted a second election form electing to transfer from Pension Plan to the Hybrid Option establishing a May 1, 2017 Hybrid Option effective date. In changing to the Hybrid Option, an FRS participant retains his accrued Pension Plan benefit and directs all future contributions, from both him and his employer, to an Investment Plan account.

6. On April 11, 2017, a MyFRS Financial Guidance Line representative called Petitioner regarding his recent election, to make sure he had correctly indicated his choice on the form he submitted, because the Hybrid Option had not been discussed in their previous conversations. Petitioner stated that his private financial planner had made the Hybrid choice, he was then added to the call, and they then were given an additional explanation of the Investment Plan compared to the Hybrid Option. During the call Petitioner confirmed that he wanted to be in the Investment Plan, not the Hybrid Option, and was transferred to the Plan Choice Administrator to begin the process of rescinding his election.

7. On April 12, 2017, Petitioner called and had another lengthy conversation with FRS Financial Guidance Line representatives. They confirmed that since Petitioner was still within his 30-day grace period, he was eligible to rescind the second election. They also confirmed Petitioner's email address and advised that he would be receiving the forms to rescind his election via the provided email address.

8. On April 24, 2017, the Plan Choice Administrator received another second election form from Petitioner choosing Option 2 - the Investment Plan, establishing a May 1, 2017 effective date for Petitioner's enrollment in the Investment Plan.

9. The 2nd Election Retirement Plan Enrollment Form Petitioner completed and signed also states in pertinent part:

I am exercising my one-time 2nd Election to... change from the FRS Pension Plan to the FRS Investment Plan

* * *

You understand the following: You have elected to switch to the Investment Plan and any accrued value you may have in the Pension Plan will be transferred to the Investment Plan as your opening balance and any Pension Plan accrued value transferred to your Investment Plan account will be subject to the vesting requirement of the FRS Pension Plan.

10. On April 27, 2017, a Florida Retirement System Confirmation of 2nd Election – Investment Plan was mailed to Petitioner, advising him as follows:

If you feel this retirement plan election was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-446-9377, Option 2. Failure to notify us no later than 4:00 PM EST on the last business day of the month following your election month will void your right to cancel this election.

Petitioner had until April 30, 2017 to cancel this second election, but did not attempt to do so before this deadline expired.

11. On May 4, 2017, Petitioner again called the MyFRS Guidance Line and confirmed his Investment Plan election had been received.

12. On May 24, 2017, Petitioner called the Guidance Line with additional questions about his recent change to the Investment Plan. The counselor told Petitioner that his account would be funded by the last day of May. Petitioner did not dispute his Investment Plan election,

or have any questions regarding DROP participation; he just wanted to confirm that his movement from the Pension Plan to the Investment Plan had been completed.

13. On April 2, 2018, Petitioner submitted a Request for Intervention asking to transfer back to the Pension Plan because “no one ever informed me a 30 day grace period. Also did not inform me that selecting Option 2 Investment Plan would remove my DROP Program Option.” In his April 26, 2018 Petition for Hearing requesting the same relief, he asked for consideration of his plea “due to my health issues.”

CONCLUSIONS OF LAW

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

(f) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, 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 pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

§ 121.4501(4)(f), Fla. Stat. (2017).

15. As provided in the above statute, members of the FRS have one opportunity to switch plans after their initial election period expires. Because Petitioner used his one-time second election in 2017, he has exhausted his only opportunity to move between plans. There is no “third” election. Unfortunately, Petitioner cannot rescind his most recent second election because he failed to do so before the deadline established by the applicable rule. The grace period provided under Rule 19-11.007, Florida Administrative Code, is as follows:

(4) 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, or if the member has reconsidered his or her plan choice, 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: 1(866) 446-9377, or by written correspondence directly to the SBA, to the Plan Choice Administrator, to the Financial Guidance Line, 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 take the necessary steps to reverse the election and to correct the member's records to reflect the election reversal.

(c) A confirmation that the election was reversed will be sent to the member by the FRS Plan Choice Administrator.

(d) The member retains the right to file a subsequent second election consistent with subsections (2) and (3), above.

(e) Nothing contained in this subsection will interfere with a member's right to file a complaint, as permitted by Section 121.4501(8)(g), F.S. and discussed in Rule 19-11.005, F.A.C.

Rule 19-11.007(4), F.A.C.

16. Under the rule, Petitioner had until the time the present value of his Pension Plan benefit was transferred to his Investment Plan account (May 31, 2017) to rescind his second election.

17. Petitioner contends he does not remember being informed of the 30-day grace period or that by selecting Option 2 – Investment Plan he would not be eligible for DROP. Petitioner had previously submitted an erroneous second election, dated April 3, 2017, and had rescinded that election within the 30-day grace period, and thus had actual knowledge of the

opportunity to rescind a second election. He had a previous extensive conversation with Guidance Line representatives that included discussion about DROP.

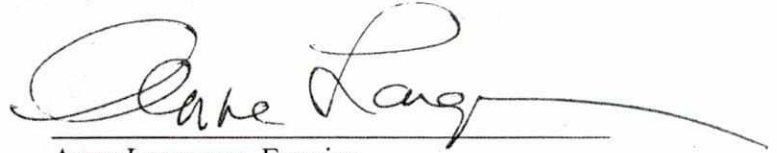
18. In carefully reviewing the record here, there is some indication that Petitioner was confused, and of some misunderstandings by both him and his private financial advisor, as well as an SBA form that was less than clear. I see no evidence, however, that Petitioner was misinformed or not adequately advised as to any relevant issue by any SBA representative or third party advisor. Instead all Respondent contractors and employees appear to have made every effort to assure that his retirement wishes were carried out, he was able to reverse his initial second election, and he was fully informed before making his plan decisions.

19. The Florida Statutes and rules creating and governing the Florida Retirement System and Petitioner's rights and responsibilities under them are clear, and the SBA cannot deviate from them. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.). 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). It is unfortunate that Petitioner here now wishes he had made a different choice of retirement plan, but he has not demonstrated entitlement to the relief he has requested under the applicable law, and this tribunal has no jurisdiction to hear any equitable claims.

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 29th day of August, 2018.



Anne Longman, Esquire
Anne Longman
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
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COPIES FURNISHED via mail and electronic mail to:

David Oldfield



Petitioner

and via electronic mail only to:

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Counsel for Respondent