

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

DANIEL ALONSO,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2007-982
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**FINAL ORDER**

On June 5, 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, Daniel Alonso, and upon counsel for the Respondent. Respondent filed a Proposed Recommended Order. Neither party filed Exceptions, which were due on June 20, 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 reverse the State Board of Administration's determination that his Second Election was invalid is denied because Petitioner submitted his Second Election request at a time when he was not earning service credit with a Florida Retirement System employer.

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 25<sup>th</sup> day of June, 2008, 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

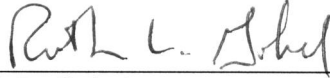
FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.

TINA JOANDS  
Clerk



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order was sent by UPS to Daniel Alonso, 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 25<sup>th</sup> day of June, 2008.



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

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STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

DANIEL ALONSO,

Petitioner,

v.

CASE NO.: 2007-982

STATE BOARD OF ADMINISTRATION,

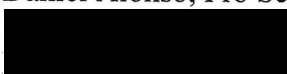
Respondent.

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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 December 13, 2007, in Tallahassee, Florida. The appearances were as follows:

**APPEARANCES**

For Petitioner: Daniel Alonso, Pro Se  
  
Petitioner

For Respondent: Brandice D. Dickson, Esquire  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

**STATEMENT OF THE ISSUE**

The issue is whether the SBA should reverse its determination that the Petitioner's Second Election was invalid because he submitted his 2nd Election Retirement Plan Enrollment

Form at a time when he was on unpaid leave from his Florida Retirement System (FRS) covered employer and not earning service credit.

### **PRELIMINARY STATEMENT**

On September 4, 2007, Petitioner filed a Request for Intervention seeking reconsideration of the Respondent's determination that his Second Election was invalid. The SBA investigated and denied this request. Petitioner then filed a Petition for Hearing requesting the same relief, which was transmitted to the undersigned for informal hearing.

Petitioner attended the informal hearing by telephone and testified on his own behalf. The Respondent presented the testimony of Dan Beard, Director of Policy Risk Management and Compliance, and Respondent's Exhibits R-1 through R-7, consisting of official agency records and communications by and to the Petitioner, which were admitted into evidence without objection. Petitioner did not submit any exhibits.

A transcript of the informal hearing was made, filed with the agency on December 20, 2007, and made available to all parties. The parties were invited to submit proposed recommended orders within 30 days after the transcript was filed. The Respondent filed a proposed recommended order; Petitioner made no further filings.

### **UNDISPUTED MATERIAL FACTS**

1. Petitioner was employed by the Miami-Dade Aviation Department, an FRS-covered employer, from April 1983 until he was terminated on June 4, 2007. By letter from his employer dated October 31, 2006, Petitioner was informed that he was placed on administrative leave beginning October 27, 2006, "until further notice."

2. Petitioner was paid for this administrative leave from October 27, 2006 through November 14, 2006.

3. Petitioner was not paid for this administrative leave from November 15, 2006 through his termination date of June 4, 2007.

4. Petitioner was unaware that his employer had changed his leave from paid administrative leave to unpaid administrative leave, and apparently did not receive any notice of this change.

5. Petitioner submitted an executed 2nd Election Retirement Plan Enrollment Form in December 2006, seeking to switch from the FRS Pension Plan to the Investment Plan.

6. Respondent notified the Petitioner that his second election was invalid.

7. After investigating Petitioner's Request for Intervention, Respondent was told that his second election was invalid because it appeared that he had not earned service credit in the month of December 2006. Petitioner remains fully vested in the FRS Pension Plan.

#### **CONCLUSIONS OF LAW**

8. The SBA is not authorized to depart from the requirements of the statutes it administers when exercising its jurisdiction, Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and 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).

9. Section 121.4501(4)(e), Florida Statutes governs an FRS plan participant's movement between plans. That statute states:

(e) After the period during which an eligible employee had the choice to elect the defined benefit program or the Public Employee Optional Retirement Program, 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 defined benefit program to the Public Employee Optional Retirement Program or from the Public Employee Optional Retirement Program to the defined benefit program. Eligible employees may elect to move between Florida Retirement System programs only if they are earning service credit in an employer-employee relationship consistent with the requirements under s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections shall be 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 that the employee must meet the conditions of the previous sentence when the election is received by the third-party administrator. This paragraph shall be contingent upon approval from the Internal Revenue Service for including the choice described herein within the programs offered by the Florida Retirement System.

§ 121.4501(4)(e), Fla.Stat. (2006).

10. The above statute dictates that an employee who is on a leave of absence without pay cannot be "earning service credit in an employer-employee relationship consistent with the requirements under §121.021(17)(b)," and so cannot elect to move between FRS programs.

11. There does not appear to be any dispute that Petitioner was on unpaid administrative leave when he submitted his 2<sup>nd</sup> Election Retirement Enrollment Form, and pursuant to the above statute, he therefore was ineligible to make a second election.

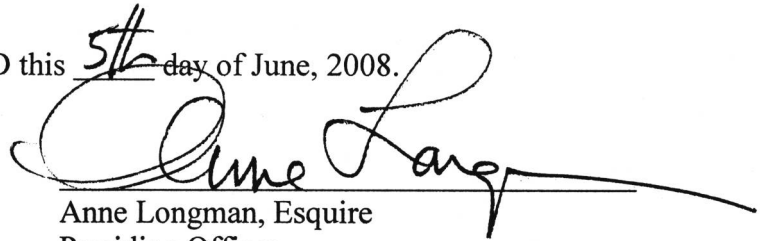
12. The record here contains no evidence that Petitioner was notified by his employer that his status was to be changed from leave with pay to leave without pay. Petitioner testified that he received no such notice, and had he known he was no longer going to be paid, he would have filed his second election earlier. Unfortunately, there does not appear to be any authority

which would allow Respondent to honor an election made while an FRS participant is on a leave of absence without pay. Whatever redress Petitioner may have against his employer for failing to keep him apprised of his employment status, and thereby potentially impacting his retirement plan status, cannot be remedied in this forum.

### RECOMMENDATION

Having considered the law and the undisputed facts in this matter, I recommend that a final order be entered by the Respondent, State Board of Administration, denying the relief requested.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of June, 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: 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 should be filed with the Agency Clerk of the State Board of Administration. 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 Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

This 5<sup>th</sup> day of June, 2008.



Copies furnished to:

Daniel Alonso



Petitioner

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