

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

SHIRIN HAMADANI,)

Petitioner,)

vs.)

SBA Case No. 2015-3222

STATE BOARD OF ADMINISTRATION,)

Respondent.)

FINAL ORDER

On April 16, 2015, 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, Shirin Hamadani, 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 May 1, 2015, were filed by either party. 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.

STATEMENT OF THE ISSUE

The SBA adopts and incorporates in this Final Order the Statement of the Issue set forth in the Recommended Order as if fully set forth herein.

PRELIMINARY STATEMENT

The SBA adopts and incorporates in this Final Order the Preliminary Statement forth in the Recommended Order as if fully set forth herein.

MATERIAL UNDISPUTED FACTS

Except for paragraph 9, the SBA adopts and incorporates in this Final Order the Material Undisputed Facts set forth in the Recommended Order as if fully set forth herein. The following paragraph is substituted for paragraph 9 in the Recommended Order to correct a typographical error:

9. On October 14, 2014 and October 21, 2014, in between the time Petitioner executed a second election form and the time that Respondent's third party administrator received the election form, Petitioner called the MyFRS Financial Guidance Line again twice. She was again advised of the different plans and the prohibition against returning to work after taking a distribution.

CONCLUSIONS OF LAW

The SBA adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

ORDERED

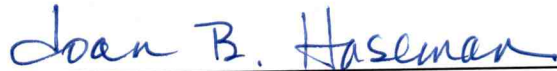
The Petitioner's request that the SBA waive the requirement set forth in Section 121.091(9)(d), Florida Statutes, that she must wait six (6) full calendar months from the date she ultimately takes a distribution from her Florida Retirement System Investment Plan account after her termination of employment before returning to work with her former employer, 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.

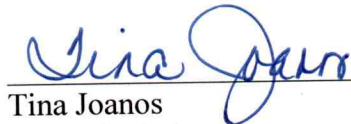
DONE AND ORDERED this 7th day of July, 2015, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Joan B. Haseman
Senior Defined Contribution Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

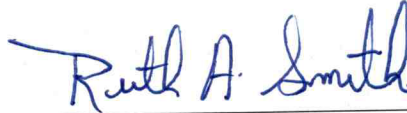
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Shirin Hamadani, pro se, both by email transmission, [REDACTED] and by U.P.S. 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 7th day of July, 2015.



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

SHIRIN HAMADANI,

Petitioner,

vs.

Case No.: 2015-3222

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 1, 2015, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Shirin Hamadani


For Respondent:

Brandice D. Dickson, Esquire
Pennington, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

EXHIBIT A

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to waive the six calendar month prohibition against re-employment after taking a distribution from her Florida Retirement System (FRS) Investment Plan account.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her own behalf, and was cross-examined by counsel for Respondent. Petitioner's Exhibits P-1 and P-2 and Respondent's Exhibits R-1 through R-11 were admitted into evidence without objection. After the hearing, Petitioner's Exhibit P-3 was submitted and admitted into evidence without objection.

A transcript of the hearing was filed with the agency and provided to the parties. At Petitioner's request for expedited handling, the parties were invited to submit proposed recommended orders on or before April 14, 2015. The following recommendation is based on the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

MATERIAL UNDISPUTED FACTS

1. Petitioner was employed with the Hillsborough Community College, an FRS-covered employer.
2. Petitioner had until August 31, 2002 to make an initial election between the FRS defined benefit Pension Plan and the FRS defined contribution Investment Plan. She did not make an affirmative choice and so defaulted into the Pension Plan effective September 1, 2002.
3. On September 30, 2014, Petitioner called the MyFRS Financial Guidance Line and asked for, and received, information about her potential benefits under the FRS Pension Plan and the FRS Investment Plan. During this very extensive call, Petitioner explained to the

MyFRS representative that she wanted to be retired, to start taking a benefit, and to then return to work as soon as possible, but she was unsure as between the Pension Plan and the Investment Plan which plan was correct for her situation. She did know that she would have to stay out of work for six months before she could return, stated this during the call, and this was confirmed by the representative.

4. Remaining in the Pension Plan and selecting among its payment options was discussed. The representative also explained that she could switch to the Investment Plan and receive a lump sum benefit, and he set out the consequences of this choice. He reiterated that if she took a benefit from either plan, she would have to wait a minimum of six months after receiving the benefit before she could return to work.

5. After explaining the differences between the two plans, the tax consequences, and distribution schedules, and making other comparisons, the MyFRS Financial Guidance Line representative told Petitioner he would check back with her to see if she had made her decision. He stated that at this point she had ample time to make her decision if she wanted to retire in December.

6. On October 6, 2014, Petitioner called the MyFRS Financial Guidance Line again and advised that she wished to switch from the FRS Pension Plan to the FRS Investment Plan, take a distribution to pay off her mortgage, and return to work and miss only one semester of school. At that time, she was advised as follows:

E&Y REPRESENTATIVE: --from the month that you leave before you can access the money. Actually, I'm sorry. I'm sorry. I was wrong. I was wrong. At your age, you have access up to ten percent after one full calendar month. **So you'll be able to take out that amount after one full calendar month, and then from that point on, you would need to wait six full calendar months.** So it would be seven months; okay?

MS. HAMADINI: That would be fine. Do you know why? Because I am calculating if I stay – the last day of my working would be this December and then – however, I have to take one semester off.

E&Y REPRESENTATIVE: Perfect.

MS. HAMADINI: And they said it's going to be August. So, from this December to August, that is the time it's going to be eight months.

E&Y REPRESENTATIVE: So here's what you want to do then. You want to retire or, you know, leave and retire December 31st; okay?

MS. HAMADINI: Okay.

E&Y REPRESENTATIVE: Then on February 1st, you're going to have access to the money to take up to ten percent. It doesn't matter how much you take, at least take one penny; okay?

MS. HAMADINI: Un-huh.

E&Y REPRESENTATIVE: Then when you take that money, you're considered retired. It doesn't mean you can't go back to work for them. It just means that you're retired, which means also that you will not be able to accumulate retirement benefits when you go back to work.

MS. HAMADINI: I recognize it because –

E&Y REPRESENTATIVE: Okay.

MS. HAMADINI: -- of anymore in the Pension Plan.

E&Y REPRESENTATIVE: Right. So they're not going to take the three percent out of your paycheck either, but you're not going to get the matching contribution from the employer.

MS. HAMADINI: Right.

E&Y REPRESENTATIVE: Okay. So then what happens is, from February 1st, **you have to wait six full calendar months from February**; okay? So, it's going to be March, April, May, June, July. You might need to wait August too. So can you leave in November?

MS. HAMADINI: I can – the last day of school is the 12, 13 of December.

E&Y REPRESENTATIVE: It doesn't matter when you leave in December. **If you can leave in November, then you can go back in August. If you leave in December, then you can't go back until – August, September – until September.**

...
E&Y REPRESENTATIVE: But because of their rules, if you leave in December, then you're not going to have access to the money until February 1st. If you take the money February 1st, it doesn't – and it doesn't matter if you take it February 1st or February 29th.

MS. HAMADINI: Okay.

E&Y REPRESENTATIVE: But as long as you take it in February, **you're still going to have to wait six full months before you can go back to work for an FRS employer.**

MS. HAMADINI: Okay.

[emphasis added]

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.

11. Petitioner called the MyFRS Financial Guidance line on January 20, 2015 to say that she wanted to rescind her second election. She was advised during that call of the procedure to make a complaint (Request for Intervention). In between the time Respondent's second election was confirmed in writing on October 23, 2014 and January 20, 2015, there is no record of communication between Petitioner and Respondent.

12. On January 20, 2015, Petitioner submitted a Request for Intervention, asking to rescind her second election because she believed she was not well-informed and citing her "broken language" at the time she executed her October 2014 second election. That request was denied 13 business days later on February 6, 2015. Ten business days later, on February 20, 2015, Petitioner filed a Petition for Hearing requesting the same relief, and this administrative proceeding followed.

13. At hearing on the Petition, Petitioner stated affirmatively that she wished to remain in the Investment Plan.

14. Instead of rescission of her second election, Petitioner now requests a waiver of the six month prohibition before she can return to work and asserts that due to SBA delay in responding to her January 20, 2015 call to the MyFRS Financial Guidance Line and January 20, 2015 Request for Intervention, she should not have to wait the full six months before being allowed to return to work. This amounts to an assertion that her January 20, 2015 call and January 20, 2015 Request for Intervention should have been addressed/decided in the month of January 2015 so that she could have taken a distribution in January 2015 and preserved her

7. On October 10, 2014, Petitioner called the MyFRS Financial Guidance Line and again explained she wanted to take a lump sum retirement benefit and return to work. Again, she was advised that she had to switch to the FRS Investment Plan to take a lump sum and, as to timing of returning to work, she was advised again that if she left work in November 2014 the earliest she would be able to return to work was August 2015, and if she delayed her termination until December 2014, the earliest she could return to work was September 2015. She acknowledged that she understood she had to stay out of work six months.

8. That same day, on October 10, 2014, Petitioner executed a 2nd Election Retirement Plan Enrollment Form indicating her desire to transfer to the Investment Plan. This form was received by Respondent's third party administrator on October 21, 2014, establishing a November 1, 2014 Investment Plan effective date. That form stated:

I understand that I can find a description of my rights and responsibilities under the FRS Pension Plan and the FRS Investment Plan in the respective Summary Plan Descriptions, Florida Statutes, and Administrative Rules available through the MyFRS Financial Guidance Line at 1-866-44-MyFRS (1-866-446-933; or TTY: 1-888-429-2160) or at MyFRS.com. **I understand that this enrollment will constitute my one-time second election as provided under the FRS; I will have to remain in this retirement plan until my retirement from the FRS.**

[emphasis in original].

9. On October 14, 2014 and October 21, 2015, in between the time Petitioner executed the second election form and the time that Respondent's third party administrator received the election form, Petitioner called the MyFRS Financial Guidance Line again twice. She was again advised of the different plans and the prohibition against returning to work after taking a distribution.

10. On October 23, 2014, Petitioner was mailed a confirmation that her second election had been received. That mailing further advised:

opportunity to return to work in August 2015 if the Request for Intervention was decided against her.

15. To date, Petitioner has not taken a distribution from her Investment Plan account.

CONCLUSIONS OF LAW

16. Section 121.091(9)(c), Florida Statutes states:

(c) Any person whose retirement is effective on or after July 1, 2010, or whose participation in the Deferred Retirement Option Program terminates on or after July 1, 2010, who is retired under this chapter, except under the disability retirement provisions of subsection (4) or as provided in s. 121.053, may be reemployed by an employer that participates in a state-administered retirement system and receive a retirement benefits and compensation from that employer. **However, a person may not be reemployed by an employer participating in the Florida Retirement System before meeting the definition of termination in s. 121.021 and may not receive both a salary from the employer and retirement benefits for 6 calendar months after meeting the definition of termination.** However, a DROP participant shall continue employment and receive a salary during the period of participation in the Deferred Retirement Option Program, as provided in subsection (13).

§ 121.091(9)(c), Fla.Stat. (2014)(emphasis added)

17. Under Section 121.021(39)(a), Florida Statutes, termination occurs when a member ceases all employment relationships with participating employers.

18. Rule 19-11.009(2), Florida Administrative Code states:

(2) If reemployed on or after July 1, 2010, a member may return to work in any position with an FRS-covered employer after being retired for six calendar months. Six calendar months means six full calendar months following the month the member retired. For example, if a member retires in January, the six calendar months are February, March, April, May, June, and July. The retiree may return to employment in August. The member must suspend receipt of any remaining retirement benefits until either employment is terminated or the completion of 12 calendar months of retirement. Effective July 1, 2010, there are no excepted positions.

19-11.009(2), F.A.C.

19. Both the statute and rule governing reemployment after retirement mandate that an employee wait six calendar months after taking a distribution before returning to work. Respondent does not have the authority to waive the prohibition against reemployment.

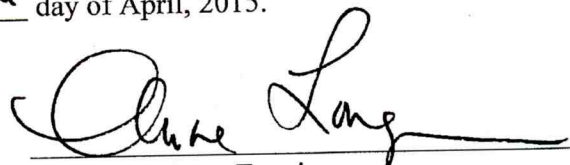
20. I conclude that Petitioner not having taken a distribution in January cannot be attributed to the Respondent's taking 13 days to respond to her Request for Intervention. Petitioner's Request for Intervention stated only that she made a wrong decision and asked that she be allowed to go back to the Pension Plan. Petitioner had already been told multiple times prior to January that she had to wait six months before returning to work and received detailed accurate guidance on how to time her actions to achieve her desired outcome. It is unfortunate that Petitioner has not been able to effectuate her intention of retiring, taking a lump sum distribution and returning to work as soon as possible. I see no indication that she was given inaccurate information or misled, and in fact all FRS representatives worked assiduously with Petitioner to guide her decision making in accordance with her wishes.

21. The Florida Statutes creating and governing the Florida Retirement System, and Petitioner's rights and responsibilities under them, are clear, and the SBA cannot deviate from them. *Balezitis v. Dep't of Management Services, Div. of Retirement*, 2005 WL 517476 (Fla.Div.Admin.Hrgs. March 2, 2005).

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 16th day of April, 2015.


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
alongman@llw-law.com

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
Tina.joanos@sbafla.com
mini.watson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:



Petitioner

and via electronic mail only to:

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Counsel for Respondent