

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**

VERNON WATKINS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SBA Case No. 2023-0022
	)	
STATE BOARD OF ADMINISTRATION,	)	
	)	
Respondent.	)	
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**FINAL ORDER**

On May 18, 2023, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, Vernon Watkins, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by April 2, 2023, 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**

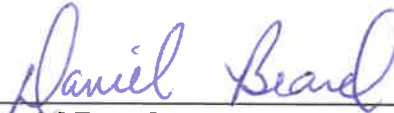
The Recommended Order (Exhibit A) is hereby adopted in its entirety. There is no statutory authority that would allow the SBA to transfer, to Petitioner’s brother, funds that Petitioner had received as a beneficiary of his deceased father’s Florida Retirement System (“FRS”) Investment Plan account where Petitioner has failed to submit a valid disclaimer of such funds. Accordingly, Petitioner is not entitled to the relief requested.

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 18<sup>th</sup> day of August 2023, in Tallahassee, Florida.

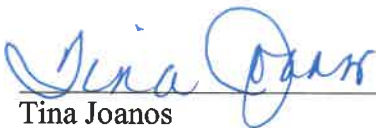
**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**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 Vernon Watkins, *pro se*, both by email transmission to Winstonwatkins10@yahoo.com and by U.P.S. to 605 Garfield Avenue, Lehigh Acres, Florida 33936; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 18<sup>th</sup> day of August, 2023.



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**

VERNON WATKINS,

Petitioner,

vs.

Case No.: 2023-0022

STATE BOARD OF ADMINISTRATION,

Respondent.

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**RECOMMENDED ORDER**

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on March 21, 2023, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

**APPEARANCES**

For Petitioner:       Vernon Watkins, pro se  
605 Garfield Avenue  
Lehigh Acres, FL 33936

For Respondent:       Deborah S. Minnis  
Ausley & McMullen, P.A.  
Post Office Box 391  
Tallahassee, Florida 32302

**STATEMENT OF THE ISSUE**

The issue is whether moneys directed to a beneficiary account created for Petitioner by the FRS Investment Plan Administrator, to receive a benefit from his father's FRS Investment Plan

**EXHIBIT A**

account, may be transferred to his brother in the absence of Petitioner having disclaimed the benefit.

### **PRELIMINARY STATEMENT**

Petitioner testified on his own behalf and presented no other witnesses. Respondent was represented by Allison Olson, SBA Director of Policy, Risk Management, and Compliance, who also provided testimony in this matter.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 3, 2023. The parties were invited to submit proposed recommended orders within thirty days after the transcript was filed. The following recommendation is based upon the undersigned's consideration of the complete record in this case and all materials submitted by the parties.

### **UNDISPUTED MATERIAL FACTS**

1. On November 20, 2009, the Investment Plan Administrator received an FRS Investment Plan Beneficiary Designation form that was completed and signed by Petitioner's father.
2. By submitting this form, Petitioner's father updated his beneficiary designation to include Petitioner as a 50% beneficiary along with Petitioner's brother. On September 26, 2022, the Investment Plan Administrator received notification of the passing of Petitioner's father and the required documentation of same. As a result, and as required by law, the Investment Plan Administrator established beneficiary accounts for Petitioner and his brother on October 21, 2022.
3. A FRS Investment Plan – Confirmation of Beneficiary Asset Transfer dated October 24, 2022, was provided to Petitioner.

4. In his Request for Intervention and his Petition for Hearing, Petitioner states that because he receives Supplemental Security Income (SSI) through the Social Security Administration, receipt of the funds at issue could affect his eligibility for SSI. He therefore would like the funds held in his name to be transferred to his brother, Winston Watkins.

5. The rules that govern Respondent require that Petitioner, as a designated beneficiary, must first disclaim the benefit. There is no provision for a simple transfer of the funds.

6. Under Rule 19-11.002, Florida Administrative Code, Petitioner was required to provide an irrevocable and unqualified refusal to accept the assets in writing to the Investment Plan Administrator. No special form is required. However, the written disclaimer must be received by the Investment Plan Administrator at the later of the following times:

- a. Nine months after the retirement account owner dies.
- b. Nine months after the beneficiary attains age 21, or if the beneficiary is 21 when the retirement account owner dies.
- c. The beneficiary must not have accepted any of the inherited assets prior to the disclaimer.

7. In addition, the rule requires that the assets must pass to the successor beneficiary without any direction on the part of the person making the disclaimer.

8. At the time of the hearing in this matter, Petitioner had not submitted the required disclaimer to the Investment Plan Administrator.

9. Petitioner has not submitted the written disclaimer within any of the time periods required by Rule 10-11.002(19)(b)3a-c, Florida Administrative Code. He also seeks to direct to whom the funds should be passed as the successor beneficiary, contrary to Rule 10-11.002(19)(b)3d, Florida Administrative Code.

## CONCLUSIONS OF LAW

1. There is no statutory authority for Respondent to transfer the funds received by Petitioner as a beneficiary to his fathers' Investment Plan account to Petitioner's brother.

2. Rule 19-11.002(19), Florida Administrative Code, sets out the process the SBA must follow for a beneficiary of an Investment Plan account to disclaim the benefit left to him or her by a deceased FRS member. The language of paragraph Rule 19-11.002(19) (a)-(c), Florida Administrative Code reads as follows:

(19)(a) A designated beneficiary may disclaim any monetary interest as provided in chapter 739, F.S., and Internal Revenue Code s. 2518. A beneficiary can make a partial disclaimer or disclaim the entire interest. When a beneficiary makes a disclaimer, the beneficiary is considered to have predeceased the member, and the other beneficiaries designated by the member may then accept or disclaim any interest to which they are entitled.

(b) The general requirements for a valid disclaimer are that:

1. The beneficiary must provide an irrevocable and unqualified refusal to accept the assets.
2. The refusal must be in writing.
3. The written disclaimer must be submitted to the Investment Plan Administrator at the later of the following times:
  - a. Nine months after the retirement account owner dies.
  - b. Nine months after the beneficiary attains age 21, or if the beneficiary is 21 when the retirement account owner dies.
  - c. The beneficiary must not have accepted any of the inherited assets prior to the disclaimer.
  - d. The assets must pass to the successor beneficiary without any direction on the part of the person making the disclaimer.

(c) There is no special form or document that an individual must complete to disclaim inherited assets. A letter, duly notarized, is sufficient as long as it meets the requirements set forth in paragraph (b).

3. Nothing in the record before me shows either Respondent or its agents made any material misstatements to Petitioner that would equitably estop Respondent from denying Petitioner's requested relief.

4. Florida Statutes creating and governing the FRS, and Petitioner's rights and responsibilities under them, are clear and the SBA cannot deviate from them. Balezentis v. Dep't of Mgmt. Servs., Div. of Retirement, Case No. 04-3263, 2005 WL 517476 (Fla. Div. Admin. Hrgs. March 2, 2005) (noting that agency "is not authorized to depart from the requirements of its organic statute when it exercises its jurisdiction").

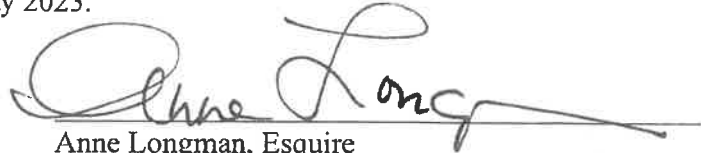
5. Respondent has no authority regarding any decisions or actions taken by the Social Security Administration regarding Petitioner's SSI benefits.

6. Respondent has no present authority to grant Petitioner's request to transfer the funds contained in his FRS Investment Plan beneficiary account to his brother.

#### **RECOMMENDATION**

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

DATED this 18<sup>th</sup> day of May 2023.



Anne Longman, Esquire  
Presiding Officer  
For the State Board of Administration  
Lewis, Longman & Walker, P.A.  
106 East College Avenue, Suite 1500  
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  
[Tina.joanos@sbafla.com](mailto:Tina.joanos@sbafla.com)  
[mini.watson@sbafla.com](mailto:mini.watson@sbafla.com)  
[Nell.Bowers@sbafla.com](mailto:Nell.Bowers@sbafla.com)  
[Ruthie.Bianco@sbafla.com](mailto:Ruthie.Bianco@sbafla.com)  
[Allison.Olson@sbafla.com](mailto:Allison.Olson@sbafla.com)  
[Ruth.Smith@sbafla.com](mailto:Ruth.Smith@sbafla.com)  
(850) 488-4406

COPIES FURNISHED via email and U.S. mail to:

Vernon L. Watkins  
605 Garfield Avenue  
Lehigh Acres, Florida 33936  
[Winstonwatkins10@yahoo.com](mailto:Winstonwatkins10@yahoo.com)  
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire  
123 South Calhoun Street  
P.O. Box 391  
Tallahassee, Florida 32301  
[dminnis@ausley.com](mailto:dminnis@ausley.com)  
[jmcvaney@ausley.com](mailto:jmcvaney@ausley.com)