

**STATE BOARD OF ADMINISTRATION
OF FLORIDA**

JOSE O. REYES,

Petitioner,

SBA Case No.: 2024-0264

vs.

STATE BOARD OF ADMINISTRATION,

Respondent.

FINAL ORDER

On October 2, 2024, the Presiding Officer submitted her Recommended Order to the State Board of Administration of Florida (SBA) in this proceeding. The Recommended Order indicates that copies were served upon the *pro se* Petitioner, Jose O. Reyes, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by October 17, 2024, 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. Pursuant to section 121.021(39)(a)2., Florida Statutes, a Florida Retirement System (FRS) member must wait six full calendar months from the retirement date before the member can be re-employed by an FRS employer. Rule 19-11.009(1)(b), Florida Administrative Code, makes it clear that the six-month calendar calculation is six full calendar months following the month in which the member is considered retired. Petitioner was re-employed by an FRS employer before six full calendar months had

passed from taking a distribution, which resulted in his retirement status. Thus, his distributions were invalid. 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 of Florida in the Office of the General Counsel, State Board of Administration of Florida, 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 16th day of December, 2024, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION
OF FLORIDA



Daniel Beard
Chief of Defined Contributions Programs
State Board of Administration of Florida
1801 Hermitage Boulevard, Suite 100
Tallahassee, FL 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.


Hillary Eason
Agency Clerk

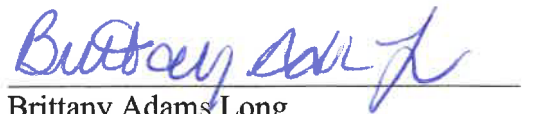
CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Final Order was served this 16th day of December, 2024, by mail and electronic mail to the following:

Jose O. Reyes



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STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

JOSE O. REYES,

Petitioner,

v.

CASE NO. 2024-0264

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding to pursuant to Section 120.57(2), Florida Statutes on August 7, 2024, in Tallahassee, Florida, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA).

APPEARANCES

For Petitioner: Jose O. Reyes, *pro se*



For Respondent: Ian C. White, Esq.
Ausley McMullen, P.A.
P.O. Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner must repay distributions he received from his Florida Retirement System (FRS) Investment Plan account or terminate his current employment with an FRS-participating employer because he did not wait a full six calendar months from the date he retired before obtaining employment at another FRS-participating employer.

PRELIMINARY STATEMENT

Petitioner testified at the hearing on his own behalf and presented no other witnesses.

Respondent's Exhibits R-1 through R-5 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on August 23, 2024. The parties were invited to submit proposed recommended orders within 30 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.

FINDINGS OF UNDISPUTED FACTS

1. On June 16, 2023, Petitioner terminated his employment with the Hillsborough County Board of County Commissioners, an FRS-participating employer.
2. On October 2, 2023, Petitioner was determined to be retired once he received a partial distribution from his Investment Plan account in the gross amount of \$6,000.00.
3. Petitioner received five additional distributions from his Investment Plan account, with the last one occurring on April 8, 2024.
4. Petitioner received gross distributions from his Investment Plan account in the amount of \$22,902.82.
5. On April 15, 2024, Petitioner was re-employed with the Hillsborough County Board of County Commissioners.
6. This re-employment occurred within six calendar months from the date when Petitioner was considered retired.
7. During an audit of the FRS Investment Plan, the distributions Petitioner received were discovered to be invalid distributions.

8. On May 24, 2024, the SBA sent Petitioner an initial letter regarding these distributions and gave him the option to either pay back the invalid distributions so that he could remain in his position at Hillsborough County Board of County Commissioners or terminate his employment and wait the remaining number of calendar months needed to meet the six-calendar month requirement. The initial deadline provided to Petitioner was July 8, 2024.

9. A few days later, Petitioner and the SBA exchanged several email communications regarding the calculation of the six-calendar month waiting period from when Petitioner received his first partial distribution from his Investment Plan account. The SBA explained that the month in which a distribution is received does not count as one of the six calendar months. Based on the email communications, Petitioner requested an extension of the July 8, 2024 deadline and disputed the reemployment violation indicated in the letter. The SBA sent Petitioner a revised letter on May 29, 2024, extending the deadline from July 8, 2024 to August 27, 2024 for Petitioner to either repay the invalid distributions or terminate employment with the Hillsborough County Board of County Commissioners.

10. On June 7, 2024, the SBA sent a letter to Petitioner denying his request regarding the date he was eligible to return to employment with an FRS employer after his retirement from the FRS Investment Plan and confirmed that he had until August 27, 2024 to either pay back the invalid distributions or terminate his employment.

CONCLUSIONS OF LAW

11. Pursuant to Section 121.4501(2)(k), Florida Statutes, a member is considered a “retiree” once they terminate employment with an FRS-participating employer and take a distribution from their Investment Plan account.

12. Pursuant to Section 121.091(9)(d), Florida Statutes, “[a] retiree may not be reemployed with an employer participating in the Florida Retirement System until such person has been retired for 6 calendar months.” A retiree who violates this requirement and any employing agency which employs such retiree are jointly and severally liable for returning any funds distributed.

13. Because Petitioner was statutorily retired on October 2, 2023 when he took a partial distribution from his Investment Plan account, Petitioner was required to wait until May 1, 2024 before being re-employed at any FRS-participating employer. The May 1st date represents six full calendar months from when Petitioner received his first distribution.

14. Petitioner was re-employed at another FRS-participating employer on April 15, 2024. Therefore, pursuant to Section 121.591(1)(a)5, Florida Statutes, the distribution Petitioner received on October 2, 2023, and the additional distributions he received, were all deemed invalid distributions. Petitioner was therefore required to either pay back the distributions within 90 days so that he could remain in his employed position or terminate his employment and wait six full calendar months before he could seek employment with an FRS-participating employer.

15. Pursuant to Section 121.021(39)(a)2, Florida Statutes, for retirements effective on or after July 1, 2010, a member must wait six full calendar months from the retirement date before they can be employed by an FRS-participating employer.

16. Chapter 19-11.009(1)(b) of the Florida Administrative Code further clarifies that a member may return to work in any position with an FRS employer after being retired for six calendar months. The six-calendar month calculation is six full calendar months following the month in which a member is considered retired. This rule also contains an explicit example showing that the six month period begins after the month in which the distribution is taken.

17. Respondent is not authorized to depart from the requirements of the statutes cited above when exercising its jurisdiction and has no power to enlarge, modify, or contravene the authority granted to it by the legislature. *State, Dept. of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Salvation Ltd., Inc.*, 452 So. 2d 65, 66 (Fla. 1st DCA 1984); *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”).

18. As an administrative entity of the State of Florida, the SBA has only those powers conferred upon it by the legislature. *See, e.g., Pesta v. Dep't of Corrections*, 63 So.3d 788 (Fla. 1st DCA 2011).

19. The Florida Administrative Procedure Act expressly provides that statutory language describing the powers and functions of such an entity are to be construed to extend “no further than...the specific powers and duties conferred by the enabling statute.” §§ 120.52(8) and 120.536(1), Fla. Stat.

20. Finally, Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. *Young v. Dep't of Community Affairs*, 625 So. 2d 831 (Fla. 1993); *Dep't of Transp. v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

21. It is unfortunate that the relevant statutes and regulations are still susceptible to misunderstanding, but Petitioner cannot demonstrate entitlement to the relief he has requested under the applicable law and must either terminate his employment with the Hillsborough County Board of County Commissioners or pay back the invalid distributions in full.

RECOMMENDATION

Having considered the law and undisputed facts of record, I recommend that Respondent, State Board of Administration, issue a final order denying the relief requested by Petitioner.



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
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
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COPIES FURNISHED via mail and electronic mail to:

Jose O. Reyes



and via electronic mail only to:

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