

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ANGELA SANTIAGO,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2024-0026
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On June 17, 2024, the Presiding Officer submitted her Recommended Order to the State Board of Administration (hereafter “SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the *pro se* Petitioner, Angela Santiago and upon counsel for Respondent. Neither party filed exceptions to the Recommended Order, which were due July 2, 2024. 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) hereby is adopted in its entirety. The Petitioner received an invalid distribution from her Florida Retirement System (FRS) Investment Plan account. Petitioner was a vested member of the FRS Investment Plan at the time she terminated her FRS-covered employment. She took a distribution from her FRS Investment Plan account on July 3, 2023. She was hired by another FRS-participating employer on December 1, 2023, less than six calendar months after she received the

distribution. As such, her distribution was in violation of Section 121.591, Florida Statutes. Because she received an invalid distribution, she is required either to terminate employment with all FRS-participating employers for six calendar months or to repay the invalid distribution within 90 days from the date of this Final Order. There are no provisions that would allow the 90-day repayment period to be waived. Thus, Petitioner's request for relief 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 31st day of July 2024, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
Office 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.



Hillary Eason,
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to the *pro se* Petitioner, Angela Santiago, both by email transmission to [REDACTED] and by U.P.S. to [REDACTED]; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com), Ian White, Esq. (iwhite@ausley.com), (jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 31st day of July, 2024.



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

ANGELA SANTIAGO,

Petitioner,

vs.

CASE NO. 2024-0026

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 April 22, 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: Angela Santiago, *pro se*

[REDACTED]

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 a distribution she received from her Florida Retirement System (FRS) Investment Plan account or terminate her current employment with an FRS-participating employer because she did not wait a full six calendar months from the date on which she retired before obtaining employment at another FRS-participating employer.

PRELIMINARY STATEMENT

Petitioner testified at the hearing on her own behalf and presented no other witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance.

Respondent's Exhibits R-1 through R-5 were admitted into evidence without objection. On May 9, 2024, three calls between a customer service representative with the Investment Plan Administrator and the Petitioner were transcribed and filed as additional evidence for the Respondent (Exhibits R-6 through R-8).

A transcript of the hearing was made, filed with the agency, and provided to the parties on May 13, 2024. On May 28, 2024, the parties were invited to submit proposed recommended orders within 10 days. 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 FACTS

1. Petitioner terminated her employment with the Agency for Health Care Administration, an FRS-participating employer, on March 17, 2023.
2. On May 17, 2023, Petitioner spoke with a customer service representative with the Investment Plan Administrator and established a pending distribution to be paid from her Investment Plan account on July 3, 2023.
3. During that call, Petitioner was asked to confirm a series of questions. Petitioner confirmed that she terminated her employment with the Agency for Health Care Administration on March 17, 2023, and was not employed with any other FRS-participating employer.

4. During the call, Petitioner was informed that once she took any distribution from her Investment Plan account, she would be considered retired from the FRS and could not seek reemployment with any FRS-participating employer in any position within six calendar months.

5. During the call, Petitioner was informed that if she was re-employed with an FRS-participating employer within those six calendar months, the distribution she received would be considered an invalid distribution which had to be paid back within 90 days, or Petitioner could choose the option to terminate her employment. Also, the FRS-participating employer would be jointly liable for returning any monies distributed.

6. In a prior call on March 17, 2023 with an EY Financial Planner with the MyFRS Financial Guidance Line, Petitioner was informed that she would not become eligible to return to FRS-participating employment until February of 2024. Petitioner acknowledged that she understood this six calendar month restriction. The transcripts filed after the hearing support this fact.

7. On July 3, 2023, Petitioner received a total distribution from her Investment Plan account in the amount of \$34,798.54 and was then considered retired.

8. On December 1, 2023, Petitioner was re-employed with the Department of Elder Affairs, an FRS-participating employer.

9. This re-employment occurred within six calendar months from the date when Petitioner was considered retired from the FRS.

10. During an audit of the FRS Investment Plan, it was discovered that the distribution Petitioner received from her Investment Plan account was an invalid distribution.

11. On January 23, 2024, the SBA sent Petitioner a letter regarding the distribution she received from her Investment Plan account and gave her the option to either pay back the invalid

distribution so that she could remain in her position at the Department of Elder Affairs or terminate her employment and wait six calendar months before returning or being employed at any other FRS-participating employer.

CONCLUSIONS OF LAW

12. 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.

13. 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.

14. Because Petitioner was considered retired on July 3, 2023, Petitioner was required to wait until February 1, 2024 before being employed at any FRS-participating employer.

15. Petitioner was re-employed at another FRS-participating employer on December 1, 2023. Therefore, pursuant to Section 121.591(1)(a)5, Florida Statutes, the distribution Petitioner received on July 3, 2023 was an invalid distribution, and she was required to either pay back the distribution within 90 days to remain in her employed position, or terminate her employment and wait six calendar months before she could seek employment with an FRS-participating employer.

16. 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”).

17. Respondent, as an administrative entity of the State of Florida, 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).

18. 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.

19. 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).

20. Petitioner cannot demonstrate entitlement to the relief she has requested under the applicable law and must either terminate her employment with the Department of Elder Affairs or pay back the invalid distribution 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.

DATED this 17th day of June 2024.

s/Anne Longman

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

Florida State Board of Administration

1801 Hermitage Boulevard, Suite 100

Tallahassee, FL 32308

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(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:
Angela Santiago

[REDACTED]

Petitioner

and via electronic mail only to:

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Counsel for Respondent