STATE BOARD OF ADMINISTRATION OF FLORIDA

QUEEN BROWN,

Petitioner,

vs. SBA Case No. 2024-0315

STATE BOARD OF ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

On January 27, 2025, the Presiding Officer submitted the 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, Queen Brown, and upon counsel for the Respondent. Petitioner filed exceptions to the Recommended Order. 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. Petitioner was hired by Miami-Dade County, a Florida Retirement System participating employer, on December 14, 1987, and was enrolled in the Pension Plan and elected, by default, to remain in the Pension Plan when the FRS Investment Plan was implemented in July 2002. On August 31, 2005, Petitioner used her one-time 2nd election to transfer to the Investment Plan. On September 2, 2005, Petitioner's employment with Miami-Dade County was terminated. On January 6, 2006, Petitioner

took a distribution from her Investment Plan account. Pursuant to section 121.4501(2)(j), Florida Statutes (2006), because her employment was terminated with an FRS employer and she took a distribution from her Investment Plan account, she was considered a retiree.

Petitioner was reinstated to her position with Miami-Dade County in May of 2007 after she entered into a settlement with Miami-Dade County that acknowledged that her termination was erroneous. Petitioner was classified as a rehired retiree and given a deadline of November 30, 2007, to make an initial election to go into either the Pension Plan or the Investment Plan. She defaulted into the Pension Plan. In this proceeding, Petitioner seeks service credit for the time she was dismissed and seeks to combine her two service periods of employment under the Pension Plan. She argues that section 121.011(3)(g)1., Florida Statutes, permits this outcome.

Section 121.011(3)(g), Florida Statutes (2007), states that any member of the FRS "who is not retired" and who has been dismissed from employment shall be considered terminated from active membership in the FRS. Section 121.011(3)(g)1. states that if such dismissal is rescinded, the member is eligible to receive retirement service credit for such period of dismissal. The statute clearly applies only to those FRS members who are not retired. Petitioner was considered retired when she took a distribution from her Investment Plan account. The SBA has no authority to combine Petitioner's original work period, for which she already received retirement benefits from her Investment Plan account, with her current work period, in which she is enrolled in the Pension Plan.

Regarding the FRS, the SBA only has the authority granted to it by the

legislature and is not authorized to depart from the statute. *See Balezentis v. Dep't of Mgmt. Servs.*, Case No. 04-3263, ¶ 10 (DOAH Mar. 2, 2005; DMS Apr. 4, 2005). Accordingly, because Petitioner was considered a retiree when she took a distribution from her Investment Plan account, 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 27th day of March, 2025, in Tallahassee, Florida.

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION
OF FLORIDA

Daniel Beard

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 27th day of March, 2025, by mail and electronic mail to the following:

Brittany Adams Long
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard, Suite 100
Tallahassee, FL 32308

Queen Brown
[redacted]
Petitioner

Ian C. White
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

QUEEN BROWN,

Petitioner,

vs. CASE NO. 2024-0315

STATE BOARD OF ADMINISTRATION,

Respondent.
_____/

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on November 4, 2024. All parties appeared telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA). The appearances were as follows:

APPEARANCES

For Petitioner: Queen Brown, *pro se*
[redacted]

For Respondent: Ian C. White, Esq.
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner may have all of her Florida Retirement System ("FRS") service credit combined for two separate periods of service with the same FRS-participating

employer, even though she took a distribution from her FRS Investment Plan account during a period of unemployment in between those two periods of service.

PRELIMINARY STATEMENT

Pursuant to Section 120.57(2), Florida Statutes, this case was heard in an informal proceeding via a telephonic hearing on November 4, 2024, in Tallahassee, Florida. The hearing was held before the undersigned presiding officer for the State of Florida, State Board of Administration.

Petitioner testified on her own behalf and presented no other witnesses. Respondent presented the testimony of Lindy Still, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-9 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on November 26, 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 December 14, 1987, Petitioner was hired by Miami-Dade County, an FRS-participating employer. At the time of Petitioner's enrollment in the FRS, the only retirement plan available for eligible employees was the Pension Plan.

2. In July 2002, the FRS Investment Plan was implemented, and Petitioner was provided with a deadline of February 28, 2003, to elect to remain in the Pension Plan or enroll in the Investment Plan. Petitioner made no election and, therefore, remained in the Pension Plan, by default.

3. On August 19, 2005, Petitioner contacted the MyFRS Guidance Line. She informed the representative that she had received notice from her employer that her employment would be terminated on September 2, 2005, and she asked about switching from the Pension Plan to the Investment Plan.

4. During this call, the customer service representative informed Petitioner that if, after switching to the Investment Plan, she took a distribution from the account and was later hired by an FRS-participating employer, she would be classified as a rehired retiree. The representative advised Petitioner that if she was rehired by an FRS employer after taking a distribution she would start over with "zero years" of service and would choose whether to join the Pension Plan or Investment Plan.

5. On August 31, 2005, Petitioner used her one-time 2nd election to switch from the Pension Plan to the Investment Plan with an effective date of September 1, 2005.

6. On September 2, 2005, Petitioner's employment with Miami-Dade County was terminated reflecting a total of 17.75 years of service.

7. Following her termination, Petitioner initiated legal proceedings against Miami-Dade County for unlawful termination.

8. On January 6, 2006, Petitioner spoke with a customer service representative at the MyFRS Guidance Line and completed the process over the phone to receive a distribution from her Investment Plan account.

9. During this call, the customer service representative informed Petitioner that if she took the distribution, she would have to wait 3 full calendar months before going back to work for any FRS-participating employer. Petitioner was also informed that by taking the distribution, if

she went back to work for any FRS-participating employer, she would not be eligible for disability retirement, Special Risk coverage or DROP (which was the case for FRS retirees at that time).

10. Petitioner took a distribution from her Investment Plan account in January of 2006.

11. In May of 2007, under the terms of a settlement agreement with her employer, Petitioner was reinstated to her position at Miami-Dade County with back pay.

12. Petitioner was classified as a rehired retiree and given a deadline of November 30, 2007 to make an initial election to go into either the Pension Plan or the Investment Plan.

13. The Plan Choice Administrator did not receive an election from Petitioner by the November deadline and, therefore, defaulted to the Pension Plan with an effective date of December 1, 2007.

14. On September 4, 2024, the SBA received a Petition for Hearing from Petitioner requesting that the SBA abide by the terms of a Negotiated Settlement Agreement entered in July of 2007 between Petitioner and Miami-Dade County, by providing service credit for her period of dismissal and by combining this service with her service credit from her two periods of employment with the County, under the Pension Plan. Respondent denied Petitioner's request and this administrative proceeding followed.

CONCLUSIONS OF LAW

15. Pursuant to Section 121.4501(2)(j), Florida Statutes (2007), a member is considered a "retiree" once they have terminated employment with an FRS-participating employer and taken a distribution from their Investment Plan account. Petitioner was considered a retiree once she cashed or deposited the distribution check she received from her Investment Plan account.

16. Petitioner argues that the preservation of rights provisions under section 121.011(3)(g), Florida Statutes requires Respondent to allow Miami-Dade to purchase service

credit for the period of her dismissal. The relevant provision of subparagraph (3)(g)1.a.(2007) provides that if a dismissal action against an FRS member is determined to be incorrect and is negated, the member is eligible to receive retirement service credit for the period of dismissal. However, paragraph (3)(g) is clear that this provision applies only to a member "who is not retired."

17. Due to her status as a "retiree," Petitioner is ineligible to receive retirement service credit for the time lost prior to her reinstatement with Miami-Dade County in May of 2007. Petitioner became an FRS retiree by operation of law and Respondent is without discretion to change her status.

18. Any argument that Respondent, or agents of Respondent, failed to inform Petitioner or misinformed her of the consequences of her decisions is without merit. The evidence is clear that Petitioner was properly informed by MyFRS representatives about the consequences of taking a distribution. Respondent Exhibit R-6, which includes a transcript of Petitioner's August 19, 2005, phone call with the MyFRS Financial Guidance line (operator, Vance of (Ernst & Young), demonstrates that Petitioner was adequately warned and that she understood the consequences of taking a distribution. She was advised as follows:

> If you move it to the investment plan, don't make any withdrawals, come back, then you come back under the investment plan. Now if you moved it to the investment plan, said to yourself, I'm going to be naughty and take $5,000 out for something that you wanted and, of course, it would all be subject to tax plus 10 percent penalty, and then – then came back, you would come back as a rehired retiree and you'd have the choice all over here of whether to go into the pension or the investment plan. (Ex. R-6; p.18:25 to p.19:11).

When Petitioner asked the representative to go over this information again, he stated,

> Suppose you switched to the investment plan and said, well, I'm gonna let all this money grow tax deferred, but then you made some sort of withdrawal prior to coming back, then you would -- you could come back but you'd come back as what is called a rehired retiree. And then at that time, you know, for purposes of the

> Florida Retirement System, you're considered -- be considered to have zero years of service and you'd choose between the pension and the investment plan. (Ex. R-6; p.19:13-23).

To make sure she understood correctly, Petitioner repeated back to the representative: "Once I make a withdrawal in the investment account then I come back, then I'd be considered a rehired – retiree --." The MyFRS representative followed up by once more telling her if she switched to the investment plan before she left her employment and didn't make any withdrawals, when she came back, she would continue in the investment plan.

19. Petitioner's argument that the SBA must comply with the terms of a settlement agreement to which it was not a party is also without merit. Those terms were reached by Petitioner and Miami-Dade County, unfortunately without any input from the SBA or the Division of Retirement. Moreover, in 2007, the parties knew or should have known that fulfillment of the settlement provision related to Petitioner's FRS participation would not be possible, and neither Petitioner nor her employer made any attempt to resolve the issue at the time.

20. Miami-Dade County's obligations to Petitioner are spelled out in paragraph (3) of the settlement agreement. Those obligations include the following: "Reinstate all leave accruals and retirement contributions applicable to the back wages stated in paragraph 3(A)." Paragraph (6) of the Agreement requires the County to provide written notice to the Director of the Miami District [EEOC] Office within 10 days of satisfying each obligation specified in paragraph (3) of the Agreement. Since satisfaction of the retirement obligation was not possible, one must question how the County was able to confirm its compliance with that provision to the EEOC. To the extent Petitioner was not misinformed 17 years ago about her employer's compliance with the terms of the parties' settlement agreement, any such miscommunication is a matter that is strictly between Petitioner and her employer.

21. Respondent is charged with implementing Chapter 121, Florida Statutes. It is not authorized to depart from the requirements of these statutes 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"). Florida law cannot be ignored or circumvented by an agency under the terms of an agreement; especially one to which the agency is not a party.

22. Petitioner is seeking an outcome in which her pre-termination service with Miami-Dade, service for her period of dismissal, and her current period of service with Miami-Dade are combined as continuous service under the Pension Plan, and her FRS participation is deemed to have been continuous, without a break in service. Respondent possesses no discretion to facilitate such an outcome and, there is no provision of law that can be cited as permitting such an outcome.

23. 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). 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.

24. Based on the foregoing, Petitioner has not demonstrated entitlement to the relief sought in her Petition and her request for relief must therefore be denied.

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.

/s/ Glenn E. Thomas
Glenn E. Thomas, Esquire
Presiding Officer
For the State Board of Administration
Lewis, Longman & Walker, P.A.
106 East College Avenue, Suite 1500
Tallahassee, FL 32301-1872
gthomas@llw-law.com

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
Hillary.Eason@sbafla.com
Nell.Bowers@sbafla.com
Mini.watson@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Lindy.Still@sbafla.com
Brittany.Long@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:
Queen Brown
[redacted]
Petitioner

and via electronic mail only to:

Deborah Minnis, Esquire
123 South Calhoun Street
Post Office Box 391
Tallahassee, FL 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent