

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

STEPHEN VILLIOTIS,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2015-3500
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On April 8, 2016, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Stephen Villiotis, and upon counsel for the Respondent. This matter was decided after an informal proceeding. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due on April 23, 2016. 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.

STATEMENT OF THE ISSUE

The Statement of the Issue as set forth in the presiding officer's Recommended Order hereby is adopted in its entirety.

PRELIMIARY STATEMENT

The Preliminary Statement as set forth in the presiding officer's Recommended Order hereby is adopted and are specifically incorporated by reference as if fully set forth herein.

MATERIAL UNDISPUTED FACTS

The Material Undisputed Facts as set forth in the presiding officer's Recommended Order hereby are adopted and are specifically incorporated by reference as if fully set forth herein.

CONCLUSIONS OF LAW

The Conclusions of Law set forth in paragraphs 6 and 7 of the Recommended Order are adopted and are specifically incorporated by reference as if fully set forth herein.

Paragraph numbers 8 and 9 are modified by the following new Conclusions of Law 8 and 9 which now read as follows:

8. Section 121.35(2)(a), Florida States provides that participation in SUSORP is limited to persons who are employed in certain State University positions and "...who are otherwise eligible for membership or renewed membership in the Florida Retirement System...".

9. As a “retiree” by operation of law, Petitioner is not eligible for renewed membership in the FRS. While there have been several bills filed with the Florida legislature, including during the 2016 session, addressing the potential inequities for FRS-covered employees created by the “rehired retiree” prohibition, none has passed. The SBA has no authority to permit Petitioner to now be a member of SUSORP since Petitioner is not eligible for renewed membership in the FRS and thereby cannot meet the criteria for SUSORP eligibility set forth in Section 121.35(2)(a), Florida Statutes.

ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety, except as modified herein. The Petitioner’s request that he be entitled to participate in the State University System Optional Retirement Program (“SUSORP”) despite having terminated employment with a Florida Retirement System (“FRS”)-participating employer and taken a distribution from his FRS Investment Plan account hereby is denied. When he took the distribution from his FRS Investment Plan account, Petitioner became a “retiree” and was no longer eligible for renewed membership in the FRS. Section 121.35(2)(a), Florida Statutes provides that certain employees of the State University System may participate in SUSORP only if they are eligible for membership or renewed membership in the FRS. Petitioner is not eligible for renewed membership in the FRS, and thereby may not participate in SUSORP.

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.

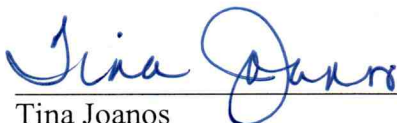
DONE AND ORDERED this 27th day of April, 2016, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



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

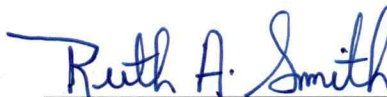
FILED ON THIS DATE PURSUANT TO SECTION 120.52, FLORIDA STATUTES WITH THE DESIGNATED CLERK OF THE STATE BOARD OF ADMINISTRATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Stephen Villiotis, 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 27th day of April, 2016.



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

STEPHEN VILLIOTIS,

Petitioner,

vs.

CASE NO. 2015-3500

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 January 29, 2016, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Stephen Villiotis, pro se


For Respondent:

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

STATEMENT OF THE ISSUE

The issue is whether Petitioner may participate in the State University System Optional Retirement Program (SUSORP) after having left previous employment with a Florida Retirement System (FRS) covered employer and taken a distribution of his FRS Investment Plan amount.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Respondent presented the testimony of Mini Watson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1-5 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties, who were invited to submit proposed recommended orders within thirty days after the transcript was filed. Respondent filed a proposed recommended order; Petitioner made no further filings.

MATERIAL UNDISPUTED FACTS

1. On August 20, 2012, Petitioner was employed with the Orange County School Board, an FRS-participating employer.
2. Petitioner had until January 31, 2013 to make an initial election between the defined benefit Pension Plan and the defined contribution Investment Plan. On January 14, 2013 he used his initial election to enroll in the Investment Plan.
3. Petitioner terminated his employment with the Orange County School Board on August 9, 2013 and then on February 11, 2014, took a total distribution of his Investment Plan account, amounting to some \$2,400.
4. Petitioner was hired by the University of Central Florida (UCF), an FRS-participating employer, into a regularly established position on September 28, 2015. UCF offers the SUSORP as its retirement program.
5. Petitioner states that he did not know that the SUSORP constituted part of the FRS,

and that therefore the information he received about the effect of having previously taken a distribution of his Investment Plan account was meaningless to him.

CONCLUSIONS OF LAW

6. A “retiree”, for purposes of the FRS Investment Plan is “a former participant of the optional retirement program who has terminated employment and has taken a distribution as provided is s.121.591, except for a mandatory distribution of a de minimis account authorized by the state board. § 121.4501(2)(k), Fla.Stat. (2010). Because Petitioner terminated his FRS employment and took a distribution from his Investment Plan account, he is considered a “retiree.” A “retiree” who becomes reemployed with an FRS participating employer on or after July 1, 2010 is ineligible to participate in the FRS. Blaesser v. State Bd. Of Admin., 134 So. 3d 1013 (Fla. 1st DCA 2012).

7. As an FRS “retiree,” Petitioner is not eligible for renewed membership in the Florida Retirement System because he was not reemployed by an FRS-participating employer in a regularly established position prior to July 1, 2010. During the 2009 legislative session, the Florida legislature revised Section 121.122, Florida Statutes to exclude from renewed membership in the FRS any retiree who becomes reemployed on or after July 1, 2010. That revised section states:

121.122. Renewed membership in system

(1) Except as provided in s. 121.053, effective July 1, 1991, through June 30, 2010, any retiree of a state-administered retirement system who is initially reemployed in a regularly established position with a covered employer, including an elective public office that does not qualify for the Elected Officer's Class, shall be enrolled as a compulsory member of the Regular Class of the Florida Retirement System. Effective July 1, 1997, through June 30, 2010, any retiree of a state-administered

retirement system who is initially reemployed in a position included in the Senior Management Service Class shall be enrolled as a compulsory member of the Senior Management Service Class of the Florida Retirement System as provided in s. 121.055. A retiree is entitled to receive an additional retirement benefit, subject to the following conditions:

(a) Such member must resatisfy the age and service requirements as provided in this chapter for initial membership under the system, unless such member elects to participate in the Senior Management Service Optional Annuity Program in lieu of the Senior Management Service Class, as provided in s. 121.055(6).

(b) Such member is not entitled to disability benefits as provided in s. 121.091(4).

(c) Such member must meet the reemployment after retirement limitations as provided in s. 121.091(9), as applicable.

(d) Upon renewed membership or reemployment of a retiree, the employer of such member shall pay the applicable employer contributions as required by ss. 112.363, 121.71, 121.74, and 121.76.

(e) Such member is entitled to purchase additional retirement credit in the Regular Class or the Senior Management Service Class, as applicable, for any postretirement service performed in a regularly established position as follows:

1. For regular class service prior to July 1, 1991, by paying the Regular Class applicable employee and employer contributions for the period being claimed, plus 4 percent interest compounded annually from first year of service claimed until July 1, 1975, and 6.5 percent interest compounded thereafter, until full payment is made to the Florida Retirement System Trust Fund; or

2. For Senior Management Service Class prior to June 1, 1997, as provided in s. 121.055(1)(j).

The contribution for postretirement service between July 1, 1985, and July 1, 1991, for which the reemployed retiree contribution was paid, shall be the difference between such contribution and the total applicable contribution for the period being claimed, plus interest. The employer of such member may pay the applicable employer contribution in lieu of the member. If a member does not wish to claim credit for all of the postretirement service for which he or she is eligible, the service

the member claims must be the most recent service.

(f) No creditable service for which credit was received, or which remained unclaimed, at retirement may be claimed or applied toward service credit earned following renewed membership. However, service earned as an elected officer with renewed membership in the Elected Officers' Class may be used in conjunction with creditable service earned under this section, provided the applicable vesting requirements and other existing statutory conditions required by this chapter are met.

(g) Notwithstanding any other limitations provided in this section, a participant of the State University System Optional Retirement Program, the State Community College Optional Retirement Program, or the Senior Management Service Optional Annuity Program who terminated employment and commenced receiving a distribution under the optional program, who initially renews membership as required by this section upon reemployment after retirement, and who had previously earned creditable Florida Retirement System service that was not included in any retirement benefit may include such previous service toward vesting and service credit in the second career benefit provided under renewed membership.

(h) A renewed member who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

(2) A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, is not eligible for renewed membership.

§121.122, Fla.Stat. (2009)(emphasis added)

8. The FRS includes the Pension Plan, the Investment Plan, and “other non-integrated programs.” §121.70, Fla.Stat. (2015). The SUSORP, the plan which the Petitioner would otherwise be eligible to join if not for section 121.122(2), Florida Statutes, is one such “non-integrated programs.”

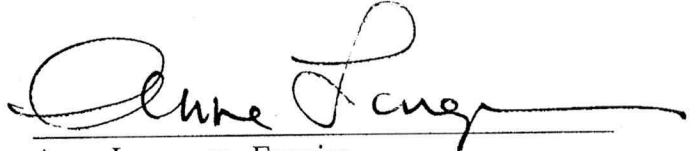
9. As a retiree by operation of law, Petitioner is not eligible for renewed membership

in any FRS plan. While there have been several bills filed with the Florida legislature, including during the 2016 session, addressing the potential inequities for FRS-covered employees created by the rehired - retiree prohibition, none has passed. The SBA therefore has no authority to permit Petitioner to now be a member of any FRS plan, including the SUSORP.

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 8th day of April, 2016.



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

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
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Tallahassee, FL 32308
Tina.joanos@sbafla.com
mini.watson@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Stephen Villiotis



and via electronic mail only to:

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Counsel for Respondent