

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ARYAN ASHKANI,)
)
 Petitioner,)
)
 vs.)
)
 STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
 _____)

SBA Case No. 2017-0184

FINAL ORDER

On December 1, 2017, 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, Aryan Ashkani, and upon counsel for the Respondent. Both Petitioner and Respondent timely filed Proposed Recommended Orders. Neither party filed exceptions to the Recommended Order which were due on December 16, 2017. 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

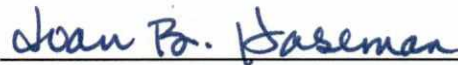
The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner’s request that she be permitted to transfer from the FRS Investment Plan to the FRS Pension Plan without being required to pay the statutorily-required “buy-in” amount hereby is denied. While Petitioner initially claimed that she had never elected the FRS Investment Plan and that she was placed in the Investment Plan due to a computer

“glitch,” record evidence clearly demonstrated that she affirmatively elected the FRS Investment Plan and that she never was provided with any inaccurate or misleading information concerning her plan election.

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 17th day of January, 2018, 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

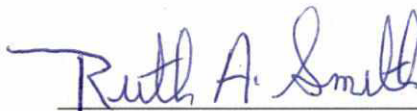
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Aryan Ashkani, pro se Petitioner, by both email transmission to [REDACTED] and by U.S. Mail 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 17th day of January, 2018.



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

ARYAN ASHKANI,

Petitioner,

vs.

Case No. 2017-0184

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 September 20, 2017, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Aryan Ashkani, pro se


Petitioner

For Respondent: Brandice D. Dickson, Esquire
Pennington, P.A.
215 S. Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue is whether the SBA should grant Petitioner's request to transfer from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan without having to pay the buy-in amount.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on her 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 R-1 through R-7 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 also filed a proposed recommended order after receiving additional time to do so based on delayed receipt of the hearing transcript.

UNDISPUTED MATERIAL FACTS

1. Petitioner was employed by Valencia College and had until February 28, 2008 to make an initial election between the defined benefit FRS Pension Plan and the defined contribution FRS Investment Plan.
2. Petitioner made her election on February 4, 2008 by logging onto the MyFRS.com website and enrolling in the Investment Plan. In processing that election online, Petitioner agreed to the following statements listed on the General Retirement Plan Enrollment Form:

* **I want to enroll in:...**The FRS Investment Plan. Designed for a more mobile workforce. Your benefit is based on the amount of money contributed to your account and its growth over time. **You qualify for a benefit after 1 year of service.**

* By clicking the "Submit" key below you are confirming that you have chosen the FRS Investment Plan...any accrued value you may have in the FRS Pension Plan will be transferred to the FRS Investment Plan. You are also confirming that future employer contributions will be sent to your FRS Investment Plan account in accordance with your Investment fund selection...

* You understand that you may have a one-time future opportunity to switch to the FRS Pension Plan at any time during your FRS career, and that there may be a cost for doing so.

(emphasis in original).

3. On February 22, 2008, Petitioner called the MyFRS Financial Guidance Line to confirm her initial election was received timely and to discuss her investment selections. The MyFRS Financial Guidance Line representative confirmed that her election was received timely, that she was in the FRS Investment Plan, and that she could revisit her investment choices at a later date if she wished.

4. On October 10, 2011, Petitioner called the MyFRS Financial Guidance Line to inquire about switching to the Pension Plan. Petitioner explained to the Guidance Line representative that she had initially elected the Investment Plan due to its shorter vesting requirement but had recently again moved to an FRS-eligible position after having been in a non-eligible position after her first year at her employer; and now was interested in switching to the defined benefit Pension Plan. The representative explained that Petitioner had a second election remaining that she could use at any time, that there was a cost associated with using the second election, that her Investment Plan balance might not cover the entire cost, and that she was subject to the six year vesting requirement if she switched to the Pension Plan. Petitioner apparently decided against switching to the Pension Plan in 2011.

5. On May 25, 2017, Petitioner filed a Request for Intervention stating that she never elected the Investment Plan and that a "computer glitch" placed her in the Investment Plan. In response to that Request for Intervention, Respondent reviewed Petitioner's history in the FRS

and provided her with information showing when and how her initial election was made and that she had confirmed her election via recorded telephone call on February 22, 2008.

6. Petitioner then filed a Petition for Hearing on July 6, 2017, stating she was told by Respondent's agents that she had to wait for six years before she could select the Pension Plan, was given misleading information, and should not have to pay the buy-in amount now required to switch to the Pension Plan. Petitioner's alternative request is to have to pay whatever the buy-in amount would have been as of 2011.

7. Petitioner admitted during the hearing, after reading the transcripts of her telephone call with the MyFRS Financial Guidance Line, that she had elected the Investment Plan and was not misled by anything said to her during those telephone calls.

8. Petitioner has been with the Valencia College system for more than 10 years, but has had four month, eight month, and ten month contracts during that time. She began her FRS participation by enrolling in the Investment Plan when she did not know how long she would be working, then apparently became ineligible for FRS participation for a while, then returned to eligibility in 2011. Her 2011 phone call to the Guidance Line shows that she was "kind of confused as far as what I want to choose between, to continue with the investment plan or to go to the pension plan." Petitioner also had a very understandable question as to whether, having become FRS- eligible again, she would be regarded as a newcomer to the system, or as someone who already had an FRS retirement plan. The counselor explained that she already had an Investment Plan account in which she was vested and so would not be treated as a newcomer, and would instead continue to grow her Investment Plan amount if she took no further action.

9. As reflected in the transcript of the call recorded on October 10, 2011, Petitioner also was advised of the risk of switching to the Pension Plan prior to achieving six years of

service: if she switched and failed to vest prior to separation from her employer, she would not have a Pension Plan benefit. Petitioner was told expressly and correctly that she could use her second election at any time prior to separation from her employer – she could use it “at one year of service, 10 years of service, or 30 years of service.”

CONCLUSIONS OF LAW

Movement between the two FRS plans is governed by Section 121.4501(4)(g), Florida Statutes. That section states, in pertinent part:

(g) After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service.

1. If the employee chooses to move to the investment plan, the provisions of subsection (3) govern the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan,

the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

...

§121.4501(4)(g), Fla.Stat.

Rule 19-11.007(3)(d), Florida Administrative Code, provides:

For members transferring to the FRS Pension Plan, if the member's Investment Plan account balance was less than the calculated amount required to buy back into the FRS Pension Plan, the election will require a personal payment. The member will receive notification and proper instructions from the Division detailing where and in what form to send any personal payments. Such payment, if necessary, must be received by the date determined by the Division. If the required amount is not received by the Division by the date due, the election will be voided.

11. The SBA is not authorized to depart from the requirements of Chapter 121, Florida Statutes, the statutes it is charged to implement, when exercising its jurisdiction. Balezentis v. Department of Management Services, Division of Retirement, 2005 WL 517476 (Fla.Div.Admin.Hrgs.), and its construction and application of those statutes are entitled to great weight and will be followed unless proven to be clearly erroneous or amounting to an abuse of discretion. Level 3 Communications v. C.V. Jacobs, 841 So.2d 447, 450; (Fla. 2002); Okeechobee Health Care v. Collins, 726 So.2d 775 (Fla. 1st DCA1998). Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements to make a valid election into the Pension Plan. Young v. Department of Community Affairs, 625 So.2d 837 (Fla. 1993); Department of Transportation v. J.W.C., 396 So.2d 778 (Fla. 1st DCA 1981).

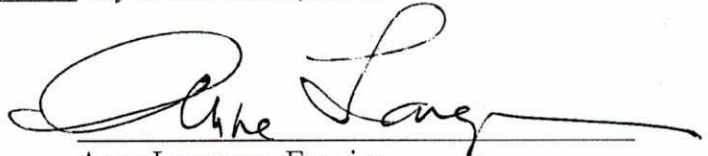
12. Respondent does not have authority to waive the statutorily mandated Pension Plan buy-in. I have carefully reviewed all the materials of record in this case, and have found no

mistakes of fact or misleading information given to Petitioner. Her conversations with the MyFRS Guidance Line show that the counselors diligently and accurately discussed her somewhat complicated situation with her, and her responses seem to indicate that she understood what she was told. It is unfortunate that she has now been surprised by the amount of the buy-in required to be in the retirement plan she prefers, but the record does not support any inference that she was misled or misinformed.

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 25th day of December, 2017.



Anne Longman, Esquire
Anne Longman
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
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308
Tina.joanos@sbafla.com
nell.bowers@sbafla.com
(850) 488-4406

COPIES FURNISHED via mail and electronic mail to:

Aryan Ashkani



Petitioner

and via electronic mail only to:

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Brandice D. Dickson, Esquire
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Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent