

STATE BOARD OF ADMINISTRATION
OF FLORIDA

MARIA V. MORENO,

Petitioner,

vs.

SBA Case No. 2024-0267

STATE BOARD OF ADMINISTRATION,

Respondent.

FINAL ORDER

On September 18, 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, Maria v. Moreno, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by October 3, 2024, were filed by either party. A copy of the Recommended Order is attached 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 SBA does not have the authority to allow Petitioner to switch from the Investment Plan to the Pension Plan after Petitioner had already used her one-time second election. 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 4 day of November, 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.

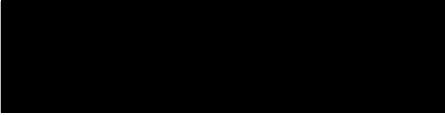


Hillary Eason
Agency Clerk

CERTIFICATE OF SERVICE

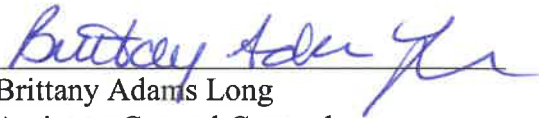
I CERTIFY that a true and correct copy of the foregoing Final Order was served on this 4th day of November 2024 by mail and electronic mail to the following:

Maria V. Moreno



Petitioner

Deborah Minnis, Esq.
123 South Calhoun Street
P.O. Box 391
Tallahassee, Florida 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent


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

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

MARIA V. MORENO,

Petitioner,

v.
STATE BOARD OF ADMINISTRATION,

CASE NO. 2024-0267

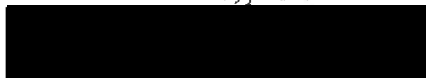
Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding to pursuant to Section 120.57(2), Florida Statutes on July 30, 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: Maria V. Moreno, *pro se*



For Respondent: Ian C. White, Esq.
Ausley McMullen, P.A.
123 S. Calhoun Street
Tallahassee, FL 32301

STATEMENT OF THE ISSUE

The issue is whether Petitioner may switch from the Florida Retirement System (FRS) Investment Plan back to the Pension Plan after having already used her one-time second election.

PRELIMINARY STATEMENT

Petitioner testified on her own behalf and presented no other witnesses. Respondent's Exhibits R-1 through R-4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on August 9, 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. Petitioner was initially hired by the Miami-Dade County School Board in February 2000. At the time of her initial enrollment in the FRS, the only retirement plan available was the defined benefit Pension Plan. Petitioner was employed with the Miami-Dade County School Board from February 2000 through June 2000.

2. In July of 2002, the defined contribution Investment Plan, as created by the Florida Legislature, was implemented as part of the FRS, to be administered by the SBA. Existing employees were given an initial election period during which they could choose to remain in the Pension Plan or enroll in the Investment Plan.

3. In February 2005, Petitioner was reemployed with the Miami-Dade County School Board in a retirement eligible position and had until July 29, 2005, by 4:00 p.m. Eastern Time, to elect to enroll in the Pension Plan or the Investment Plan.

4. On July 29, 2005, the SBA's Plan Choice Administrator received and processed Petitioner's election to enroll in the Pension Plan with an effective date of August 1, 2005.

5. On November 6, 2019, Petitioner called the MyFRS Financial Guidance Line and spoke with an EY Financial Planner to confirm which retirement plan she was in.

6. During the call, Petitioner was informed she was in the Pension Plan. Petitioner indicated she wanted to switch to the Investment Plan and intended to retire at age 62. Petitioner was provided very detailed information about the differences between the Pension Plan and the Investment Plan which included comparison estimates based on her retirement at age 62. Survivor benefits were also explained. Petitioner was informed that if she switched to the Investment Plan, she would be using her one-time second election and could not transfer back to the Pension Plan.

7. On November 7, 2019, Petitioner spoke with an EY Financial Planner and discussed the various funds available if she switched to the Investment Plan. Petitioner was also provided comparisons if she were to switch to the Investment Plan now versus waiting to switch at age 62. The Financial Planner then discussed with Petitioner how to complete the second election form and where to locate the form on the MyFRS.com website.

8. On November 20, 2019, Petitioner spoke with an EY Financial Planner and stated she was ready to switch to the Investment Plan. During this call, Petitioner completed and submitted a 2nd Election EZ Retirement Plan Enrollment Form (Form ELE-2EZ) on the MyFRS.com website. Petitioner confirmed she acknowledged, read, and understood the information provided on the form.

9. Petitioner's one-time second election form was submitted after 4:00 p.m. Eastern Time, and processed on November 21, 2019, with an effective date of December 1, 2019, for her membership in the Investment Plan.

10. A Florida Retirement System – Confirm of 2nd Election - Investment Plan dated November 22, 2019, was sent to Petitioner containing the following information:

- a. This statement confirms your recent Florida Retirement System (FRS) Plan Choice utilizing your one-time 2nd election.

- b. You have elected to change to the FRS Investment Plan and transfer the Present Value of your FRS Pension Plan benefit. The effective date of this election will be December 1, 2019.
- c. This is your final Plan Choice Election under the Florida Retirement System. You must remain in the FRS Investment Plan until your retirement from FRS-covered employment.
- d. If you feel this retirement plan election was made in error, you may be able to cancel it. Please call the MyFRS Financial Guidance Line at 1-866-446-9377, Option 2. Failure to notify us no later than 4:00 PM EST on the last business day of the month following your election month will void your right to cancel this election.

11. On December 26, 2019, the present value of Petitioner's Pension Plan benefit was transferred to her new Investment Plan account.

12. Petitioner did not contact the MyFRS Financial Guidance Line to cancel her one-time second election to the Investment Plan by 4:00 p.m. EST on December 31, 2019.

CONCLUSIONS OF LAW

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

(f) 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.

14. Rule 19-11.007, Florida Administrative Code, provides a grace period to FRS members to rescind their election. This section states, in pertinent part:

(4) Grace Period

(a) If a member files an election with the Plan Choice Administrator and the member realizes that the election was made in error, or if the member has reconsidered his or her plan choice, the State Board of Administration (SBA) will consider, on a case-by-case basis, whether the election will be reversed, subject to the following: The member must notify the SBA by calling, to the

Plan Choice Administrator, to the MyFRS Financial Guidance Line, or to the Division, no later than 4:00 p.m. (Eastern Time), on the last business day of the election effective month.

15. In order to take advantage of this provision, Petitioner was required to notify the FRS no later than December 31, 2019, by 4:00 p.m. Eastern Time to rescind her decision to switch to the Investment Plan. There are no statutory provisions that would allow any additional elections after a member uses their one-time second election.

16. The Plan Choice Administrator did not receive a request from the Petitioner to cancel her election prior to the expiration of the grace period.

17. Respondent 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”).

18. 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. Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. *Young v. Dep't of Community*

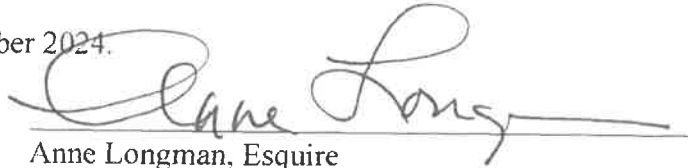
Affairs, 625 So. 2d 831 (Fla. 1993); *Dep't of Transp. v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981);

19. It is unfortunate that Petitioner now wishes she had stayed in the Pension Plan, but I see nothing to indicate that she was misled or inadequately informed. Respondent does not have the authority to allow Petitioner to switch from the Investment Plan to the Pension Plan, and therefore cannot grant the relief requested.

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.

DATED this 18th day of September 2024.



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

COPIES FURNISHED via mail and electronic mail to:

Maria V. Moreno



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