

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ANDREW HUGHES,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2018-0339
)	
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On March 1, 2019, the Presiding Officer submitted her Recommended Order to the State Board of Administration (“SBA”) in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Andrew Hughes, and upon counsel for the Respondent. 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 March 16, 2019. 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 to be granted a “third election” so that he would be able to transfer back from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan, because he was unhappy with the market performance of his selected investment options, 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.

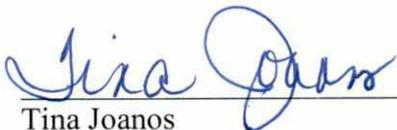
DONE AND ORDERED this 11 day of April, 2019, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

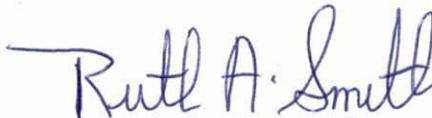
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Andrew Hughes, pro se, both by email transmission to [REDACTED] and by US 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 11 day of April, 2019.



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

ANDREW HUGHES,

Petitioner,

vs.

Case No.: 2018-0339

STATE BOARD OF ADMINISTRATION,

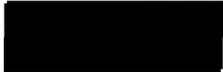
Respondent.

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 14, 2019, in Tallahassee, Florida. The appearances were as follows:

APPEARANCES

For Petitioner:

Andrew Hughes, pro se


For Respondent:

Brian A. Newman, Esquire
Pennington, P.A.
215 South Monroe Street, Second Floor
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner's request to return to the Florida Retirement System (FRS) Pension Plan from the FRS Investment Plan should be granted.

PRELIMINARY STATEMENT

Petitioner attended the hearing by telephone, testified on his own behalf, and presented no other witnesses. Counsel for the Respondent attended the hearing in person and presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits 1 through 4 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties. The parties 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. Petitioner became a member of the FRS through his employment with Miami-Dade County, an FRS-participating employer, beginning in 1992, when the FRS offered only the defined benefit Pension Plan.

2. After the Florida Legislature created the defined contribution Investment Plan, Petitioner had until February 28, 2003 to make an initial election between the Pension Plan and Investment Plan. Petitioner defaulted into the Pension Plan because he made no affirmative election.

3. On October 30, 2006, Petitioner submitted a 2nd Election Retirement Plan Enrollment Form to the Investment Plan's Plan Choice Administrator indicating his desire to transfer from the Pension Plan to the Investment Plan.

4. The second election form that Petitioner signed encouraged him to call the MyFRS Financial Guidance Line or to visit MyFRS.com if he had any questions about the impact of changing from one plan to another. The form Petitioner completed and signed also states in pertinent part:

I understand that I have elected to change retirement plans to the FRS Investment Plan, and that any accrued value I may have in the FRS Pension Plan will be transferred to the FRS Investment Plan... I understand that this election will constitute my one-time second election as provided under the FRS and that I must remain in this retirement plan until my retirement. I understand that my one-time second election is irrevocable.

5. Petitioner submitted a Request for Intervention on September 26, 2018 asking to be placed back in the Pension Plan because he wanted to “get out of the Investment Plan due to the Market.” His request was denied by the SBA. Petitioner then filed a Petition for Hearing requesting the same relief and this administrative proceeding followed.

CONCLUSIONS OF LAW

6. Movement between the Pension Plan and Investment Plan is governed by section 121.4501(4)(f), 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.

§ 121.4501(4)(f), Fla. Stat. (2018) (emphasis added).

7. As provided in the above statute, members of the FRS are allowed only one opportunity to switch plans after their initial election period expires. Because Petitioner used his one-time second election in 2006, he has exhausted his only opportunity to move between plans. There is no “third” election.

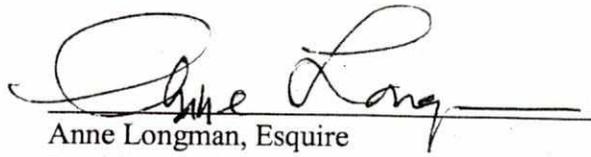
8. Petitioner states that he does not remember ever getting a first election and was unaware of the free resources available to help him understand the differences between the FRS plans. The 2nd Election Enrollment Form Petitioner signed encouraged him to take advantage of the free resources offered through the MyFRS Financial Guidance Program.

9. It is unfortunate that Petitioner is no longer in the retirement plan he would prefer, but there is no statutory authority for the SBA to now return him to the Pension Plan.

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 1st day of March, 2019.



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
1801 Hermitage Blvd., Suite 100
Tallahassee, FL 32308

Tina.joanos@sbafla.com
Mini.watson@sbafla.com
Nell.Bowers@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Liz.stevens@sbafla.com
(850)488-4406

COPIES FURNISHED via mail and email to:

Andrew Hughes



Petitioner

and via electronic mail only to:

Brian A. Newman, Esquire
Brandice D. Dickson, Esquire
Pennington, P.A.
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Tallahassee, Florida 32301
slindsey@penningtonlaw.com

Counsel for Respondent