

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

JEENA MATHEW,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2023-0638
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On April 24, 2024, the Presiding Officer submitted her Recommended Order to the State Board of Administration in this proceeding. The Recommended Order indicates that copies were served upon the Petitioner, Jeena Mathew, who had been represented by a qualified representative during the proceeding, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by May 9, 2024, were filed. 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, who had been a member of the Florida Retirement System (“FRS”) Pension Plan in 2001, elected to join the FRS Investment Plan when it first became available in 2002. While Petitioner claimed she did not remember making her election into the FRS Investment Plan, for over 19 years she made several telephone calls to the MyFRS Financial Guidance Line demonstrating she was aware she was in the FRS Investment Plan. As

such, the Petitioner's request that she be allowed to use her second election to switch from the FRS Investment Plan to the FRS Pension Plan without having to pay any required buy-in amount hereby is denied. Section 121.4501(4)(f), Florida Statutes, specifically provides that if a member of the FRS Investment Plan wants to file a second election to transfer to the FRS Pension Plan, that employee must transfer from his or her Investment Plan account and from any other monies from the employee as necessary, an amount representing the present value of such employee's accumulated benefit obligation immediately following the time of making the transfer. There are no exceptions provided by law.

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 23 day of July 2024, 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.



Hillary Eason
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Jeena Mathew, *pro se*, both by email transmission to [REDACTED] and by U.P.S. to 1170 Nevermore Circle, Bartow, Florida 33830; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ian White (iwhite@ausley.com) and jmcvaney@ausley.com, Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 23 day of July, 2024.



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

JEENA MATHEW,

Petitioner,

CASE NO. 2023-0638

v.

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on February 27, 2024, at 9:00 a.m., with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA).

APPEARANCES

For Petitioner:

Jeena Mathew


Qualified Representative - Patrick Scruggs
LTM Legal, PLLC
517 Lucerne Avenue
Tampa, Florida 33606

For Respondent:

Ian C. White, Esq.
Ausley McMullen, P.A.
P.O. Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner can use her second election to move from the Florida Retirement System (FRS) Investment Plan to the FRS Pension Plan without having to buy into the Pension Plan.

PRELIMINARY STATEMENT

Petitioner presented no witnesses. Respondent presented the testimony of Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-11 were admitted into evidence without objection.

A transcript of the hearing was made, filed with the agency, and provided to the parties on March 12, 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 FACT

1. Petitioner began employment with the Polk County Board of County Commissioners, an FRS-participating employer, in July of 2001. At the time of her initial enrollment in the FRS, the only plan available was the defined benefit Pension Plan. In 2002, the defined contribution Investment Plan was implemented and each employee participating in the FRS had a 90-day election period to enroll in the Investment Plan. Petitioner had until February 2, 2003 (subsequently extended to February 28, 2003) to elect to either remain in the Pension Plan or enroll in the Investment Plan.

2. On February 26, 2003, Petitioner called an FRS Plan Choice Administrator and was transferred to an EY Financial Planner to discuss moving from the Pension Plan to the Investment Plan and the type of funds available in the Investment Plan.

3. On February 27, 2003, Petitioner used her first election to enroll in the Investment Plan, which established an effective date of March 1, 2003. Although there is no extant recording of Petitioner's voice making a first election, this was confirmed by the SBA's investigation, and the actions which followed show that this did happen.

4. On April 12, 2016, Petitioner called the MyFRS Financial Guidance Line and spoke with an EY Financial Planner. Petitioner brought in a representative/friend to participate with her on the call, and this representative/friend asked for the balance in Petitioner's Investment Plan account. The words "investment plan" were specifically used and at no time during the call did Petitioner express any concern or issue with being in the Investment Plan.

5. During this same call, there was discussion of the differences between the Pension Plan and the Investment Plan, and the EY Financial Planner reminded Petitioner that she would have to wait a full three calendar months after retiring before she could access her retirement funds.

6. On February 22, 2018, Petitioner called the MyFRS Financial Guidance Line and spoke with an EY Financial Planner to go over the percentage Petitioner was contributing from each of her paychecks into her Investment Plan account.

7. On June 6, 2022, Petitioner spoke with an EY Financial Planner to discuss an email she received regarding the asset allocations in her Investment Plan account and asked for the balance in her account.

CONCLUSIONS OF LAW

8. Over a span of 19 years after February 26, 2003, Petitioner had multiple phone calls with an EY Financial Planner, and at no time did Petitioner express any concern or issue with being in the Investment Plan.

9. As a matter of law, and pursuant to Section 121.4501(8)(g), Florida Statutes, Petitioner's election to transfer from the Pension Plan to the Investment Plan is presumed to have been made at her request and with her full knowledge and consent. This section states, in pertinent part:

(g) The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to

a member if the action occurred 5 or more years before the complaint is submitted to the state board. **It is presumed that all action taken 5 or more years before the complaint is submitted was taken at the request of the member with the member's full knowledge and consent.** To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

§ 121.4501(8)(g), Fla. Stat. (emphasis added).

10. Petitioner may still use her second election to move from the Investment Plan to the Pension Plan.

11. Pursuant to Section 121.4501(4)(f), Florida Statutes, if an employee wants to move to the Pension Plan, that employee must transfer from their Investment Plan account, and from any other monies from the employee as necessary, an amount representing the present value of that employee's accumulated benefit obligation immediately following the time of making the transfer.

12. Therefore, if Petitioner wants to move from the Investment Plan to the Pension Plan, she will have to pay this buy-in amount.

13. Respondent is not authorized to depart from the requirements of the statutes cited above 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").

14. 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).

15. 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.

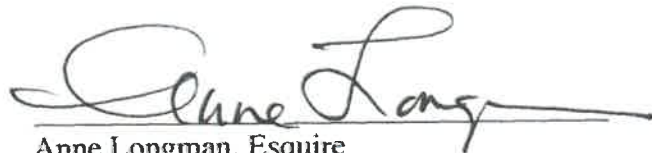
16. Petitioner carries the burden to demonstrate compliance with all applicable statutory requirements before being granted the relief requested. *Young v. Dep’t of Community Affairs*, 625 So. 2d 831 (Fla. 1993); *Dep’t of Transp. v. J.W.C.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

17. It is unfortunate that Petitioner now wishes she did not have to pay to transfer to the Pension Plan, but Respondent does not have the authority to allow Petitioner to switch from the Investment Plan to the Pension Plan without Petitioner making this payment.

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.

DATED this 24th day of April 2024.



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

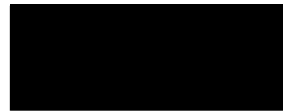
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS: THIS IS NOT A FINAL ORDER

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
Hillary.eason@sbafla.com
Nell.Bowers@sbafla.com
mini.watson@sbafla.com
Ruthie.Bianco@sbafla.com
Allison.Olson@sbafla.com
Ruth.smith@sbafla.com
(850) 488-4406

COPIES FURNISHED via email and U.S. mail to:

Jeena Mathew



Petitioner

and via electronic mail only to:

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dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent