

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

DAVID VAUGHN,)	
)	
Petitioner,)	
)	
vs.)	SBA Case No. 2024-0008
)	
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
_____)	

FINAL ORDER

On May 29, 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 *pro se* Petitioner, David Vaughn, and upon counsel for the Respondent. No exceptions to the Recommended Order, which were due by June 13, 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

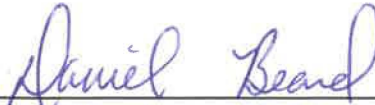
The Recommended Order (Exhibit A) is hereby adopted in its entirety. Petitioner had been employed in Florida Retirement System (“FRS”) eligible positions but terminated employment prior to the time the FRS Investment Plan was implemented. As such, he never made an initial election. Many years later, in 2022, he became employed with an FRS-participating employer and was fully advised of the necessity of making an

initial election. He failed to do so, and, by law, he was defaulted into the FRS Investment Plan. Petitioner's request that he now be allowed to switch from the FRS Investment Plan to the FRS Pension Plan without using his second election and 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 transfer to the FRS Pension Plan, then that employee must file a second election and 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 31st 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

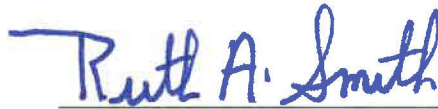
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Hillary Eason
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to David Vaughn, *pro se*, both by email transmission to [REDACTED] and by U.P.S. to [REDACTED] [REDACTED] [REDACTED] 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 31st 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

DAVID VAUGHN,

Petitioner,

vs.

CASE NO. 2024-0008

STATE BOARD OF ADMINISTRATION,

Respondent.

RECOMMENDED ORDER

This case was heard in an informal proceeding pursuant to Section 120.57(2), Florida Statutes, on April 3, 2024, with all parties appearing telephonically before the undersigned presiding officer for the State of Florida, State Board of Administration (SBA).

APPEARANCES

For Petitioner:

David Vaughn


For Respondent:

Deborah Minnis
Ausley McMullen, P.A.
123 South Calhoun Street (32301)
P. O. Box 391
Tallahassee, FL 32302

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to enroll in the Florida Retirement System (FRS) Pension Plan without using his second election and paying the required buy-in.

PRELIMINARY STATEMENT

Petitioner testified on his own behalf and presented no other witnesses. Respondent was represented by Allison Olson, SBA Director of Policy, Risk Management, and Compliance. Respondent's Exhibits R-1 through R-3 were admitted into evidence.

A transcript of the hearing was made, filed with the agency, and provided to the parties on April 19, 2024. The parties were invited to submit proposed recommended orders within thirty 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 FACTS

1. The Petitioner was initially employed in an FRS-eligible position with the Alachua County School Board from February 1994 to August 1995. The Petitioner was then employed with the Union County School Board from August 1996 to June 2001. During these two terms of employment and enrollment in the FRS the only retirement plan available for eligible employees was the defined benefit Pension Plan.

2. The defined contribution Investment Plan created by the legislature was implemented in July 2002. Having left his employment with Union County School Board in June 2001 prior to the implementation of the Investment Plan, the Petitioner was not included in the initial choice period provided by statute to employees at that time. As such, Petitioner had not made an initial election.

3. The Petitioner returned to Florida and began employment with the Levy County School Board in an FRS eligible position on March 4, 2022. Because there was no initial election showing for Petitioner, the statutes and rules governing the initial choice process applied to him.

4. Petitioner had a deadline of November 30, 2022, to make an initial election between the Pension Plan and the Investment Plan. The Plan Choice Administrator has no record of receiving an initial choice form from the Petitioner on or before the November 30, 2022, deadline. Pursuant to Section 121.4501(4)(b)3a., Florida Statutes, Petitioner is deemed to have made an initial election by default to membership in the Investment Plan.

5. A Benefit Comparison Statement with the November 30, 2022, Choice Deadline was mailed to Petitioner on April 21, 2022, at the address on file as provided to Respondent by his employer.

6. In addition, the Petitioner was sent reminder letters on August 10, 2022, and November 10, 2022, reminding him of the need to make an election before the November 30, 2022, deadline. As a courtesy he was also sent reminder emails to the email address in his file as provided by his employer on June 20, 2022, July 15, 2022, September 6, 2022, October 3, 2022, and November 29, 2022.

7. The Benefit Comparison Statement also provided Petitioner with information on the various ways in which he could contact FRS to obtain additional information and included his PIN. He could choose one or more of the following options:

- i. Using the 1st Election Choice Service on [MyFRS.com](https://www.myfrs.com);
- ii. Calling the toll-free MyFRS Guidance Line at 1-866-446-9377, Option 4;
or
- iii. Using the ELE-1-EZ Retirement Plan Enrollment Form (online or hardcopy) or ELE-1 General Retirement Plan Enrollment Form (hardcopy) available on [MyFRS.com](https://www.myfrs.com).

8. There was also educational material available to Petitioner, including:

- i. Toll-free access to the MyFRS Financial Guidance Line;
- ii. Access to public information on [MyFRS.com](https://www.myfrs.com) (including detailed information on the choice process, copies of all publications provided in the Choice Kit and FAQ's);
- iii. Employee workshops; and

- iv. Employer Human Resources offices, which were afforded workshop training on the choice, supplied with printed materials, and received email updates on the choice.
9. Petitioner has not utilized his second election and it remains available to him.

CONCLUSIONS OF LAW

10. During Petitioner's previous periods of employment in FRS eligible positions, the only plan available was the Pension Plan. Petitioner left his second FRS eligible position in June of 2001 before the implementation of the Investment Plan. Therefore, Petitioner was not required to make an initial election.

11. However, after Petitioner's employment ending in June of 2001 and the beginning of his employment with the Levy County School Board in March of 2022, the Investment Plan was implemented in July 2002. Because Petitioner was not an FRS employee at the initial Choice Period provided to employees when the Investment Plan was implemented, Petitioner did not make an initial election. Because he had not made an initial election when he began his employment in 2022, Petitioner was provided an initial Choice Period. The statutes and rules applying to this initial election process applied to Petitioner.

12. The Plan Choice Administrator has no record of receiving an initial choice form from the Petitioner either on or before the November 30, 2022, deadline. Pursuant to Section 121.4501(4)(b)3a., Florida Statutes, Petitioner is deemed to have made an initial election by default to membership in the Investment Plan.

13. Petitioner has asserted that he did not receive notice and was not provided with sufficient information to properly exercise his initial election. However, the evidence establishes that Petitioner was provided notice of his requirement to make an initial election, the date by which the election had to be made and the consequence of failing to make his election by the deadline.

14. The evidence also shows that this information was provided to the Petitioner on several occasions, both by letter to the address and email address on file provided by his employer. The notice was mailed to the address of record and is presumed to have been received. *Brake v. State of Florida*, 473 So.2d 774 (Fla. 3rd DCA 1985). “When documents are mailed to an addressee, there is a presumption of receipt.” *Allstate Insurance Co. v. Eckert*, 472 So.2d 807, 809 (Fla. 4th DCA 1985).

15. In addition, the evidence shows that Petitioner was made aware of several resources through which he could get additional information relating to his choice obligation.

16. Neither Respondent nor its agents made any material misstatement to Petitioner that would equitably estop Respondent from denying Petitioner’s requested relief. To the extent Petitioner was given erroneous information by his employer’s Human Resources representative, the Respondent is not bound by any such statements made or information provided. Section 121.021(10), Florida Statutes, explicitly provides that “[e]mployers are not agents of the [Department of Management Services], the [State Board of Administration], or the Division of Retirement, and the department, the state board, and the division are not responsible for erroneous information provided by representatives of employers.

17. 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. 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.

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

18. Petitioner may still utilize his second election to join the Pension Plan, but he must buy into that plan as required by section 121.4501(4)(f)2, Florida Statutes.

19. 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.

20. 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”).

21. Accordingly, Respondent does not have the authority to allow Petitioner to switch from the Investment Plan to the Pension Plan without paying the required buy-in 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 by Petitioner.

DATED this 29th day of May 2024.

s/Anne Longman

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

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 mail and electronic mail to:

David E. Vaughn



Petitioner

and via electronic mail only to:

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Post Office Box 391
Tallahassee, FL 32301
dminnis@ausley.com
iwhite@ausley.com
jmcvaney@ausley.com
Counsel for Respondent