

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHERRY STEARNS,)
)
 Petitioner,)
)
 vs.) Case No. 98-1224
)
 DEPARTMENT OF MANAGEMENT SERVICES,)
 DIVISION OF RETIREMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in Daytona Beach, Florida, on June 10, 1998, by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sherry Stearns, pro se
360 South Senaca Boulevard
Daytona Beach, Florida 32114

For Respondent: Stanley N. Danek, Esquire
Department of Management Services
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
Tallahassee, Florida 32399-1560

STATEMENT OF THE ISSUE

The issue is whether Petitioner is eligible to purchase her employee service as a CETA employee with a state agency as credible service in the Florida Retirement Service.

PRELIMINARY STATEMENT

Petitioner applied for retirement credit for her employment as a CETA employee of the Department of Labor and Commerce from January 1976 until September 30, 1977. The Division of Retirement denied Petitioner's application, and advised her of her right to a hearing on the issue. Petitioner requested a formal hearing, and the Division referred the case to the Division of Administrative Hearings. The case was noticed for hearing and heard as noticed.

The Petitioner testified in her own behalf at hearing. The Division of Retirement called Ira Gaines as its only witness and introduced its records of Petitioner's service as a CETA employee as its only exhibit which was received into evidence. Both parties submitted proposed findings which were read and considered.

FINDINGS OF FACT

1. Petitioner, Sherry Stearns, was employed by the State of Florida, Department of Labor and Commerce, in the Florida State Unemployment office from January 1976 until September 30, 1977.

2. The records maintained by the Department of Retirement based upon payroll data submitted by the Department of Revenue reflect that Petitioner was not in a permanent position as reflected by the Code 0303 and the entry of "zz" in the last column showing she was not eligible for retirement benefits.

3. The Petitioner offered no evidence in support of her claim to show that she was employed in a position which was covered or for which she could claim prior service credit.

CONCLUSIONS OF LAW

4. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case, pursuant to Section 120.57(1), Florida Statutes.

5. The burden of proof is on Petitioner to show she is entitled to retirement credit.

6. To qualify for retirement credit, the Petitioner must show that the claimed service was covered under the rules which existed at the time of her service or under the current rules.

7. At all times during her employment, the statute and rules restricted retirement credit for state employees to those persons employed or filling a regularly established position and compensated from a salary appropriation or account.

8. The Petitioner candidly stated she was in a CETA position. CETA positions were funded from federal funds, and, although coverage was extended to those CETA employees of local agencies, it was not extended to CETA employers of state agencies. Compare Rules 60S-1.004(4)(a) and (b), with Rules 60S-1004.(4)(c) 6 and 7a - c, Florida Administrative Code.

9. Rule 60S-1004(5), Florida Administrative Code, specifically excludes coverage for an employee filling a temporary position. A temporary position is one compensated from another personal services account as provided for in Section 216.011(1)x, Florida Statutes.

10. Other personal services means compensation for services rendered by a person who is not a regular or full-time employee filling an established position. This definition includes, but is not limited to, services of temporary employees, student fellowships, part-time academic employees, board members, consultants, and other services specifically budgeted by each agency.

11. The statute goes on to recite that it is intended that persons paid from salaries appropriations shall be state officials and employees and shall be eligible for membership in a state retirement system, and those paid from other personal services appropriations shall not be eligible for such membership.

12. The records introduced by the Division of Retirement show that Petitioner was not paid from a salary appropriation and was not eligible for retirement credit.

13. The Petitioner's claim must be denied.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That Petitioner's claim be DENIED.

DONE AND ENTERED this 29th day of July, 1998, in
Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.