

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JUAN SCORNIK, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-0817  
 )  
 DEPARTMENT OF MANAGEMENT SERVICES, )  
 DIVISION OF RETIREMENT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for a disputed-fact hearing on June 5, 2000, in Gainesville, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Esteban F. Scornik, Esquire  
McDonough & Wieland, P.A.  
Post Office Drawer 1991  
Orlando, Florida 32802

For Respondent: Thomas E. Wright, Esquire  
Division of Retirement  
Cedars Executive Center, Building C  
2639 North Monroe Street  
Tallahassee, Florida 32399-1560

STATEMENT OF THE ISSUE

May Petitioner be excluded from participating in the Florida Retirement System for the academic/fiscal year 1978-1979?

PRELIMINARY STATEMENT

In response to Petitioner's request for an audit of his account to determine his years of eligible service in the Florida Retirement System, Respondent Division of Retirement determined Petitioner was eligible for retirement service credit from his first date of employment in 1975 at the University of Florida until the present, with the exception of the 1978-1979 academic/fiscal year.

Petitioner timely requested a disputed-fact hearing.

At the hearing, Respondent's Requests for Admission 1 through 8 to Petitioner were deemed admitted. Petitioner and Respondent entered additional stipulated facts into the record. Petitioner's Exhibits 1-16 were admitted in evidence. Official recognition was taken of Chapter 121, Florida Statutes, and Rules 60S-1.004 and 60S-2.019, Florida Administrative Code.

A transcript was not provided. The parties' respective Proposed Recommended Orders were timely-filed within the last period to which they agreed.

FINDINGS OF FACT

1. Petitioner was hired by the University of Florida in 1975 and has been employed with the University of Florida from 1976 to the present.

2. Petitioner believed himself to be a member of the Florida Retirement System from 1976 to the present. There is no dispute that he is entitled to Florida Retirement System benefits

from 1976 to 1978 and from 1979 to the present, during which years Petitioner was paid from State salaries allocations and worked in a regularly established State position.

3. Petitioner was paid during the years 1976-1980 with a combination of funds from several sources: the State salary budget, the federal Veterans Administration (VA), and a University of Florida practice funding account. The allocation of these funds in the year 1978-1979 created the current problem.

4. During the years 1976-1980, Petitioner performed work for both the University of Florida (State of Florida) and the VA.

5. The Federal Retirement System was a defined plan from 1976 to 1980.

6. Petitioner was an employee of the VA from 1976 to 1980. Petitioner was a participant in the Federal Retirement System as an employee of the VA from 1976 to 1980. Petitioner received retirement credits in the Federal Retirement System as an employee of the VA from 1976 to 1980.

7. Petitioner's employment during the State fiscal year 1978-1979 included job duties and work performed as an employee of the University of Florida (State of Florida) and did not change from previous years.

8. Petitioner's salary during the State fiscal year 1978-1979 should have included an allocation from State funds.

9. Due to an administrative error, Petitioner's entire salary was paid only with federal VA funds for the State fiscal

year 1978-1979. State funds did not contribute to Petitioner's salary during the State fiscal year 1978-1979 solely due to the administrative error in the allocation of funds for Petitioner's salary, and even though the State presumably benefited from his labor.

10. For the 1978-1979 fiscal year, Petitioner received retirement credits in the Federal Retirement System and none have been taken away. Contributions were made to the Federal Retirement System on Petitioner's behalf as an employee of the VA from 1976 to 1980, and Petitioner received retirement credits in the Federal Retirement System as a VA employee for that period.

11. Petitioner earned \$2,072.50, in federal retirement contributions in 1977; \$2,256.52, in federal retirement contributions in 1978; and \$1,931.56, in federal retirement contributions in 1979.

12. When Petitioner discontinued work for the VA in 1980, his federal contributions were paid to him in a lump sum by the federal government. Petitioner placed this money in a private retirement account.

#### CONCLUSIONS OF LAW

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

14. The Florida Retirement System is codified in Chapter 121, Florida Statutes. Section 121.051, Florida Statutes (1999),

provides for compulsory participation in the Florida Retirement System for all employees hired after December 1, 1970, with certain exceptions not relevant to this proceeding.

15. Section 121.021(11), Florida Statutes (1999), defines "employee" as any person receiving salary payments for work performed in a regularly established position.

16. Section 121.021(52)(a), Florida Statutes, defines "regularly established position" as:

. . . a position which is authorized and established pursuant to law and is compensated from a salaries appropriation pursuant to s. 216.011(1)(z)1. and 2., . . .

17. Rule 60S-1.004(4)(a), Florida Administrative Code, provides in pertinent part:

A regularly established position in a state agency is a position which is authorized pursuant to Section 216.262(1)(a) and (b), F.S., and is compensated from either a salaries appropriation as provided for in Section 216.011(1)(z)1. and 2., F.S., or a salaries account as provided for in 3A-10.031, F.A.C.

18. Rule 60S-2.019, Florida Administrative Code, provides in pertinent part:

Retirement credit for service that was performed after December 1, 1970, under the Florida Retirement System and, due to error, was never reported to the Division as required in Section 60S-3.011 may be claimed by a member of the Florida Retirement System provided:

(1) The unreported service was performed by an employee filling a regularly established position based on the definition in effect at the time of the service as follows:

(a) A regularly established position during the period from December 1, 1970 through June 30, 1979, was any position authorized in an employer's approved budget for which salary funds were specifically appropriated to pay the salary of the position. Included within this definition were temporary, part-time, full-time, probationary, and seasonal employment positions. Not included within this definition was any position the salary for which was derived from a fund for Other Personal Services or from any account or sub-account other than the regular salary account which was the source of funds for the salaries of those positions which were regularly established and reported to the Division.

19. Petitioner was not paid from regularly appropriated State salary funds as required by the above statute and rules during the academic/fiscal year in question, 1978-1979.

20. During 1978-1979, Petitioner was paid a higher percentage of federal salary money, and he has since received a refund of the contributions made on his behalf to the Federal Retirement System.

21. During 1978-1979, Petitioner did not receive "salary payments" from the State of Florida and no monetary contributions to the Florida Retirement System were made in relation to the salary payments made to Petitioner from federal funds.

22. Therefore, Respondent Division of Retirement was correct in determining that Petitioner was not a state employee during the academic/fiscal year of 1978-1979.

23. That determination, however, does not preclude Petitioner's participation in the Florida Retirement System for

that period of time if, prior to his retirement date with the State of Florida, Petitioner avails himself of the provisions of Rule 60S-2.007(3), Florida Administrative Code, by purchasing the 1978-1979 year of federal employment by the "payback system" established in Rule 60S-3.008(3), Florida Administrative Code.

24. Those Rules read, in pertinent part, as follows:

Rule 60S-2.007 Credit for Out-of-State and In-State Service -

(3) A member of the Florida Retirement System may purchase credit for up to 5 years of . . . employment with the federal government (which may include military service not claimed under (60S-2.005) . . . as follows:

(a) Such service must have been service covered by a retirement or pension plan provided by the employer, and performed prior to a period of membership in the Florida Retirement System.

(b) The member must not have received, or be eligible, now or in the future, to receive a benefit from any other retirement or pension plan based on the service being claimed.

(c) To receive credit for such service, the member must have completed at least 10 years of creditable service in the Florida Retirement System, which can include service in an existing system, and which excludes any service purchased under this subsection.

(d) Prior to completing 10 years of creditable service in Florida Retirement System, a member may purchase credit for one year of service under this subsection after the completion of one year of creditable service; with the purchase of additional years of service being allowed on a year to year basis, up to the five-year maximum. However, such service will not be creditable until after the completion of 10 years of

creditable service under the Florida Retirement System.

(e) A member who wishes to claim such service shall obtain the following from the out-of-state or in-state employer's retirement or pension plan on Form FR-30, Verification for Out-of-State Service Credit, adopted in 60S-9.001:

1. A statement verifying that the member was a member of a retirement or pension plan provided by the employer and to which the employer paid contributions, and that he has not been, is not, and will not be eligible to receive either a lump sum distribution, or other than a refund of member contributions, or a continuing benefit from that plan based on that service.

2. Certification of years and partial years of service by fiscal year, and length of work year.

(f) The service shall be claimed and credited as Regular Class service.

(g) A member shall be eligible to receive credit for such service performed after leaving the Florida Retirement System only upon return to membership and completion of at least 1 year of creditable service following the out-of-state or in-state service.

(h) The required contributions shall be paid by the member or his employer as provided in 60S-3.008(3).

60S-3.008 Retirement Contribution for Out-of-State and In-State Service Credit -

(3) The required contributions for a member who is eligible to claim credit for out-of-state public employment, federal employment including military service or in-state non-FRS employment, as provided in 60S-2.007(3), shall be 20 percent multiplied by the member's salary for the first full work year of creditable service the member earned under the Florida Retirement System, or \$12,000, whichever is greater; plus interest at 6.5



percent compounded annually from the date of the first year of creditable service. The employer may pay all or a portion of the cost of this service credit.

25. Since the Division has acknowledged Petitioner's federal retirement eligibility in this case, it should not even be necessary for Petitioner to submit a verification of federal service in order to proceed.

#### RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Division of Retirement enter a final order which:

(1) Finds Petitioner was a federal employee during the 1978-1979 academic/fiscal year and at this time is not entitled to credit therefor in the Florida Retirement System;

(2) Provides for his participation in the Florida Retirement System for the 1978-1979 academic/fiscal year if he elects to participate pursuant to Rule 60S-2.007(3) Florida Administrative Code; and

(3) Establishes, pursuant to the formula provided in Rule 60S-3.008(3), Florida Administrative Code, the amount by which Petitioner may "buy back" that year of State service, if he elects to do so.

DONE AND ENTERED this 31st day of July, 2000, in  
Tallahassee, Leon County, Florida.

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ELLA JANE P. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of July, 2000.

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.