

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YVONNE WEINSTEIN,)
)
 Petitioner,)
)
 vs.) Case No. 01-1637
)
 DEPARTMENT OF MANAGEMENT SERVICES,)
 DIVISION OF RETIREMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 26, 2001, by video teleconference between Miami and Tallahassee, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Yvonne Weinstein, pro se
15443 Southwest 137th Place
Miami, Florida 33177

For Respondent: Thomas E. Wright, Esquire
Division of Retirement
Cedars Executive Center, Building C
2639 North Monroe Street
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STATEMENT OF THE ISSUE

Whether Petitioner is entitled to participate in the Deferred Retirement Option Program (DROP) of the Florida

Retirement System (FRS), for the period September 1, 1998, through and including September 30, 1999.

PRELIMINARY STATEMENT

In September 1998, Petitioner became eligible to participate in DROP. In October 1999, Petitioner submitted her application to participate in DROP to her employer. In her initial application, Petitioner requested that her participation be retroactive to September 1, 1998, the date she became eligible to participate in DROP. Because her application was filed in October 1999, Respondent's staff determined that her DROP benefits could not begin before October 1, 1999. Respondent denied Petitioner's request that her participation in DROP be retroactive to September 1, 1998, and required her to submit a second application requesting a start date of October 1, 1999. Petitioner complied with the instructions to file a second application, but she timely challenged the denial of her request to begin her participation in DROP retroactive to September 1, 1998. The matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the final hearing, Petitioner testified on her own behalf, but presented no other testimony and offered no exhibits. Respondent offered the testimony of Doug Cherry, a Benefits Administrator employed by Respondent, and offered three

exhibits, each of which was admitted into evidence. Official recognition was taken of relevant statutes and rules.

No transcript of the proceedings was filed. Each party filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a former employee of the School Board of Miami-Dade County (School Board) and is a retired member of FRS.

2. In September 1998, Petitioner became eligible to participate in DROP by virtue of reaching 30 years of service with the School Board.

3. In September 1998, Petitioner asked Respondent for an estimate of her retirement benefits.

4. In January 1999, the estimate of Petitioner's retirement benefits was prepared by Respondent and mailed to Petitioner.

5. During the 1998-99 school year, Petitioner had difficulties in her dealings with a new school principal. 1/ Petitioner testified that she delayed applying for DROP because she believed that her relationship with her employer would improve and she could continue to work as a teacher. Petitioner also testified that School Board administrators gave her erroneous information and misled her as to their intention to permit her to continue to teach. Petitioner argues that she

would have elected to participate in DROP beginning September 1, 1998, had her employer told her the truth about her employment status. In this proceeding, Petitioner argues that she be permitted to participate in DROP effective September 1, 1998, on equitable grounds, without specifying the equitable principles upon which she relies.

6. On October 27, 1999, Petitioner completed her application to participate in DROP and filed the application with the School Board's personnel office. Respondent received the completed application via facsimile on November 3, 1999.

7. The first application sent in by Petitioner requested that her DROP participation start retroactive to September 1, 1998. Respondent, through its staff, denied that request and informed Petitioner that she would have to submit a second application, referred to by staff as a corrected application, requesting a start date of October 1, 1999.

8. Pursuant to those instructions, Petitioner submitted a second application requesting that her start date be October 1, 1999.

9. Petitioner's challenge to Respondent's denial of her request to accept her participation in DROP retroactive to September 1, 1998, was timely.

10. Petitioner was later terminated from her position with the School Board. 2/

11. Respondent has been paid her drop benefits for the period beginning October 1, 1999, and ending when the School Board terminated her employment. Petitioner has not been employed by a FRS employer since the School Board terminated her employment.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

13. In this de novo proceeding, Petitioner has the burden of proving by a preponderance of the evidence that she is entitled to participate in DROP between September 1, 1998, and September 30, 1999. See Section 120.57(1)(j) and (k), Florida Statutes; Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977); and Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993).

14. Chapter 121, Florida Statutes, is the Florida Retirement System Act. See Section 121.011(1), Florida Statutes.

15. Section 121.019(13), Florida Statutes, describes DROP as follows:

(13) In general, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter

referred to as the DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the System Trust Fund on behalf of the participant, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the participant shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP.

16. There is no dispute that Petitioner is entitled to participate in DROP from October 1, 1999, until her employment was terminated. The only dispute is whether she is also entitled to benefits under DROP between September 1, 1998, and September 30, 1999.

17. Section 121.091(13)(b), Florida Statutes, provides:

(b)1. An eligible member may elect to participate in the DROP for a period not to exceed a maximum of 60 calendar months immediately following the date on which the member first reaches his or her normal retirement date or the date to which he or she is eligible to defer his or her election to participate as provided in subparagraph (a)2. However, a member who has reached normal retirement date prior to the effective date of the DROP shall be eligible to participate in the DROP for a period of time not to exceed 60 calendar months immediately following the effective date of the DROP . . .

2. Upon deciding to participate in the DROP, the member shall submit, on forms required by the division:
 - a. A written election to participate in the DROP;
 - b. Selection of the DROP participation and termination dates, which satisfy the limitations stated in paragraph (a) and subparagraph 1. Such termination date shall be in a binding letter of resignation with the employer, establishing a deferred termination date. The member may change the termination date within the limitations of subparagraph 1., but only with the written approval of his or her employer;
 - c. A properly completed DROP application for service retirement as provided in this section; and
 - d. Any other information required by the division.

18. Section 121.091(13)(c)3., Florida Statutes, provides as follows:

3. The effective date of DROP participation and the effective date of retirement of a DROP participant shall be the first day of the month selected by the member to begin participation in the DROP, provided such date is properly established, with the written confirmation of the employer, and the approval of the division, on forms required by the division.

19. Pursuant to the foregoing provisions of Section 121.019(13), Florida Statutes, Petitioner had to apply to participate in DROP before she could receive any benefits from that program. Because she did not apply to participate in DROP until October 1999, she is not entitled to any benefits under DROP before October 1, 1999.

20. Petitioner has failed to demonstrate a basis in equity or law that she is entitled to DROP benefits for the period September 1, 1998 to September 30, 1999.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a final order denying Petitioner's request for benefits under DROP for the period September 1, 1998 to September 30, 1999.

DONE AND ENTERED this 10th day of August, 2001, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of August, 2001

ENDNOTES

1/ Those difficulties are set forth in detail in the Recommended Order entered September 11, 2000, in DOAH Case No. 99-5125, styled Dade County School Board v. Yvonne M. Weinstein.

2/ According to DOAH's computer records pertaining to DOAH Case No. 99-5125, supra, the School Board terminated Petitioner's employment on December 14, 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.