

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDNA M. SHEPHERD,)
)
 Petitioner,)
)
 vs.) Case No. 02-2522
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION)
 OF RETIREMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was held pursuant to notice in the above-styled case by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, on August 27, 2002, in Inverness, Florida.

APPEARANCES

For Petitioner: Leon M. Boyajan, II, Esquire
2303 West Highway 44
Inverness, Florida 34453-3809

For Respondent: Thomas E. Wright, Esquire
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner's application for disability retirement benefits should be reinstated.

PRELIMINARY STATEMENT

Petitioner Edna Shepherd is a member of the Florida Retirement System and applied for disability retirement benefits in September 2001. The Division of Retirement (Division), after several attempts to have Ms. Shepherd submit all the documents necessary to process her application, dismissed her claim by final agency action letter on March 25, 2002. Ms. Shepherd timely requested a hearing, which is the subject of this Recommended Order.

In addition to Petitioner's testifying in her own behalf, she presented five exhibits, which were admitted. Mark Sadler, Administrator for the Disability Section of the Division of Retirement testified for the Division, and, in addition, the Division submitted six exhibits, which were accepted into evidence. The Division requested and was granted official recognition of Chapter 60S-4.0035, Florida Administrative Code, and the rules of the Division of Retirement.

Respondent submitted a Proposed Recommended Order which was read and considered.

FINDINGS OF FACT

1. Petitioner Edna Shepherd is a member of the Florida Retirement System.

2. In September 2001, Ms. Shepherd submitted an application for disability retirement benefits to the Division of Retirement.

3. The application was not complete and several documents were needed to process the application.

4. By letter dated September 27, 2001, the Division wrote Ms. Shepherd acknowledging receipt of the disability application and requesting additional information. Enclosed with the letter were two blank FR-13b forms (Physician's Statement Forms), which were necessary to complete the application.

5. Petitioner did not respond to the September 27, 2001, letter, so the Division mailed another request on October 29, 2001. Again two blank FR-13bs were included with the letter.

6. On November 29, 2001, the Division mailed a third request for information to Petitioner. Blank forms were also included with this letter.

7. By letter dated January 3, 2002, the Division mailed a fourth request to Ms. Shepherd again requesting information necessary to complete her application for disability retirement benefits.

8. After the Division did not receive a response to its previous letters mailed to Petitioner, it sent a letter dated February 4, 2002, by certified mail to Ms. Shepherd advising her

that she had 21 days from the date of the letter to submit the necessary information or her application would be cancelled.

9. Finally, after more than six months since submission of her application, the Division sent a letter dated March 25, 2002, by certified mail to Ms. Shepherd notifying her that her disability application was cancelled and giving her 21 days to request a hearing. She did receive this letter and this timely appeal followed.

10. Petitioner's attorney made two submissions to the Division dated September 14, 2001, and February 22, 2002; however, they did not contain the requested physician statements.

11. As of the hearing, the requested physician statements still had not been supplied to the Division.

12. The applicant is responsible for ensuring the Division receives the information necessary to process an application for disability retirement benefits.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this case.

14. The Florida Retirement System was created by the Legislature in 1970 and is codified in Chapter 121, Florida Statutes (2001).

15. Rule 60S-4.0035(4), Florida Administrative Code,

"Retirement Application and Effective Retirement Date" provides:

When a member's application for retirement benefits is received, the Division will:

(a) Acknowledge the receipt of the member's application and advise him of any required information or documents that have not yet been received. Such information may include, but is not limited to, birthdate verification, beneficiary designation, option selection as required by Rule 60S-4.010, F.A.C., spousal acknowledgement if option 1 or 2 is selected as required by subsection 60S-4.010(9), F.A.C., any payments due the member's account for purchase of additional service credit or a written statement from the member that the member does not wish to claim such service credit, and final certification of earnings.

(b) Establish the effective retirement date as provided in paragraph 60S-4.0035(3)(a), F.A.C., for normal or early retirement, or as provided in paragraph 60S-4.0035(3)(b), F.A.C., for disability retirement.

(c) Send follow-up notices, reminding the member of any required information or documents that have not yet been received.

(d) If all the required information or documents have not been received by the Division after 3 follow-up notices have been sent to the member, a certified letter will be sent advising the member he has 21 days to provide such information or documents without loss of benefits.

(e) If all the required information or documents have not been received by the Division after the 21 days specified in the certified letter, a final agency action letter will be sent to the member advising the member that his application is cancelled

and he must reapply to receive benefits, with a new retirement date established upon application.

16. The Division in September 2001, received Ms. Shepherd's initial application for disability benefits. The Division mailed more than three follow-up notices to Ms. Shepherd requesting additional information. Despite the numerous letters that were sent to her, neither Ms. Shepherd nor her attorney supplied the requested information.

17. Ms. Shepherd was notified that if she failed to submit the required information, her application would be cancelled. She was given a final agency action letter and she still did not supply the requested statements.

18. Petitioner has the burden of providing sufficient evidence to support her case. The burden of proof in an administrative proceeding is on the party asserting the affirmative of the issue unless the burden is otherwise established by statute. Florida Department of Transportation v J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1 DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1 DCA 1977). Petitioner must demonstrate by a preponderance of the evidence that she is entitled to the agency action she proposes, that is, the reinstatement of her disability retirement application. Ms. Shepherd received more than three notices requesting she complete her application. She

failed to act, so the Division, in accord with its rule, cancelled her application. No evidence was introduced by the Petitioner to support her request of the Division to rescind the cancellation.

19. Based upon a lack of record evidence, there is no basis for the Division of Retirement to grant Ms. Shepherd's request to reinstate her disability retirement application. However, this decision is not a bar to re-application.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED:

That the Division of Retirement issue a Final Order denying the request of Petitioner Edna M. Shepherd to reinstate her disability retirement application.

DONE AND ENTERED this 18th day of September, 2002, 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 18th day of September, 2002.

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.