

4-13-04

STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES

FILED  
04 JUN -4 AM 9:15  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

JACK L. POITINGER, JR.,

Final Order No. DMS-04-027

Petitioner,

AT

vs.

Case No: DOAH 03-2976  
DMS-DOR-03-31  
OGC: 04-01863

STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES,  
DIVISION OF RETIREMENT,

CCA-CLOS

Respondent.

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FINAL ORDER

Notice was provided and on January 16, 2004, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2003). The hearing location was the Offices of Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida. The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Jack L. Poitinger, Jr., Esquire, pro se  
700 Barineau Road  
Tallahassee, Florida 32304

For Respondent: Robert B. Button, Esquire  
Department of Management Services  
Division of Retirement  
4050 Esplanade Way, Suite 260  
Tallahassee, Florida 32399

## STATEMENT OF THE ISSUE

Is Petitioner eligible to join the Florida Retirement System (FRS), Deferred Retirement Option Program (DROP)? See § 121.091(13)(a), Fla. Stat. (2001).

## PRELIMINARY STATEMENT

On May 14, 2003, Petitioner, as a member of the FRS, wrote to Respondent requesting enrollment in DROP. On May 27, 2003, Respondent replied to Petitioner denying the request to participate in DROP and advising Petitioner of his right to contest that preliminary decision. On June 16, 2003, Petitioner wrote Respondent requesting a hearing to contest the proposed agency action denying him permission to participate in DROP.

On August 19, 2003, the Division of Administrative Hearings (DOAH) received notice of the transmittal of the case from Respondent asking for the assignment of an administrative law judge to address the dispute by entry of a recommended order.

Originally the case was scheduled to be heard on October 28, 2003, before Don W. Davis, Administrative Law Judge. The case was rescheduled to be heard on January 16, 2004, and reassigned to the present administrative law judge for hearing.

At hearing Petitioner testified in his own behalf and presented the testimony of Larry Hunnicutt, Benefits Administrator for Respondent. Joint Exhibits numbered 1 through 6 were admitted as evidence. At Petitioner's request official recognition was given Chapter 2002-287, Section 899, Laws of Florida.

A hearing transcript was filed on February 6, 2004. The parties timely filed proposed recommended orders. The Division of Administrative hearings issued a recommended order on April 13, 2004, recommending that a final order be entered denying Petitioner's right to participate in the DROP program. Neither party filed exceptions.

FINDINGS OF FACT

The Findings of Fact set forth in the Recommended Order, attached hereto, are incorporated by reference in this Final Order.

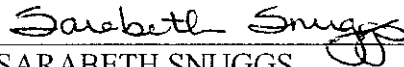
CONCLUSIONS OF LAW

The Conclusions of Law set forth in the Recommended Order, attached hereto, are incorporated by reference in this Final Order.

ORDER

Upon consideration of the Findings of Fact, and Conclusions of Law, the Petitioner, Jack L. Poitinger, Jr., is denied eligibility to participate in the Deferred Retirement Optional Program (DROP) of the Florida Retirement System.

DONE AND ENTERED this 2nd day of June, 2004, in Tallahassee, Leon County, Florida.



SARABETH SNUGGS  
Interim State Retirement Director  
Division of Retirement  
Department of Management Services  
4050 Esplanade Way  
Tallahassee, Florida 32399-1560

COPIES FURNISHED:

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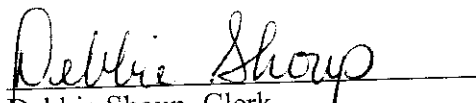
Alberto Dominguez, General Counsel  
Department of Management Services  
Division of Retirement  
4050 Esplanade Way  
Tallahassee, Florida 32399-1560

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF MANAGEMENT SERVICES, 4050 ESPLANADE WAY, SUITE 260, TALLAHASSEE, FLORIDA 32399-0950, AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this Final Order was filed in the official records of the Department of Management Services and copies were furnished to: Robert B. Button, Assistant General Counsel, Department of Management Services, 4050 Esplanade Way, Suite 260, Tallahassee, Florida 32399-0950; Jack Poitinger, Jr., 700 Barineau Road, Tallahassee, Florida 32304 and Judge Charles C. Adams., Division of Administrative Hearings, The Desoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, the And day of June 2004.

  
Debbie Shoup, Clerk  
Department of Management Services  
4050 Esplanade Way, Suite 260  
Tallahassee, Florida 32399-0950