

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CAROLYN JOHNSON-ROLLINS,)
)
 Petitioner,)
)
vs.) Case No. 03-4024
)
DEPARTMENT OF MANAGEMENT)
SERVICES, DIVISION OF)
RETIREMENT,)
)
 Respondent.)

)

RECOMMENDED ORDER

A formal hearing was conducted in this case on December 22, 2003, in Gainesville, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Carolyn Johnson-Rollins
 Apartment N118
 2701 Northwest 23rd Boulevard
 Gainesville, Florida 32605

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

STATEMENT OF THE ISSUES

The issues are whether Petitioner's employment as a substitute teacher is creditable service under the Florida

Retirement System, entitling her to retirement benefits and whether she may purchase retirement credit for out-of-state and federal service prior to vesting.

PRELIMINARY STATEMENT

By letter dated August 19, 2003, Respondent Department of Management Services, Division of Retirement (Respondent) advised Petitioner Carolyn Johnson-Rollins (Ppetitioner) that she was ineligible for benefits under the Florida Retirement System. Petitioner subsequently requested an administrative hearing to challenge Respondent's decision.

In a Notice of Hearing dated November 6, 2003, the undersigned scheduled the hearing for December 22, 2003. During the hearing, Petitioner testified on her own behalf and offered nine exhibits that were accepted into the record as evidence. Respondent did not present any witnesses but offered the deposition of Doug Cherry, with attached exhibits, which was accepted as testimony in lieu of live testimony at hearing.

The parties did not file a copy of the hearing transcript. Respondent filed a Proposed Recommended Order on December 30, 2003. Petitioner has not made a post-hearing submission as of the date of issuance of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, aged 53, applied for retirement benefits from the Florida Retirement System (FRS) on October 20, 2003.

2. Petitioner has 4.53 years of creditable service with the FRS due to her employment as a full-time teacher with the Alachua County School Board (School Board). She worked for the School Board from sometime in the early 1970s through May 1977.

3. In May 1977, Petitioner terminated her employment with the School Board. She then joined the military, serving four years of active duty.

4. After completing her military service in 1981, Petitioner worked out of state as a civil service employee with the Federal government. She also worked for a period of time in the private sector.

5. In the 1990s, Petitioner returned to Alachua County, Florida. She worked as a substitute teacher for the School Board for approximately four years, from November 21, 1999 through February 14, 2002.

6. Before beginning her employment as a substitute teacher/temporary employee in 1999, Petitioner signed a document entitled "Acknowledgement of FRS Status and Alternative Plan." This document clearly advised Petitioner that her employment as a substitute teacher was not covered under FRS.

7. Petitioner was not employed by a participating employer in a regularly established position on July 1, 2001. She needs an additional 1.47 years of credible service in order to vest in FRS with six years of credible service.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

9. Petitioner has the burden of proving by a preponderance of the evidence that she is entitled to benefits under FRS. Department of Transportation v. J.W.C. Co. Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Agrico Chemical Co. v. Department of Environmental Regulation, 365 So. 2d 759 (Fla. 1st DCA 1978).

10. Section 121.021(45), Florida Statutes (2003), provides as follows in pertinent part:

(45)(a) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under Section 121.091(4).

(b) Effective July 1, 2001, a 6-year vesting requirement shall be implemented for the defined benefit program of the Florida Retirement System. Pursuant thereto:

* * *

2. Any member not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of 6 years

of creditable service, provided that such member is employed in a covered position for at least 1 work year after July 1, 2001. However, no member shall be required to complete more years of creditable service than would have been required for that member to vest under retirement laws in effect before July 1, 2001.

11. Section 121.1115, Florida Statutes, provides as follows in relevant part:

121.1115 Purchase of retirement credit for out-of-state and federal service.--Effective January 1, 1995, a member of the Florida Retirement System may purchase creditable service for period of public employment in another state and receive creditable service for such periods of employment. Service with the Federal government, including any military service, may be claimed. Upon completion of each year of service earned under the Florida Retirement System, a member may purchase up to one year of retirement credit for his or her out-of-state service subject to the following provisions:

(1) LIMITATIONS AND CONDITIONS.--To receive credit for the out-of-state service:

* * *

(b) The member must have completed a minimum of 6 years of creditable service under the Florida Retirement System, excluding out-of-state service and in-state service claimed and purchased under section 121.1122.

12. Florida Administrative Code Rule 60S-1.004(5) provides as follows in relevant part:

(5) An employee who is filling a temporary position shall not be eligible for membership in the Florida Retirement System. . . . An employer employing a person in a temporary position shall advise the employee at the time of his employment that he is filling a temporary position and cannot participate in the Florida Retirement System or claim this temporary employment later for retirement purposes.

* * *

(b) A temporary position in a local agency is:

* * *

2. An employment position which is listed below in (d) regardless of whether it will exist beyond 6 consecutive months.

* * *

(d) The following types of positions in a local agency are considered temporary positions for retirement purposes. . . .

* * *

4. Substitute Teacher Positions (positions filled by persons not on contract called to work intermittently to substitute.)

13. In this case, Petitioner has not met her burden. She has 4.53 years of creditable service in the FRS. She needs to work in a covered position for an additional 1.47 years in order to vest in FRS with six years of creditable. Only then will she be eligible to purchase her out-of-state and/or military service.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That Respondent enter a final order finding that Petitioner is not entitled to FRS benefits.

DONE AND ENTERED this 13th day of January, 2004, in Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of January, 2004.

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.