

STATE OF FLORIDA
DIVISION OF RETIREMENT

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

VERNA JOHNSON,
Petitioner,

Final Order No. DMS - 08-0118

vs.

DOAH Case No. 05-3287
DMS No. 05-05957

DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,
Respondent.

AMENDED FINAL ORDER

After being formally notified of the Division of Retirement's determination that she had not effectuated her retirement under the Florida Retirement System (FRS) in July, 1999, Mrs. Johnson timely filed a petition for hearing and the case was referred to the Division of Administrative Hearings.

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, P. Michael Ruff, held a formal hearing in the above-styled case October 13, 2005, in Gainesville, Florida.

At the formal proceeding, Petitioner testified on her own behalf and offered 6 exhibits, which were admitted. Respondent offered the testimony of Joyce Morgan, Benefits Administrator, Division of Retirement and 23 exhibits, which were admitted. Official Recognition was taken of Sections 121.021 and 121.091, Florida Statutes (2005), and Rule 60S-1.004, Florida Administrative Code.

No transcript was initially ordered and the Parties filed their proposed Recommended Orders. A Recommended Order was issued March 3, 2006, which is incorporated by reference

into this Amended Final Order. No Exceptions to the Recommended Order were filed. A transcript was ordered and reviewed in the preparation of the Final Order.

The Final Order was entered on September 18, 2006. This Order accepted the Findings of Fact in the Recommended Order, and accepted all but one Conclusion of Law set forth in the Recommended Order. Conclusion of Law number 18 was rejected, and the Department of Management Services instead adopted language stating Petitioner was an employee of the Caring and Sharing Learning School as a matter of law.

Petitioner appealed the Final Order to the First District Court of Appeal on October 17, 2006. This Court held that whether Petitioner was an employee was a factual finding to be determined by the Administrative Law Judge, and remanded this case to the Division of Administrative Hearings. The Administrative Law Judge ultimately found that Petitioner was not an employee of the Caring and Sharing Learning School.

STATEMENT OF THE ISSUES

The issue in this case is to determine whether Verna M. Johnson effectuated her retirement under the FRS in July, 1999.

FINDINGS OF FACT

The Division of Retirement accepts the Findings of Fact set forth in the Recommended Order, with one exception. In Finding of Fact number 1, the date of Petitioner's termination from Alachua County schools was June 9, 1999, rather than July 9, 1999. This is apparently a typographical error (Exhibit R-4).

Further, the Division of Retirement accepts the additional Finding of Fact set forth in the Order on Remand – that Mrs. Johnson was not an employee of the Caring and Sharing Learning School. As stated in the Order on Remand, this Finding of Fact was based on the following:

(i) Mrs. Johnson was paid very irregularly, receiving compensation every two to three months, on the order of \$500.00 to \$1,000.00. A portion of the money paid to Mrs. Johnson was reimbursement for expenses she expended on behalf of the school.

(ii) The amount received by Mrs. Johnson was significantly less than what she would have been paid for her services if this was her regular employment. Mrs. Johnson received \$500.00 to \$1,000.00 every two to three months, whereas she would have received \$60,000.00 to \$80,000.00 per year for her services as a regular employee.

(iii) Compensation to Mrs. Johnson was paid due to her entrepreneurial and altruistic interest in establishing a quality school.

(iv) The payroll records in evidence did not show that Mrs. Johnson received payment during the period in question.

(v) The employment relationship questionnaire completed by Mrs. Johnson did not apply to the period in question.

(vi) Mrs. Johnson was not supervised or trained by the agency.

(vii) Mrs. Johnson did not work regular hours. She did not report to work on the same day, or at the same time on any day when she did any work at the school.

CONCLUSIONS OF LAW

The Division accepts the Conclusions of Law set forth in the Recommended Order, which are incorporated herein by reference.

ORDER

Based on the foregoing, it is hereby ORDERED AND DIRECTED that Petitioner's retirement be determined effective and lawful, and that Petitioner be deemed entitled to the

retirement benefits accrued and paid from June 9, 1999, forward, including the DROP accumulations that accrued from August 1, 1998.

DONE AND ORDERED this 22 day of December 2008, in Tallahassee,

Leon County, Florida.




LINDA SOUTH
Secretary
Department of Management Services
4050 Esplanade Way
Tallahassee, FL 32399-0950

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 160, 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 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.

I HEREBY CERTIFY that this Amended Final Order was filed in the official records of the Department of Management Services, and copies distributed by U.S. Mail to the parties below, on the 22 day of Dec, 2008.



DEBBIE SHOUP
Clerk
Department of Management Services

Copies furnished to:

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✓ Judge P. Michael Ruff
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