

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

FILED
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ARTHUR J. MARSLAND, JR.,

Final Order No. DMS-09-0001

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

vs.

Case No. 08-4385

DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,

Respondent.

FINAL ORDER

This cause came before the undersigned for the purpose of issuing a final agency order.

APPEARANCES

For Petitioner: Mr. Arthur J. Marsland, Jr., pro se
1856-B Hereford Road
Middleburg, Florida 32068

For Respondent: Geoffrey M. Christian, Esq.
Assistant General Counsel
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner has forfeited his rights and benefits under the Florida Retirement System (FRS) pursuant to Section 112.3173, Florida Statutes.

PRELIMINARY STATEMENT

Pursuant to notice, Respondent advised Petitioner of its decision to forfeit his FRS rights and benefits pursuant to Section 112.3173, Florida Statutes. The proposed agency action was premised on Petitioner's plea of guilty in a state court

proceeding wherein he had been charged with certain criminal offenses. The notice afforded Petitioner a point of entry to challenge Respondent's proposed action and to request an administrative review of the issues. Petitioner timely filed a request for an administrative hearing. Thereafter, the matter was transferred to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a formal hearing pursuant to Section 120.57(1), Florida Statutes.

The matter was ultimately heard on November 12, 2008. Respondent requested and was granted official recognition of the matters addressed in pleadings filed on September 29 and November 7, 2008. The parties submitted eleven joint exhibits for admission into evidence and they were so admitted. The parties submitted thirty-two joint stipulations of facts. Petitioner testified on his own behalf and Respondent presented the testimony of Charlene Fansler, a benefits administrator in its Bureau of Retirement Calculations. A transcript of the proceedings was not ordered. The parties' proposed recommended orders were timely filed. The administrative law judge submitted her recommended order and all exhibits offered into evidence to the Department. A copy of the recommended order is attached hereto and made a part hereof. No exceptions were filed.

STANDARD OF REVIEW

Section 120.57(1)(1), Florida Statutes (2008), provides that an agency reviewing a Division of Administrative Hearings recommended order may reject or modify the findings of fact of an

administrative law judge if "the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Florida law defines "competent substantial evidence" as "such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So.2d 912, 916 (Fla.1975). However, an agency may not create or add to findings of fact because it is not the trier of fact. See Friends of Children v. Dep't of Health & Rehabilitative Servs., 504 So.2d 1345, 1347-48 (Fla. 1st DCA 1987).

Section 120.57(1)(1), Florida Statutes (2008), provides that an agency may reject or modify an administrative law judge's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction" whenever the agency's conclusions or interpretations are "as or more reasonable" than the conclusions or interpretations made by the administrative law judge. Florida courts have consistently applied this section's "substantive jurisdiction limitation" to prohibit an agency from reviewing conclusions of law that are based upon the administrative law judge's application of legal concepts, such as collateral estoppel and hearsay, but not from reviewing conclusions of law containing the administrative law judge's interpretation of a statute or rule over which the

Legislature has provided the agency administrative authority. See Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So.2d 1140, 1141-42 (Fla. 2nd DCA 2001); Barfield v. Dep't of Health, 805 So.2d 1008, 1011 (Fla. 1st DCA 2001). Further, an agency's interpretation of the statutes and rules that it administers is entitled to great weight, even if it is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. See State Bd. of Optometry v. Fla. Soc'y of Ophthalmology, 538 So.2d 878, 884 (Fla. 1st DCA 1998).

FINDINGS OF FACT

The Department hereby adopts and incorporates by reference the findings of fact set forth in the recommended order.


CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the conclusions of law set forth in the recommended order.

Based upon the foregoing it is,

ORDERED and DIRECTED that, pursuant to Section 112.3173, Florida Statutes, Petitioner's FRS rights and benefits were forfeited when he pled guilty to a specified offense committed prior to retirement.

DONE and ORDERED on this 13 day of JAN, 2009.


LINDA H. SOUTH, Secretary
Department of Management Services
4050 Esplanade Way, Suite 285
Tallahassee, Florida 32399

Copies to:

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NOTICE OF RIGHT TO APPEAL

UNLESS EXPRESSLY WAIVED BY A PARTY SUCH AS IN A STIPULATION OR IN OTHER SIMILAR FORMS OF SETTLEMENT, ANY PARTY SUBSTANTIALLY AFFECTED BY THIS FINAL ORDER MAY SEEK JUDICIAL REVIEW BY FILING AN ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF MANAGEMENT SERVICES, AND A COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE CLERK OF THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER, IN ACCORDANCE WITH RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, AND SECTION 120.68, FLORIDA STATUTES.

Certificate of Clerk:

Filed in the Office of the Agency Clerk of the Department of Management Services on this 14th day of January 2009.



Agency Clerk