

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRIAN PRINCE AND WENDY P. RIVERS, )  
 )  
 Petitioners, )  
 )  
 vs. ) Case No. 09-2582  
 )  
 DEPARTMENT OF MANAGEMENT )  
 SERVICES, DIVISION OF RETIREMENT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on July 22, 2009, in Tallahassee, Florida.

APPEARANCES

For Petitioners: Brian Prince, pro se  
1063 Walden Road  
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For Respondent: Elizabeth Regina Stevens, Esquire  
Department of Management Services  
Office of the General Counsel  
4050 Esplanade Way, Suite 160  
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STATEMENT OF THE ISSUE

The issue presented is whether Petitioners are entitled to Option 2 continuing retirement benefits following the death of Linda Prince, a Florida Retirement System member.

PRELIMINARY STATEMENT

By correspondence dated March 2 and March 11, 2009, Respondent Department of Management Services, Division of Retirement, notified Petitioners Brian Prince and Wendy P. Rivers that their request for continuing retirement benefits following the death of their mother Linda J. Prince was denied, and Petitioners timely requested an administrative hearing regarding that determination. This cause was thereafter transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

Petitioners presented the testimony of Annie Lamb, Samantha Andrews, Harrison T. Rivers, and Harrison W. Rivers. Respondent presented the testimony of Brian D. Prince and Paula Kazmirski. Additionally, Petitioners' Exhibit numbered 1 and Respondent's Exhibits numbered 1-9 were admitted in evidence.

At the commencement of the final hearing, the style of this case was amended to reflect that both Brian Prince and Wendy P. Rivers are the Petitioners in this cause.

No transcript of the final hearing has been filed. Petitioners and Respondent have, however, filed proposed recommended orders, and those documents have been considered in the entry of this Recommended Order.

## FINDINGS OF FACT

1. Linda J. Prince was employed by the Florida Department of Law Enforcement (hereinafter "FDLE") and was a vested, regular class member of the Florida Retirement System (hereinafter "FRS").

2. After she was diagnosed with a serious health condition, she was able to continue as a full-time employee by participating in the Department's sick leave pool. By November 2008 her family understood that she was terminally ill. About that time, she began alternating staying at the home of her son Brian Prince and at the home of her daughter and son-in-law Wendy and Harrison T. Rivers.

3. During the first week of November 2008, her son, daughter, and son-in-law began discussing whether she should retire rather than remaining in full-pay status. Harrison T. Rivers asked his father Harrison W. Rivers for advice since his father was a retired member of FRS. His father told him that Linda Prince should retire right away under Option 2 since that would guarantee a 10-year payout.

4. One of the persons that Harrison T. Rivers contacted for advice referred him to Annie Lamb, a Personnel Services Specialist at FDLE. He remembers asking her about Option 2 and understood her to tell him that Option 2 required having a

spouse or other dependents. She does not recall the conversation.

5. When Harrison T. Rivers conveyed his understanding to Brian Prince, Brian requested that a meeting be set up at FDLE's Personnel Office. The two men met with Samantha Andrews, a different FDLE Personnel Services Specialist, near the end of 2008.

6. All three persons attending the meeting recall that they discussed the sick leave pool, and the two men were assured that there were enough donations to the sick leave pool to cover Linda Prince's continuing need. The attendees at the meeting have different recollections of the other matters discussed. The two men believe they discussed Option 2 and that Samantha Andrews called across the hall to Annie Lamb who confirmed that Option 2 required a spouse. Lamb recalls Andrews asking her a question but does not remember what the question was. Andrews does not recall asking Lamb a question and further does not recall discussing the retirement options at the meeting.

7. At the final hearing, Andrews admitted that she did not understand the differences among the four retirement options until after Linda Prince's death and that before then she thought that one had to be a spouse or a dependent child to be a beneficiary. Andrews' impression of the meeting is that

Linda Prince's children wanted to be sure she remained in full-pay status through the sick leave pool to increase her income and keep her benefits available and at a reasonable cost.

8. After this meeting, Linda Prince remained on full-pay employment status. As a result, she received (1) her full salary rather than a reduced retirement amount, (2) health insurance at a cost of \$25 bi-weekly, and (3) a \$44,000 life insurance policy at the cost of \$2 bi-weekly. If she had retired, she would have had to pay nearly \$500 a month for the health insurance and would have lost her \$44,000 life insurance policy. Instead, she would have had the option of purchasing either a \$10,000 or \$2,500 life insurance policy for \$29.65 or \$7.41 a pay period, respectively.

9. On January 10, 2009, Harrison W. Rivers was visiting at his son's home while Linda Prince was staying there. In a conversation with her, he was surprised to learn that she had not retired as he had strongly advised two months earlier. When he later questioned his son as to why she had not retired, his son told him because she did not have a spouse. Harrison W. Rivers told his son that that information was not correct.

10. On January 20, 2009, Harrison W. Rivers met with his own financial advisor David A. Wengert and relayed the information his son had given him. Wengert agreed with Rivers that the information about a spouse or dependent child was not

correct but checked with a contact he had at the Department of Corrections. That person confirmed that the spouse or dependent child requirement did not apply to Option 2 and faxed the necessary forms for retiring under Option 2 to Wengert who gave them to Rivers.

11. Harrison W. Rivers gave the folder from Wengert containing the correct information and required forms to his son and told his son to retire Linda Prince immediately. His son subsequently called Brian Prince, gave him the correct information, and told him that Linda Prince should retire. Brian Prince agreed but was out of town at the time.

12. On February 11, 2009, Harrison T. Rivers drove Annie Lamb from FDLE to where Linda Prince was staying. The forms were completed and signed, and Lamb notarized Linda Prince's signature. The forms provided for Linda Prince to take early retirement under Option 2 with Brian Prince and Wendy Rivers as her equal beneficiaries.

13. The forms were filed with Respondent, the Department of Management Services, Division of Retirement, the same day. The forms she signed selected February 28, 2009, as Linda Prince's termination of employment date. A termination date of February 28, 2009, resulted in a March 1, 2009, retirement date.

14. Linda Prince died on February 14, 2009. On that date, she was still in full-pay status since she had not terminated her employment and retired.

15. Option 2 under the FRS system provides a reduced monthly benefit payable for the member's lifetime, but if the member dies within ten years after his or her retirement date, the designated beneficiary receives a monthly benefit in the same amount for the balance of the ten-year period, and then no further benefits are payable.

16. Option 1 provides for monthly payments for the member's lifetime, and upon the member's death, no further monthly benefits are payable. It, therefore, pays no continuing benefits to a beneficiary. Options 3 and 4 provide for joint annuitants and reduced monthly benefits. Under Option 3, upon the member's death, the joint annuitant, who must be a spouse or a financial dependent, will receive a lifetime monthly benefit payment in the same amount, but there are limitations on the amount and length of those payments for a joint annuitant under 25 who is not a spouse. Option 4 provides an adjusted monthly benefit while the member and the joint annuitant are living, a further reduced monthly benefit after the death of either the member or the joint annuitant, with adjustments if the joint annuitant is under the age of 25 and not a spouse. No benefits are payable after both the member and the joint annuitant are

deceased. Thus, only Options 3 and 4 require a spouse or financial dependent in order for continuing benefits to be paid after the member's death.

17. Upon learning of her death, the Division of Retirement researched whether any benefits were due to Linda Prince or her beneficiaries. Since she had paid nothing into the FRS, there were no contributions to refund. Further, since she had not retired, no retirement benefits were payable to her or her beneficiaries. The Division also looked at the dates of birth of her beneficiaries to determine if a beneficiary would qualify as a joint annuitant, but both of her beneficiaries were over the age of 25.

18. The only time that Linda Prince contacted the Division of Retirement was in 2002 when she sent an e-mail asking that her benefits be calculated as to what she would receive if she retired at age 62. The Division performed the calculations and sent her the information as to what her benefits would be under Options 1 and 2. Her file contains her e-mail, the benefits estimates sent to her, and a copy of an informational retirement brochure.

19. Information on the FRS, including descriptions of the Options, has been available on the Division's website, in employee handbooks available from the Division, and was available in written form in FDLE's Personnel Office on the day



that Brian Prince and Harrison T. Rivers met with Samantha Andrews. During that meeting, neither Brian Prince nor Harrison T. Rivers requested a copy of the employee handbook or any written materials describing the Options for retirement.

20. Because of Petitioners' estoppel argument, the chronology in this case must be closely reviewed. At least until early November 2008, Linda Prince had made her decision to stay on full-pay status to receive her full salary and benefits rather than take early retirement. In early November, her son, daughter, and son-in-law became involved in that decision. In early November, her son-in-law understood an FDLE employee to say that Linda Prince needed a spouse or financial dependent to qualify for continuing retirement benefits, but his father, who was a retired member of FRS, told him that information was wrong and that Option 2 would provide a ten-year continuing benefit for her beneficiaries. No contact was made on her behalf with the Division of Retirement to ascertain which information was correct.

21. On January 10, 2009, Harrison W. Rivers, upon learning that Linda Prince was still not retired, again told his son that she should be retired under Option 2 and that his son's understanding that she needed a spouse or financial dependent was wrong. Again, no contact was made with the Division of Retirement.

22. On January 20, 2009, Harrison W. Rivers obtained the written information and required forms. Within a few days he gave the information and forms to his son and told him again to see to it that Linda Prince was retired immediately. Yet, the forms were not executed and filed with the Division of Retirement until February 11, 2009.

23. Had Linda Prince or anyone on her behalf contacted the Division of Retirement to clarify which information was correct once they had conflicting information the first week of November 2008, she could have retired starting December 1. Had Linda Prince or anyone on her behalf submitted her application for retirement when Harrison W. Rivers provided the correct information and forms to use in January 2009, she could have retired then with a February 1 retirement date.

24. Even though Petitioners offered evidence to show that they relied upon erroneous information conveyed by Harrison T. Rivers and even though they offered evidence that they received erroneous information from Samantha Andrews, it would have been clear to a reasonable person that such information conflicted with the information given by Harrison W. Rivers, who had gone through the process. Further, in January when Rivers gave them the correct written information and the forms to use, there was no basis for relying upon the erroneous information. If Petitioners had acted to clarify the previous conflicting

information or had not delayed in having Linda Prince execute the forms when Rivers provided them, they would have retired her before her death and would have been entitled to continuing benefits. Whatever circumstances caused the further delay in the filing of Linda Prince's application for retirement and supporting documentation, the delay was not caused by the information, erroneous or not, provided by the FDLE employees.

25. Accordingly, Linda Prince was still a full-time employee at the time of her death not as a result of erroneous information provided by FDLE employees as alleged by Petitioners, but as a result of delay in obtaining the easily-accessible correct information from the Division of Retirement and as a result of delay in acting on the correct information when it was provided to them.

26. There are over 960 agencies, including state departments and local governments and school boards, which participate in the FRS. The employer and employee handbooks distributed to those agencies and their employees by the Division of Retirement clearly state that representatives of participating agencies are not the agents of the Division of Retirement but rather only act as a link between employees and the Division of Retirement.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

28. The FRS is codified in Chapter 121, Florida Statutes. Pursuant to Section 121.1905, Florida Statutes, the Division of Retirement was created to administer the FRS. The Division is guided by its own rules found in Chapter 60S-4, Florida Administrative Code.

29. Retiring FRS members submit certain documents to the Division for the administration of their retirement benefits. These documents include the Application for Service Retirement, Option Selection for FRS Members Form, and the Beneficiary Designation Form. Linda Prince filed all of these forms with the Division on February 11, 2009.

30. The four options available to retiring members are provided on the Option Selection Form. She chose Option 2 which is defined by Section 121.091(6)(a)2., Florida Statutes, as follows:

A decreased retirement benefit payable to the member during his or her lifetime and, in the event of his or her death within a period of 10 years after retirement, the same monthly amount payable for the balance of such 10-year period to his or her beneficiary . . . .

31. Although Linda Prince selected Option 2, an option selection is null and void if the member dies before the effective date of retirement. § 121.091(6)(e), Fla. Stat. Florida Administrative Code Rule 60S-4.0035(3)(a) defines the effective date of retirement as follows:

For a member who makes application for a normal or early retirement benefit . . . the effective retirement date shall be the first day of the month following the month in which the member's termination occurs. . . .

32. Since Linda Prince's termination date was February 28, 2009, her effective retirement date was March 1, 2009. Since she died prior to this date, her option selection is null and void.

33. Section 121.091(7)(b), Florida Statutes, provides:

If the employment of an active member who may or may not have applied for retirement is terminated by reason of his or her death subsequent to becoming vested and prior to his or her effective date of retirement, if established, it shall be assumed that the member retired as of the date of death. . . . Benefits payable to the designated beneficiary shall be as follows:

\* \* \*

2. For a beneficiary who does not qualify as a joint annuitant, no continuing monthly benefit shall be paid and the beneficiary shall be entitled only to the return of the member's personal contributions.

Accordingly, when a member dies before his or her effective retirement date and is vested, as Linda Prince was, only

beneficiaries who qualify as joint annuitants will be entitled to a continuing benefit.

34. The term "joint annuitant" is defined by Section 121.021(28), Florida Statutes, as any person designated by the member to receive a retirement benefit upon the member's death who is also the member's spouse; the member's natural or adopted child under age 25; the member's physically or mentally disabled child incapable of self-support, regardless of age; a person under age 25 who is financially dependent on the member and for whom the member is the legal guardian; or the member's parent or grandparent or a person aged 25 or older for whom the member is the legal guardian and who is financially dependent on the member.

35. Petitioners do not qualify as joint annuitants under the statutory definition. Petitioners are not entitled, therefore, to a continuing retirement benefit. See Walker v. Dep't. of Management Servs., Div. of Retirement, DOAH Case No. 02-0213 (F.O. 12/30/02).

36. Petitioners allege that Linda Prince's application for retirement would have been filed earlier and she would have lived until her effective retirement date if they had not been given incorrect information from FDLE. In effect, Petitioners rely on the doctrine of equitable estoppel in seeking continuing

benefits from FRS. This tribunal does not have jurisdiction to grant equitable remedies. § 26.012, Fla. Stat.

37. Even if there were jurisdiction to award equitable relief in this proceeding, Petitioners would have the burden of proving the following elements: (1) a representation by a party as to some material fact, (2) reliance on that representation by the party claiming estoppel, and (3) a change in the party's position caused by his or her reliance on the representation to his detriment. See, e.g., Shaffer v. Sch. Bd. of Martin County, 543 So. 2d 335 (Fla. 4th DCA 1989).

38. Further, as a general rule, estoppel may be applied against the state only in rare instances or under exceptional circumstances. Dolphin Outdoor Advert. v. Dep't. of Transp., 582 So. 2d 709 (Fla. 1st DCA 1991). Petitioners must also show affirmative conduct, not merely negligence, that they relied upon to their detriment. Martin County v. Indiantown Enter., Inc., 658 So. 2d 1144 (Fla. 4th DCA 1995).

39. Petitioners have not proven a factual basis for applying equitable estoppel in this proceeding. First, there is no evidence that the Division of Retirement represented a material fact to them. Rather, the evidence is clear that Petitioners did not contact the Division in the face of conflicting information. Second, there is no evidence that Petitioners relied on a representation made by the Division of

Retirement. Third, there is no evidence that Petitioners changed their position to their detriment due to their reliance on a representation made by the Division.

40. Petitioners' testimony regarding advice received from FDLE employees has not been corroborated by those employees. Rather, the impression of the FDLE employee who attended the meeting is that Petitioner's son and son-in-law wanted to make sure Linda Prince could remain in full-pay status to receive her full salary and benefits. The evidence is clear that Petitioners were given conflicting information about the same time that they were obtaining information from FDLE; yet, they did nothing to resolve the conflict. Further, once they were given the indisputably correct information, they delayed acting on it in a timely manner for personal reasons, not through some action on the part of FDLE.

41. Even if the alleged misrepresentation were made, FDLE is a separate entity from the Division of Retirement, and representations made by FDLE cannot be attributed to the Division. Bright v. Dep't. of Mgmt. Servs., Div. of Ret., DOAH Case No. 03-2142 (F.O. 4/8/04). FRS employers and their employees are advised that FRS employers are not agents of the Division and cannot bind the Division. The public policy implications of binding the Division by statements made by a representative of any other participating entity are obvious.



This non-agent position has been affirmed by case law and has recently been codified by the Legislature in CS/CS/HB 479. Section 1 of Chapter 2009-209, Laws of Florida, effective July 1, 2009, provides that: "Employers are not agents of the department, the state board, or the Division of Retirement, and the department, the state board, and the division are not responsible for erroneous information provided by representatives of employers."

42. Petitioners bear the burden of proof in this proceeding. See Fla. Dep't. of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't. of Health and Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977); and Young v. Dep't. of Cmty. Affairs, 625 So. 2d 831 (Fla. 1993). Petitioners have failed to meet this burden by proving their allegations by a preponderance of the evidence.

#### RECOMMENDATION

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

RECOMMENDED that a final order be entered finding Petitioners ineligible for an Option 2 benefit from the FRS retirement account of Linda Prince.

DONE AND ENTERED this 10th day of August, 2009, in  
Tallahassee, Leon County, Florida.

*Linda M. Rigot*

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LINDA M. RIGOT  
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Filed with the Clerk of the  
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this 10th day of August, 2009.

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.