

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHERIDAN CHESTER,)
)
 Petitioner,)
)
 vs.) Case No. 10-1255
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF)
 RETIREMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on June 23, 2010. The ALJ conducted the hearing by video teleconference in Tallahassee and Fort Myers, Florida.

APPEARANCES

For Petitioner: Jane Marie Letwin, Esquire
The Law Office of Jane M. Letwin
7333 Coral Way, Suite C
Miami, Florida 33155

For Respondent: Thomas E. Wright, Esquire
Department of Management Services
Division of Retirement
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STATEMENT OF THE ISSUE

The issue is whether Petitioner is eligible to participate in the Florida Retirement System (FRS), within the meaning of

Subsection 121.021(17)(a), Florida Statutes (2009),¹ as a substitute teacher for the Lee County School Board.

PRELIMINARY STATEMENT

By letter dated March 20, 2009, Respondent advised Petitioner that she is not eligible to participate in the Florida Retirement System (FRS) for the period of her employment as a teacher from February 28, 2001, through the present. The basis for the denial is that her employment was in a temporary position. Petitioner requested a final hearing before DOAH.

At the hearing, Petitioner testified, called one witness, and submitted 12 exhibits for admission into evidence. Respondent presented the testimony of three witnesses and submitted five exhibits for admission into evidence.

The identity of the witnesses and exhibits and the rulings regarding each are reported in the Transcript of the hearing filed with DOAH on July 2, 2010. Petitioner and Respondent timely filed their respective Proposed Recommended Orders on July 21 and 19, 2010.

FINDINGS OF FACT

1. Petitioner has been an employee of the Lee County School Board (the School Board) from February 28, 2001, through the date of the final hearing. The School Board is a participating member in the FRS.

2. Petitioner has never been a full-time employee of the School Board and has never been eligible for service credits for purposes of the FRS. From February 28, 2001, until some time in May 2004, the School Board employed Petitioner in a temporary, part-time position. From some time in May 2004 through the date of the final hearing, the School Board has employed Petitioner as a substitute teacher.

3. From February 28, 2001, through some time in May 2004, the School Board required part-time employees such as Petitioner to participate in a plan identified in the record as the Bencor FICA Alternative Plan (the Bencor Plan). The Bencor Plan provided retirement benefits for temporary teachers, who were not eligible for FRS retirement benefits.

4. On May 25, 2004, Petitioner submitted a Distribution Request Form to withdraw her accumulated savings from the Bencor Plan. Petitioner was eligible to withdraw her retirement benefits from the Bencor Plan, because she changed her employment status from a temporary teacher to a substitute teacher.

5. Some time in May 2004, Petitioner began teaching as a substitute teacher for the School Board. Petitioner has continued as a substitute teacher for the School Board through the date of the final hearing. As a substitute teacher,

Petitioner is not a full-time employee, who is eligible for service credits for purposes of the FRS.

CONCLUSIONS OF LAW

6. Petitioner argues that Respondent is equitably estopped from denying FRS benefits to Petitioner. Equity is the exclusive province of the courts in Florida. Art. V, Fla. Const. Neither DOAH nor its ALJs constitute a court with equitable jurisdiction. See Florida Department of Revenue v. WHI Limited Partnership, d/b/a Wyndham Harbor Island Hotel, 754 So. 2d 205, 206 (Fla. 1st DCA 2000); Florida State University v. Hatton, 672 So. 2d 576, 579 (Fla. 1st DCA 1996). Cf. Maddonna Sue Jervis Wise v. Department of Management Services, Division of Retirement, 930 So. 2d 867 (Fla. 2d DCA 2006).²

7. The jurisdiction of DOAH with respect to Petitioner's equitable estoppel argument is limited to relevant findings of fact. §§ 120.569 and 120.57(1), Fla. Stat. For reasons stated in the Findings of Fact, a preponderance of the evidence does not show that Respondent misrepresented that Petitioner was eligible to receive FRS benefits.

8. DOAH has jurisdiction over the remaining subject matter and the parties in this proceeding pursuant to Section 120.569 and Subsection 120.57(1). DOAH provided the parties with adequate notice of the final hearing.

9. Petitioner has the burden of proving by a preponderance of the evidence that she is entitled to FRS benefits. See §§ 120.57(1)(j) and (k); Young v. Dept. of Community Affairs, 625 So. 2d 831 (Fla. 1993); Florida Dept. of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Dept. of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). For reasons stated in the Findings of Fact and not repeated here, Petitioner did not satisfy her burden of proof.

10. A preponderance of evidence does not show that Petitioner was ever employed in a regularly-established position within the meaning of Subsection 121.021(52)(b). Rather, a preponderance of the evidence shows that Petitioner was always employed in a temporary position defined in Subsection 121.021(53)(b) or in a substitute teacher position defined in Florida Administrative Code Rule 60S-1.004(5)(b)4.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of Retirement, enter a final order denying Petitioner's request for FRS benefits.

DONE AND ENTERED this 11th day of August, 2010, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of August, 2010.

ENDNOTES

^{1/} References to subsections, sections, and chapters are to Florida Statutes (2009), unless otherwise stated.

^{2/} The Recommended Order issued by this ALJ in the Wise case, in relevant part, applied the doctrine of equitable estoppel without first considering the constitutional authority of an ALJ, as an officer of an executive branch agency, to exercise equitable powers. See Madonna Sue Jervis Wise v. Department of Management Services, Division of Retirement, Case No. 04-4020 (March 25, 2005). The constitutional limits on the executive agency, if any, were cured in the grant of equitable relief by the appellate court, which has plenary constitutional authority to grant such relief, but upheld the equitable relief granted by the ALJ without addressing the underlying constitutional question because the constitutional issue was not raised by either the ALJ or the parties in the administrative hearing. Wise, 930 So. 2d at 873.

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.