

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RUFUS ROYAL,)
)
 Petitioner,)
)
 vs.) Case No. 11-5492
)
 DEPARTMENT OF MANAGEMENT)
 SERVICES, DIVISION OF RETIRMENT)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 8, 2011, by video teleconference, with the parties appearing in Miami, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida, in accordance with the authority set forth in sections 120.569 and 120.57(1), Florida Statutes (2011).¹

APPEARANCES

For Petitioner: Rufus Royal, pro se
3471 Grand Avenue, Apartment 2
Miami, Florida 33133-5052

For Respondent: Larry Scott
Assistant General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether the Division properly denied Petitioner's request to change Petitioner's retirement in the Florida Retirement System from an early retirement service benefit to disability retirement.

PRELIMINARY STATEMENT

On June 15, 2011, the Department of Management Services, Division of Retirement ("Respondent" or "Division"), issued a denial letter informing Rufus Royal ("Petitioner" or "Royal"), that the Division was not able to honor his request for disability benefits because he was receiving a service retirement benefit. Petitioner timely requested a formal hearing to contest these allegations, and the matter was referred to the Division of Administrative Hearings on October 27, 2011.

The presiding administrative law judge set the final hearing for December 8, 2011. The case then proceeded as scheduled and both parties appeared at the appointed place and time.

At hearing, Petitioner testified on his own behalf and presented the testimony of one witness, Lavern Speights. Petitioner's Composite Exhibit 1 was offered and received into evidence. The Division presented the testimony of Debra

Roberts, Benefits Administrator. The Division's Exhibits 1 through 14 were offered and received into evidence.

At the request of the Division, the undersigned took official recognition of Florida Administrative Code Rule 60S-4.002(4) and section 121.091, Florida Statutes.

The proceedings were recorded but not transcribed. Both parties filed timely Proposed Recommended Orders, which have been considered in the preparation of the Proposed Recommended Order.

FINDINGS OF FACT

1. Respondent is charged with managing, governing, and administering the Florida Retirement System ("FRS").

2. Royal worked for the Florida Department of Transportation ("DOT") over 28 years.

3. As a prior employee of DOT, Royal is a member of the FRS.

4. Royal was injured on his job on July 16, 2002.

5. After being informed by the Social Security Administration that he was disabled, Royal started applying for line-of-duty disability retirement with the FRS.

6. Since Royal's injury, Royal has gotten his neighbor, Levern Speights, to prepare his retirement applications and write letters to the Division on his behalf. Royal signs every submission.

7. Royal first applied for disability retirement on December 19, 2003.

8. About three months later, Royal applied for early service retirement benefits on or about March 9, 2004. Directly above Royal's signature, the application stated:

I understand I must terminate all employment with FRS employers to receive a retirement benefit under Chapter 121, Florida Statutes. I also understand that I **cannot** add additional service, change options, or change my type of retirement (Regular, Disability, and Early) once my retirement becomes final. My retirement becomes final when any benefit payment is cashed or deposited.

9. While the two applications were pending, Royal contacted the Division to check on the status of his disability retirement application. During the call, Royal found out that he could obtain retirement monies immediately if he wrote a letter requesting early retirement.

10. On or about April 12, 2004, Royal submitted a letter to the Division that stated he "wish[ed] to apply for early service retirement."

11. Upon receipt of the April 12, 2004, letter, the Division switched Royal's application from a disability application to early retirement application and Royal went on the Florida Retirement System payroll effective March 1, 2004.

12. Royal has been receiving early service retirement checks and cashing or depositing them since March 2004.

13. However, Royal still believes he is entitled to disability retirement benefits since he is disabled.

14. Throughout the years, Royal has continuously contacted the Division periodically in an effort to still try and get disability retirement benefits.

15. In January, April, and May 2006, the Division received three letters from Royal questioning his receipt of early service retirement benefits and requesting to apply for in-line-of-duty disability retirement benefits.

16. On May 16, 2006, Royal applied for disability benefits again.

17. On June 3, 2006, the Division responded to Royal's request by letter stating:

The Division of Retirement has received your letter requesting that you receive disability benefits. Our records indicated you are receiving a service retirement benefit. According to Chapter 60S-4.002(4), Florida Administrative Code, you cannot change your option selection, purchase additional service, or change your type of retirement after you have cashed or deposited any benefit payment. Therefore the Division is unable to honor your request.^[2]

18. On December 24, 2008, Royal wrote the Division and requested that his "retirement be changed to disability retirement to reflect my current condition."³

19. On January 21, 2009, the Division informed Royal again by letter that "Florida law does not have provisions that allow the Division of Retirement to change a member's retirement type from service retirement to disability retirement. Therefore, your service retirement benefit is final and cannot be changed to disability retirement."

20. Royal contacted the Division on several more occasions trying to get disability benefits.

21. On or about June 25, 2011, Royal requested a hearing regarding the issue.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011).

23. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Wilson v. Dep't of Admin., Div. of Ret., 538 So.2d 139, 141-142 (Fla. 4th DCA 1989); Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). Accordingly, Petitioner bears

the burden of proof in this proceeding by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

24. Section 121.091 sets forth how benefits are payable.

This statute provides, in pertinent part:

Benefits payable under the system. -

Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

25. Rule 60S-4.002(4) provides in pertinent part:

After a retirement benefit payment has been cashed or deposited or after a DROP payment is credited:

(a) No additional service, which remained unclaimed at retirement, may be claimed or purchased;

(b) The selection of an option may not be changed; and

(c) **The type of retirement, i.e., normal, early, or disability, may not be changed, except for the following:**

1. When a member recovers from disability and subsequently applies for

normal or early retirement as provided in subsections 60S-4.007(7) and (8), F.A.C.

2. When a member begins receiving normal or early service retirement benefits while appealing a denial of his application for disability retirement and such disability application is subsequently approved as provided in paragraph 60S-4.007 (3) (g), F.A.C., or

3. When an elected officer requests, prior to July 1, 1990, that his benefit be suspended and recalculated as provided in paragraph 60S-4.012(6) (b), F.A.C. (emphasis added).

26. It is unfortunate that Royal suffers from a disability as a result of an injury suffered while on the job at DOT. However, the record is clear that Royal elected by letter dated April 12, 2004, to apply for early service retirement while the disability application was still pending. Additionally, Royal has been cashing and/or depositing early service retirement checks since 2004. While the end result is harsh under the circumstances, the law mandates that since Royal's benefit payment was cashed, his early service retirement benefit cannot be changed under the FRS. The record is void of Petitioner asserting any exceptions to rule 60S-4.002(4).

RECOMMENDATION

Based on 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 to change his early service retirement benefit to disability retirement.

DONE AND ENTERED this 22nd day of December 2011, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2011.

ENDNOTES

^{1/} Unless otherwise indicated, all references are to the 2004 Florida Statutes and 2004 Florida Administrative Code.

^{2/} Respondent's Exhibit 9.

^{3/} Respondent's Exhibit 10.

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.