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STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES  
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STEPHEN J. GONOT

Petitioner  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

Final Order No. DMS - 14-0004

vs.

Case No. 13-002396

DEPARTMENT OF MANAGEMENT SERVICES,  
DIVISION OF RETIREMENT,

Respondent.

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FINAL ORDER

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

APPEARANCES

For the Division of  
Administrative Hearings:

Judge Darren A. Schwartz  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

For the Petitioner:

Lawrence R. Metsch, Esq.  
20801 Biscayne Boulevard, Suite 308  
Aventura, Florida 33180-1423

For the Respondent:

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

STATEMENT OF THE ISSUE

Whether Petitioner forfeited his rights and benefits under the Florida Retirement System pursuant to sections 112.3173 and 121.091(5)(f), Florida Statutes, when he was convicted of official misconduct, a third degree felony, in violation of section 838.022(1), Florida Statutes.

PRELIMINARY STATEMENT

Pursuant to notice, Respondent, Department Of Management Services, Division Of Retirement ("Division"), advised Petitioner, Stephen J. Gonot ("Gonot"), of its decision to forfeit his rights and benefits in the Florida Retirement System ("FRS") pursuant to sections 112.3173 and 121.091(5)(f), Florida Statutes. The Division's action was premised on Gonot's conviction in a state court proceeding wherein he had been charged with certain criminal offenses. The notice afforded Gonot a point of entry to challenge the Division's proposed action and to request an administrative review of the issues. Gonot timely requested administrative review. Thereafter, the matter was transferred to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a formal hearing.

The formal hearing was held on November 5, 2013. The Division presented the testimony of Richard Clifford, a Division Benefits Administrator, and submitted eight exhibits for admission into evidence, which were admitted by stipulation of the parties at the hearing. Prior to the hearing, the Division's request for official recognition of certain exhibits identified in a pleading filed on June 28, 2013, was granted. Likewise, the Division's motion to deem matters admitted, filed August 28, 2013, was also granted. Gonot presented the testimony of no witnesses and submitted no exhibits for admission into evidence.

The parties ordered a transcript of the proceeding. The transcript was filed with the Division of Administrative Hearings on November 25, 2013. The Division filed a proposed recommended order. Gonot elected not to file a proposed recommended order. On December 13, 2013, the administrative law judge submitted his recommended order, the hearing transcript, and all exhibits offered into evidence to the Department. A copy of the recommended order is attached hereto and made a part hereof. Both parties had the right to submit written exceptions to the Department within 15 days from the date of the recommended order. Gonot timely filed a single written exception to the recommended order. A copy of Gonot's exception is attached hereto and made a part hereof. The recommended order, hearing transcript, all hearing exhibits, and Gonot's exception have been carefully reviewed and considered in the preparation of this final agency order.

#### STANDARD OF REVIEW

Subsection 120.57(1)(1), Florida Statutes, provides that an agency may reject or modify an administrative law judge's findings of fact only 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." The Florida Supreme Court has defined "competent substantial evidence" to mean "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). An agency may not create or add to findings of fact because it is not the trier of fact. See Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco, 475 So.2d 1277, 1281-82 (Fla. 1st DCA 1985); Greseth v. Dep't of Health & Rehabilitative Servs., 573 So.2d 1004, 1006 (Fla. 4th DCA 1991).

Subsection 120.57(1)(1), Florida Statutes, provides that an agency may reject or modify an administrative law judge's conclusions of law over which the agency has "substantive jurisdiction." When rejecting or modifying such conclusions of law, an agency must state with particularity its reasons for rejecting or modifying such conclusions of law and must make a finding that its substituted conclusions of law are "as or more reasonable" than those which were rejected or modified. § 120.57(1)(1), Fla. Stat. Florida courts have consistently applied this subsection'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 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. 2d DCA 2001); Barfield v. Dep't of Health, 805 So.2d 1008, 1011

(Fla. 1st DCA 2001). An agency's interpretation of the statutes that it administers is entitled to great deference, 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, 885 (Fla. 1st DCA 1998).

#### PETITIONER'S EXCEPTION

Gonot's exception is denied. The Department agrees the recommended order does not find Gonot's "misconduct involved the use or attempted use of the power, rights, privileges, duties or position of his public office or employment" position, as would be required under sections 112.3173(2)(e)6. and 7. and 121.091(5)(i), Florida Statutes. In this case, Gonot was convicted of official misconduct, a felony in violation of section 838.022(1), Florida Statutes, and a forfeitable offense under sections 112.3173(2)(e)4. and 121.091(5)(f), Florida Statutes. Thus, in the instant case, the recommended order need not have made such a finding. Gonot's exception is further denied because, contrary to Gonot's assertions, the recommended order does not anywhere "conclude[]" that his "misconduct constituted a 'breach of the public trust' as that term is used in Article II, §8(d), Florida Constitution." Instead, the recommended order correctly concludes in relevant part that "[b]ecause ... both sections 112.3173 and 121.091(5)(f), Florida Statutes, require forfeiture for a conviction of official

misconduct under section 838.022(1), [Gonot]'s FRS rights and benefits must be forfeited."

FINDINGS OF FACT

Upon review of the entire record, the Department concludes that the administrative law judge's findings of fact in the recommended order are supported by the competent substantial evidence of record and that the proceedings upon which the findings are based comply with the essential requirements of law. The Department hereby adopts and incorporates by reference the findings of fact set forth in the recommended order.

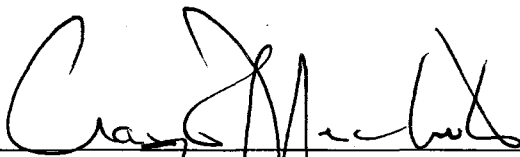
CONCLUSIONS OF LAW

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 Gonot was a public employee convicted of a forfeitable offense committed prior to retirement pursuant to sections 112.3173 and 121.091(5)(f), Florida Statutes, and has forfeited all of his FRS rights and benefits, except for the return of his accumulated contributions, if any.

DONE and ORDERED on this 28th day of January, 2014.

  
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CRAIG J. NICHOLS, Agency Secretary  
Department of Management Services  
4050 Esplanade Way  
Tallahassee, Florida 32399-0950

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 29<sup>th</sup> day of January, 2014.

  
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Agency Clerk