

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN R. BLUM,

Petitioner,

vs.

Case No. 14-2808

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF
RETIREMENT,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes, before Jessica E. Varn, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH). The hearing was held on August 5, 2014, in Tallahassee, Florida.

APPEARANCES

For Petitioner: John R. Blum, pro se
5050 Southwest Eleventh Place
Margate, Florida 33068-4060

For Respondent: Larry D. Scott, Esquire
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUES

Whether Respondent, John R. Blum (Mr. Blum), violated the re-employment provisions set forth in section 121.091(13)(c)5.d.,

Florida Statutes (2013), and, therefore, must repay his Deferred Retirement Option Program (DROP) distribution and subsequent monthly retirement benefits.

PRELIMINARY STATEMENT

By letter dated May 8, 2014, the Department of Management Services, Division of Retirement (Division), advised Mr. Blum that the Division intended to void his participation in DROP. The letter further instructed Mr. Blum to repay all retirement benefits received, including his DROP accumulation, in the amount of \$227,755.51. The letter cited sections 121.021(39)(b)2. and 121.091(13)(c)5.d., Florida Statutes, as authority; it also afforded Mr. Blum a point of entry to challenge the Division's decision.

Mr. Blum disputed the Division's decision and timely requested an administrative hearing. The request for a hearing was forwarded to DOAH on or about June 17, 2014. A hearing was scheduled for August 5, 2014.

At hearing, Mr. Blum testified on his own behalf and offered the testimony of Teresa Strepp, chief of personnel services at the Department of Highway Safety and Motor Vehicles.

Petitioner's Exhibits 1 through 3 and 5 were admitted into evidence. The Division offered the testimony of two witnesses: Ira Gaines, retirement benefits administrator with the Division; and Bonnie Bevis, assistant director of Finance and Accounting

for the Department of Highway Safety and Motor Vehicles. Respondent's Exhibits 1 through 6, 8, and 9 were admitted into evidence. The Division's Motion for Official Recognition of sections 121.091(1), 121.091(13)5.d., 121.021(39)(b)2., 121.021(17), and 121.021(24) was granted.

The hearing was not transcribed. The parties timely filed proposed recommended orders, which have been duly considered in the preparation of this Recommended Order.

References to Florida Statutes will be to the 2013 version unless otherwise noted.

FINDINGS OF FACT

1. The Division is the state agency charged with the responsibility of administering the Florida Retirement System (FRS).

2. Mr. Blum was employed as a highway patrol officer with the Department of Highway Safety and Motor Vehicles (DHSMV). He made the decision to enter DROP, and, for the last five years of his employment with DHSMV, he participated in DROP.

3. Prior to ending his DROP participation, Mr. Blum completed a Deferred Retirement Option Program Termination Notification, confirming he would terminate employment on May 31, 2013. The notification was also signed by the retirement coordinator for DHSMV confirming Mr. Blum's employment termination date, and reads in pertinent part:

In order to satisfy your employment termination requirement, you must terminate all employment relationships with all participating FRS employers for the first 6 calendar months after your DROP termination date. Termination requirement means you cannot remain employed or become employed with any FRS covered employer in a position covered or non-covered by retirement for the first 6 calendar months following your DROP termination date. This includes but is not limited to: part-time work, temporary work, other personal services (OPS), substitute teaching, adjunct professor or non-Division approved contractual services.

* * *

If you fail to meet the termination requirement, you will void (cancel) your retirement and DROP participation and you must repay all retirement benefits received (including accumulated DROP benefits).

4. The form has been incorporated by reference into Florida Administrative Code Rule 60S-11.004(9).

5. Mr. Blum terminated his employment with DHSMV on the agreed termination date of May 31, 2013.

6. In July 2013, Mr. Blum began to work once again with DHSMV. He had applied and was hired to return as a reserve officer to work security at Florida turnpike stations. The Florida Highway Patrol provided Mr. Blum with access to the online system for payroll, and he was paid for his work through direct deposit from DHSMV, an FRS employer.

7. Mr. Blum was under the mistaken impression that, when he worked the security for the turnpike stations, he was working for

a private vendor. He had no intention of violating the termination of employment provisions.

8. In September 2013, after working for almost three months, Mr. Blum was notified that he had violated the termination of employment provisions of DROP, and he ceased working as a reserve officer.

9. On May 8, 2014, the Division sent a letter to Mr. Blum, notifying him that his DROP participation and retirement had been voided and that he must repay all retirement benefits, including his DROP accumulation. The total amount paid is \$227,755.51, which the Division seeks to recover. He was also informed that his retirement account would be credited to reflect membership from March 2009 through May 2013.

10. Mr. Blum has returned to work as a highway patrol officer, and his DROP application has been approved effective May 1, 2014.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 & 120.57(1), Fla. Stat. (2014).

12. This proceeding is de novo. § 120.57(1)(k), Fla. Stat. (2014).

13. The burden of proof in an administrative proceeding is on the party asserting the affirmative of the issue unless the

burden is established otherwise by statute. Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). The Division, as the party asserting that Mr. Blum has voided his retirement benefits and that those benefits must now be repaid, has the burden of proof in this proceeding. The standard of proof is by a preponderance of the evidence. Nelson v. Dep't of Mgmt. Servs., Div. of Ret., Case No. 11-4343 (Fla. DOAH June 6, 2012), aff'd. 107 So. 3d 410 (Fla. 1st DCA 2013).

14. The Division is the state agency responsible for administering the FRS. §§ 121.025 & 121.031, Fla. Stat.

15. The Legislature has imposed limitations upon employees who opt to participate in DROP: specifically, there is a waiting period of six months after termination of employment before a participant can return to employment with an FRS employer.

Section 121.091(13)(c)5. provides:

At the conclusion of the member's participation in DROP, the Division shall distribute the member's total accumulated DROP benefits, subject to the following:

* * *

d. A DROP participant who fails to terminate all employment relationships as provided in s. 121.021(39) shall be deemed as not retired, and the DROP election is null and void. Florida Retirement Services membership shall be reestablished retroactively to the date of the commencement of DROP

16. Section 121.021(39) provides as follows:

(b) "Termination" for a member electing to participate in the DROP occurs when the program participant ceases all employment relationships with an employer in accordance with s. 121.091(13), however:

* * *

2. For termination dates occurring on or after July 1, 2010, if the member becomes employed by any such employer within the next 6 calendar months, termination will be deemed not to have occurred

17. Rule 60S-11.004(9) states that, if a participant fails to meet the termination requirement, the participant voids or cancels their retirement and DROP participation and must repay all retirement benefits received, including accumulated DROP benefits.

18. Mr. Blum, without the intention of doing so, voided his termination of employment by returning to work with the same FRS employer within the forbidden six-month period after he terminated his participation in DROP.

19. Mr. Blum must, therefore, repay the Division the total amount of \$227,755.51, which includes the DROP accrual, the health insurance subsidy, and the monthly retirement benefits he received.

20. Given the facts established by the Division, the undersigned has no discretion to conclude otherwise.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Division enter a final order finding that Mr. Blum violated the re-employment provisions of section 121.091(13)(c)5.d., Florida Statutes, and, therefore, must repay retirement payments in the amount of \$227,755.51 to the Division.

DONE AND ENTERED this 25th day of August, 2014, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of August, 2014.

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.