

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES**

JAMES B. ANDERSON,

Petitioner,

Final Order No. DMS – 16-0017

v.

Case No. 15-5416

**DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF RETIREMENT,**

Respondent.

FINAL ORDER

This cause came before the Secretary for the purpose of the issuance of a final agency order. The Administrative Law Judge, J. Lawrence Johnston, assigned by the Division of Administrative Hearings (DOAH) in the above-styled case, entered a Recommended Order on January 22, 2016, attached hereto and incorporated herein as “Exhibit A.”

Pursuant to Uniform Rules, Section 28-106.217, Florida Administrative Code, exceptions may be filed within 15 days of the date of entry of the Recommended Order. The Petitioner and Respondent have not filed exceptions.

APPEARANCE

For Petitioner: Nicholas Karatinos, Esquire
 Law Offices of Nicholas Karatinos
 18920 North Dale Mabry Highway, Suite 101
 Lutz, FL 33548

For Respondent: Joe Thompson, Esquire
 Department of Management Services
 Office of the General Counsel
 4050 Esplanade Way, Suite 160
 Tallahassee, FL 32399-0950

ISSUE

Whether James Anderson's (Petitioner) selection of Option 1 for his pension plan benefits could be changed to Option 3 for the benefit of his widow, Mitzi Anderson.

PRELIMINARY STATEMENT

On August 31, 2015, Department of Management Services, Division of Retirement (Respondent) issued a final agency action letter to Petitioner. The letter informed Mitzi Anderson, the widow of nominal Petitioner James Anderson, that Respondent denied Mitzi Anderson's request to continue to receive, subsequent to the death of her husband, the retirement benefit payments that her husband had been receiving. Mitzi Anderson desired for Respondent to effect a change from Option 1 to Option 3 on the Florida Retirement System Pension Plan Option Selection for Members form. James Anderson had filed an Option Selection form with Respondent that indicated his choice as Option 1 when he filed the requisite forms to initiate his retirement. Mitzi Anderson claimed that after James Anderson filed an Option Selection form with Option 1 as his indicated choice, James Anderson completed another Option Selection form that was intended to override his previous Option 1 selection and to indicate Option 3 as his new selection. Respondent denied Mitzi Anderson's request to change James Anderson's option selection for three reasons. The first reason is that Option 1 provides no continuing benefit to the retired member's beneficiary. The second reason is that James Anderson's Option 1 selection became final when he deposited retiree benefit payments into his banking account. See §121.091(6)(h), Florida Statutes. The third reason is that Respondent did not receive a copy of the notarized Option 3 form until Mitzi Anderson forwarded it to Respondent after James Anderson's death, which was more than seven years after James Anderson filed his Option 1

selection form with Respondent and began depositing Option 1 payments into his banking account.

Mitzi Anderson timely requested an administrative hearing. On September 25, 2015, the request was referred to DOAH to assign an administrative law judge to conduct the final hearing, due to the existence of a disputed issue of material fact.

At the final hearing on December 7, 2015, Mitzi Anderson presented the testimony of herself and Donna Pepper, an employee in the human resources department of the University of South Florida. Mitzi Anderson had three exhibits accepted into evidence. Respondent presented the testimony of Allison Olson, Benefits Administrator for the Division of Retirement; David Heidel, Benefits Administrator for the Division of Retirement; Todd Gunderson, Senior Benefits Analyst for the Division of Retirement; and Teresa Bach, an employee in the Bureau of Funds Management, Department of Financial Services. Respondent had thirteen exhibits accepted into evidence. Petitioner and Respondent each timely filed a proposed recommended order after the final hearing.

FINDINGS OF FACT

The Department of Management Services (Department) hereby adopts and incorporates by reference the Findings of Fact as 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 Mitzi Anderson's request for entitlement to her husband's retirement benefits following her husband's death is DENIED.

DONE and ORDERED this 17th day of March 2016.



Chad Poppell, Secretary
Department of Management Services
4050 Esplanade Way, Suite 285B
Tallahassee, FL 32399-0950

Copies:

Nicholas Karatinos, Esquire
Law Offices of Nicholas Karatinos
18920 North Dale Mabry Highway, Suite 101
Lutz, FL 33548

Joe Thompson, Esquire
Department of Management Services
Office of the General Counsel
4050 Esplanade Way, Suite 160
Tallahassee, FL 32399-0950

J. Lawrence Johnston
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

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 Clerk of the
Department of Management Services
on this 17th day of March
2016

Celenna Southall
Deputy Agency Clerk