

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

LETTIE JONES,

Petitioner,

Final Order No. DMS – 18-0003

vs.

DOAH Case No. 16-0429
DMS No.: 14-29202

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, Suzanne Van Wyk, assigned by the Division of Administrative Hearings (DOAH) in the above styled case, entered a Recommended Order on October 25, 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 the entry of the Recommended Order. The Petitioner has filed 8 exceptions.

APPEARANCES

For Petitioner: Lettie Jones, pro se
14304 John Henry Road
Tallahassee, Florida 32312

For Respondent: Thomas E. Wright
Asst. General Counsel
Department of Management Services
4050 Esplanade Way, Suite 160
Tallahassee, FL 32399-0950

ISSUE

The issue in this case is to determine whether Petitioner is entitled to change the retirement option selection of her late husband, James Jones.

PRELIMINARY STATEMENT

On April 7, 2014, Department of Management Services, Division of Retirement (Respondent) issued a final agency action letter to Petitioner. The letter informed Lettie Jones that Respondent denied her request to change the retirement option chosen by her late husband James Jones. James Jones retired under the disability provisions of the Florida Retirement System (FRS) effective October 1, 1996. At the time of his retirement, Mr. Jones chose option 2 for his FRS benefit. Option 2 provided a reduced benefit for Mr. Jones' life, and if he should pass before receiving 120 payments, the remainder of those 120 payments would go to his beneficiary, Lettie Jones, the Petitioner here. James Jones passed away in 2013 after receiving more than 120 benefit payments.

The Petitioner timely filed a petition for hearing and the case was referred to the Division of Administrative Hearings on January 27, 2016. A Final Hearing was scheduled and continued twice at the request of Petitioner.

At the final hearing on September 29, 2016, in Tallahassee, Florida, Mrs. Jones testified on her own behalf and offered the testimony of her daughter, Kimberly Jones. Petitioner offered no exhibits. Respondent offered the testimony of David Heidel, Benefits Administrator for the Survivor Benefits Section at the Division of Retirement. Respondent offered ten exhibits, all of which were admitted.

The Respondent timely filed a Proposed Recommended Order. Petitioner filed a request for an extension of time to file to file a Proposed Recommended Order, which was denied. A Recommended Order was issued October 25, 2016, which is incorporated

by reference into this Final Order. Exceptions to the Recommended Order have been filed by Petitioner. A transcript of the hearing has been reviewed in the preparation of this Final Order, and references to it will be (T-).

STANDARD OF REVIEW

Subsection 120.57(1)(l), Florida Statutes (2015), provides that an agency reviewing a Division of Administrative Hearings (DOAH) recommended order may not reject or modify the findings of fact of an administrative law judge, "unless 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." Florida law defines "competent substantial evidence" as "such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla., 1975). Furthermore, an agency may not create or add to findings of fact because an agency is not the trier of fact. See Friends of Children v. Department of Health and Rehabilitative Services, 504 So. 2d 1345, 1347, 1348 (Fla. 1st DCA, 1987).

Subsection 120.57(1)(l), Florida Statutes (2015), provides that an agency may reject or modify an administrative law judge's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction" whenever the agency's interpretations are "as or more reasonable" than the interpretation made by the Administrative Law Judge. 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 or rule 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. Department of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA, 2001). Further, an agency's interpretation of the statutes and rules that it administers is entitled to great weight, even if it is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. See State Board of Optometry v. Florida Society of Ophthalmology, 538 So.2d 878, 884 (Fla. 1st DCA, 1998).

EXCEPTIONS

Petitioner's Exception 1 to the Recommended Order is hereby rejected. Petitioner's daughter offered testimony as to James Jones' cognitive function, however no medical evidence was offered. The testimony was not persuasive to the Administrative Law Judge, the finder of fact.

Petitioner's Exception 2 to the Recommended Order is hereby rejected. Petitioner offered testimony regarding the events at the Division of Retirement offices. The Department offered testimony and documentary evidence to support the findings of fact.

Petitioner's Exception 3 to the Recommended Order is hereby rejected. Petitioner offered only hearsay evidence to support such a finding of fact.

Petitioner's Exception 4 to the Recommended Order is hereby rejected. Petitioner offered testimony from Kimberly Jones, but no medical evidence was offered to support such a finding of fact.

Petitioner's Exception 5 to the Recommended Order is hereby rejected. Petitioner offered hearsay evidence to support such a finding, but the documentary evidence and other testimony was at odds. The Administrative Law Judge, as the trier of fact, found that other evidence outweighed Petitioner's testimony.

Petitioner's Exception 6 to the Recommended Order is hereby rejected. The Administrative Law Judge, as trier of fact, found that the option selection form was valid, and this finding of fact is supported by competent evidence in the record.

Petitioner's Exception 7 to the Recommended Order is hereby rejected. This exception is essentially repetitious of other exceptions noted above.

Petitioner's Exception 8 to the Recommended Order is hereby rejected. A review of the transcript of the Final Hearing does not support this exception. (T-83-86).

FINDINGS OF FACT

The Department of Management Services accepts the Findings of Fact set forth in the Recommended Order, which are incorporated by reference.

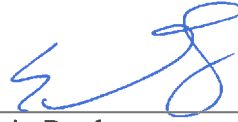
CONCLUSIONS OF LAW

The Department of Management Services accepts the Conclusions of Law set forth in the Recommended Order, which are incorporated herein by reference.

ORDER

Based on the foregoing, it is hereby ORDERED AND DIRECTED that the Petitioner's request to change the retirement option chosen by James Jones is hereby DENIED.

DONE AND ORDERED this 3 day of January 2018, in
Tallahassee, Leon County, Florida.



Erin Rock
Secretary
Department of Management Services
4050 Esplanade Way
Tallahassee, Fl. 32399-0950
(850) 488-2786

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF MANAGEMENT SERVICES, 4050 ESPLANADE WAY, SUITE 160, TALLAHASSEE, FLORIDA 32399-0950, AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

I HEREBY CERTIFY that this Final Order was filed in the official records of the Department of Management Services, and copies distributed by U.S. Mail to the parties below, on the 3rd day of January, 2018.



Diane Wint
Agency Clerk
Department of Management Services



Copies Furnished To:

Lettie Jones
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