

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES**

RONALD J. ROSEN,

Petitioner

vs.

Final Order No. DMS – 18-0067

Case No. 16-33926

DOAH Case No. 16-1987

STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF RETIREMENT,

Respondent,

FINAL ORDER

THIS MATTER has come before the undersigned for the purpose of issuing a Final Order, in accordance with Section 120.569(1), Florida Statutes. On October 21, 2016, Administrative Law Judge (ALJ) J. Lawrence Johnston issued a Recommended Order recommending that the Department of Management Services, Division of Retirement (Respondent), enter a Final Order denying Petitioner Ronald J. Rosen's (Petitioner) petition for hearing and holding that Petitioner forfeited his retirement benefits except for the return of any accumulated contributions. Petitioner identified two exceptions to the Recommended Order. Respondent did not identify any exceptions to the Recommended Order.

RULING ON EXCEPTIONS

Standard of Review: A Final Order shall include an explicit ruling on each exception. *See* § 120.57(1)(k), Fla. Stat. An agency may not reject or modify an ALJ's findings of fact unless the agency first determines after a review of the entire record that the findings were not supported by competent substantial evidence. *See* § 120.57(1)(l), Fla. Stat. The agency may

reject or modify an ALJ's conclusions of law over which it has jurisdiction, but if it does so, it must state with particularity why it is doing so and why its conclusion is more reasonable than that in the recommended order. *See id.*

Petitioner's exceptions do not comply with section 120.57, Florida Statutes. Petitioner's exceptions take the form of a memo without citation to the Recommended Order or the Record. "[A]n agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." § 120.57(1)(k), Fla. Stat.

Petitioner does not identify any specific paragraphs or page numbers of the ALJ's recommended order or make specific citations to the record. Though Petitioner's exceptions do not take the form required by statute, they identify two different issues on which Petitioner argues the ALJ erred. This Final Order will address each issue as a separate exception. To the extent Petitioner's exemption was attempting to raise additional issues not identified herein, these will not be addressed for failure to comply with section 120.57(1)(k), Florida Statutes.

Petitioner's Exception 1.

In paragraph 2 of his exceptions, Petitioner states: "In his Recommended Order the Administrative Law Judge ("ALJ") determined that Respondent proved the nexus by relying on the Petitioner's Petition for Hearing, which suggested that he was a teacher at the time of the offenses. This was improper." The ALJ cited Petitioner's Petition in paragraph 1 of his Findings of Fact on page 4 of his Recommended Order.

This is an administrative proceeding governed by chapter 28-106, Florida Administrative Code. In such a proceeding, the court relies upon the petition "to state the ultimate facts, to

identify the facts that are in dispute, and to allege the facts that warrant, in the petitioner's opinion, reversal.” *Brookwood Extended Care Ctr. of Homestead, L.L.P. v. Agency for Healthcare Admin.*, 870 So. 2d 834, 840 (Fla. 3d DCA 2003) (construing rule 28-106.201, Florida Admin. Code).

One of the purposes of the petition, therefore, is to frame the facts that will be in dispute at the hearing. Examination of Petitioner’s Petition shows that the nexus of which Petitioner complains in his exemptions was not framed as a fact in dispute. Petitioner’s Petition states, “Petitioner Rosen was an experienced educator employed with the Brevard County School Board. In that capacity he taught in a public elementary school.” Petition ¶ 5. Petitioner’s Petition then states, “While Petitioner Rosen has steadfastly denied the accusations of any criminal wrongdoing towards the minor students alleged to be victims – and continues to do so – he cannot deny the legal fact that he presently remains convicted of four (4) lewd molestation offenses.” Petition ¶ 8.

In his Petition, Petitioner does not dispute the fact of his convictions for offenses committed in conjunction with his employment as a teacher. Instead, Petitioner’s Petition argues whether those offenses can be treated as “specified offenses” under the relevant statute. Petition ¶¶ 10-16.

It is clear from a review of the record that the fact of Petitioner’s employment as a teacher, and conviction of the predicate offenses while employed in that capacity, was not disputed prior to Petitioner’s “nexus” arguments at hearing. The ALJ was entitled to rely upon the Petition to make a Finding of Fact concerning what was framed in that document as an undisputed issue of fact.

Petitioner’s Exception number 1 is denied.

Petitioner's Exception 2.

In paragraph 8 of his exceptions, Petitioner states: "The Administrative Law Judge also improperly relied upon the factual recitation in the Florida Fifth District Court of Appeal decision in Rosen v. State, 940 So. 2d 1155 (Fla. 5th DCA 2006)." The ALJ cited the *Rosen* case in paragraph 7 of his Conclusions of Law on page 6 of his Recommended Order.

Though the hearing transcript does not include reference to the *Rosen* case, the Respondent cites the case in its Proposed Recommended Order. As State of Florida decisional law, the case is subject to compulsory judicial notice. See § 90.201(1), Fla. Stat. Furthermore, the ALJ cited the case as further support for the undisputed fact of the Petitioner's employment and its relationship to his crimes.

Petitioner's Exception number 2 is denied.

FINDINGS OF FACT

Respondent hereby adopts the Findings of Fact contained in the Recommended Order as its findings in this Final Order.

CONCLUSIONS OF LAW

Respondent hereby adopts the Conclusions of Law contained in the Recommended Order as its conclusions in this Final Order.

ORDERED AND ADJUDGED:

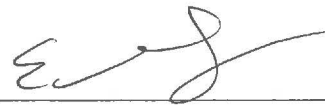
1. The Recommended Order issued in this case is adopted as described herein and is incorporated herein by reference.

2. Based upon the Findings of Fact and Conclusions of Law contained in the Recommended Order and adopted by the Respondent in this Final Order, Petitioner Ronald J.

Rosen's Petition is **DENIED**. Petitioner's rights and benefits under the Florida Retirement System are forfeited except for the return of any accumulated contributions.

3. This final order shall become effective on the date of filing with the agency clerk of the Respondent.

DONE and ORDERED on this 25 day of May, 2018.



ERIN ROCK, Secretary
Department of Management Services
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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 25th day of
May, 2018.

for Celena Southall (oc)
Diane Wint, Agency Clerk