

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

QIU-XING JIANG,

Petitioner,

vs.

Case No. 16-2796

DEPARTMENT OF MANAGEMENT
SERVICES, DIVISION OF
RETIREMENT,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 1 and October 18, 2016, via video teleconference in Tallahassee and Gainesville, Florida, before Suzanne Van Wyk, Administrative Law Judge of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Qiu-Xing Jiang, pro se
Apartment 156
5333 Southwest 75th Street
Gainesville, Florida 32608

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

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to membership in the State University System Optional Retirement Program (SUSORP), rather than the Florida Retirement System (FRS).

PRELIMINARY STATEMENT

Petitioner was notified by letter dated March 25, 2016, that his request to be enrolled in the SUSORP was denied. Petitioner timely requested an administrative hearing to contest the decision, which is taken as the Petition for Administrative Hearing (Petition) in this case.

Respondent forwarded the Petition to the Division on May 20, 2016. The matter was originally scheduled for hearing on July 18, 2016, but was continued twice due to conflicts with Petitioner's schedule, and finally rescheduled for September 1, 2016.

The final hearing commenced as rescheduled, but due to Hurricane Hermine, the hearing was not completed on that date. The final hearing was continued to, and concluded on, October 18, 2016.

At the final hearing, Petitioner testified on his own behalf and offered no exhibits in evidence.

Respondent presented the testimony of Stephen Bardin, Respondent's Benefits Administrator; Lisa Hodges, Assistant Director of Benefits for University of Florida Human Resources

(UF HR); and Kathy Higgs, Employee Relations Specialist for University of Florida's Institute of Food and Agricultural Sciences Human Resources (IFAS HR). Respondent's Exhibits 1 through 12 were admitted in evidence.

The proceedings were recorded. At the time the hearing concluded, Petitioner was unsure whether he would order a transcript. None was ultimately filed. Respondent filed a Proposed Recommended Order on October 28, 2016. Petitioner filed a Summary of Hearing on November 28, 2016, to which Respondent did not object, and which is taken as Petitioner's proposed recommended order. Both parties' post-hearing filings have been considered in preparation of this Recommended Order.

All references herein to the Florida Statutes are to the 2015 version.

FINDINGS OF FACT

1. Petitioner, Qiu-Xing Jiang, is a faculty member in the Department of Microbiology and Cell Science at the University of Florida Institute of Food and Agricultural Science (UF IFAS).

2 Respondent, Department of Management Services, Division of Retirement, is the state agency with the responsibility to administer the FRS and the SUSORP.

3. Petitioner was a professor at the University of Texas Southwestern Medical Center in Dallas, Texas, when he received a

written offer letter from UF IFAS for his current faculty position on August 14, 2015.

4. The offer letter was delivered to Petitioner via his personal e-mail address, which is a Yahoo account.

5. The offer letter is five pages long, including an addendum containing conditions of employment.

6. The two-page addendum includes the following information regarding retirement options:

You are required to participate in at least one of the retirement programs offered by the State of Florida, unless you have received a pension or distribution of employer contributions, including a rollover, from a retirement program administered by the State of Florida. If you have received a distribution as described, you are not eligible to participate or renew membership in a State of Florida retirement plan. Otherwise, an employee contribution of 3% is mandatory and you may select the retirement program you wish to enroll. For more information, please attend new employee orientation or visit the UF Retirement website at <http://hr.ufl.edu/benefits/retirement>. Should you have any questions regarding benefits or retirement, please contact University Benefits and Retirement at (352) 392-2477.

7. Petitioner electronically signed and accepted the offer of employment, and initialed the two-page addendum, on August 14, 2015.

8. The website to which the offer letter to Petitioner referred contained all the information regarding the SUSORP,

including eligibility, enrollment, contribution rates, forms, publications, and other resources. With respect to enrollment, the website informed new hires of the two steps for enrollment:

Open an account with an investment provider.

Fax completed Optional Retirement Program Enrollment Form (<https://www.rol.frs.state.fl.us/forms/orp-enroll.pdf>) to UF Benefits at (352) 392-5166 within 90 calendar days from hire.

9. Prior to receiving the written offer letter, Petitioner travelled to Gainesville to enroll his children in school and complete other tasks to settle his family in a new location. Petitioner's children began school on August 15, 2015.

10. Petitioner's hire date was September 1, 2015.

11. UF has adopted an online hiring process, known as "GatorStart," to expedite payroll enrollment of new hires. To reduce the paperwork required, the system requires new hires to create an e-signature and review and initial all the necessary forms online.

12. The GatorStart system shows that Petitioner accessed the system on August 31, 2015, and acknowledged receipt by initialing several forms, including the W-4, Direct Deposit, the FRS Certification, and the Benefits and Retirement Information.

13. The Benefits and Retirement Information form includes the following pertinent information:

Welcome to the University of Florida! The university offers a comprehensive array of benefits to employees. This provides a brief introduction to those benefits. Specifically, please take note of the enrollment deadlines associated with insurance and retirement benefits. In addition to our website, you may refer to the New Employee Orientation Guide at <http://hr.ufl.edu/working-at-uf/new-employees/employee-handbook/>. Throughout your employment, you can always contact us by email as well.

Benefits: benefits@ufl.edu
Retirement: retirement@ufl.edu

* * *

Retirement

Enrollment in a retirement plan is mandatory. You have 90 days from your date of hire to enroll in the SUSORP. To select the FRS Investment Plan, you must enroll by the end of the 5th month after your month of hire. If you do not actively enroll in a plan, you will default into the FRS Pension Plan. Health Science Center faculty are mandatory SUSORP participants. For more information, visit <https://www.hr.ufl.edu/retirement>.

The form then lists the three plan choices (SUSORP, FRS Investment, and FRS Pension), as well as the voluntary plans (403(b) and 457).

14. At hearing, Petitioner denied that he accessed and acknowledged receipt of the online hiring forms on August 31, 2015. Instead Petitioner maintained that someone in his department must have done that on his behalf.

15. However, Petitioner admitted that he accessed the online retirement tutorial at some point prior to September 1, 2015,^{1/} but was unable to enroll because he was not yet "in the University system."

16. On or about September 17, 2015, Petitioner met with Kathy Higgs. Ms. Higgs has been employed with IFAS HR for 10 years and assists new employees with benefits enrollment. Her primary duties are with respect to enrollment in medical and supplemental insurance plans. Ms. Higgs has no expertise in state retirement options. With respect to retirement options, it is her practice to inform new employees of the enrollment deadlines and direct them to the website which lists investment providers and their local representatives. Ms. Higgs has prepared a summary chart of the three retirement options, including eligibility, vesting time, and enrollment window, which she generally provides to new employees.

17. New employees enroll in medical and supplemental insurance plans through the People First portal. Every employee has a unique password to access the portal.

18. Petitioner faults Ms. Higgs for misleading him into waiting to enroll in a retirement plan until after he received his People First password.

19. Ms. Higgs denied having instructed, or otherwise advised, Petitioner to wait until he received his People First

password to enroll in a retirement plan. Based on the evidence, Petitioner misunderstood certain communications from Ms. Higgs.

20. Petitioner's employment at UF is a blend of two different positions: 0.8 Full-Time Equivalent (FTE) for IFAS and 0.2 FTE for Sponsored Research.

21. On September 21, 2015, Ms. Higgs e-mailed Lisa Hodges, UF HR Assistant Director of Benefits, to determine whether Petitioner needed to enroll for benefits separately in each position. On September 22, 2015, Ms. Hodges replied via e-mail that, for the state plans, Petitioner should enroll as usual in People First and that the two FTEs would be combined, but for UFSelect plans, Petitioner should enroll under the 0.8 FTE. Ms. Hodges added, "The only enrollment that he would need to enter on both is LTD since it has to factor in the salary on the .80 and .20 FTE job."

22. On September 22, 2015, Ms. Higgs forwarded Ms. Hodges' e-mail explanation of benefits enrollment to Petitioner at his UF e-mail address. She included the following message by way of introduction: "Good morning, Dr. Jiang, Please read below email from University Benefits to make sure your enrollments are processed successfully." On that same date, Petitioner responded, "Thanks for your help. I will wait for the ID/passwd. What is LTD? Best, Qiu-Xing."

23. Ms. Hodges was copied on that e-mail exchange between Petitioner and Ms. Higgs, and replied to Petitioner on September 30, 2015, that LTD means "Long-Term Disability" and referred Petitioner to the UF website containing a tutorial on both the state and UFSelect benefits plans.

24. The e-mail exchanges were clearly limited to benefits enrollment, not retirement.

25. Also on September 22, 2015, UF HR, through its Benefits office, sent Petitioner an e-mail regarding all three retirement options and instructions on how to enroll. The e-mail was sent to Petitioner's e-mail address at Southwestern Medical Center in Dallas, Texas. Petitioner did not receive the e-mail.

26. Petitioner faults UF HR for failing to send the e-mail to the correct address.

27. Ms. Hodges characterized the e-mail as a "courtesy" that is sent to all new employees as a reminder of the retirement options. Respondent provided no satisfactory explanation for why the courtesy e-mail reminder was sent to Petitioner's former university e-mail address.

28. On October 7, 2015, Petitioner sent Ms. Higgs an e-mail in regard to hiring a scientist for his lab. Petitioner only had an Other Personal Service (OPS) position available, but the scientist was a current UF employee enrolled in the FRS.

Petitioner inquired of Ms. Higgs if he could hire the scientist in the OPS position but "pay extra money to continue his FRS pension program he is currently in as he will continue to work for UF."

29. On October 9, 2015, Ms. Higgs sent Petitioner an e-mail wherein she included the link to the SUSORP page of the retirement benefits website. This e-mail was sent to Petitioner 39 days after his hire date.

30. Petitioner did not make a retirement election within 90 days of his hire date and, thus, defaulted to membership in the FRS.

31. Respondent notified Petitioner by letter dated January 11, 2016, that because he had not selected a SUSORP provider company within 90 days of his hire date, Respondent transferred his retirement contributions to the FRS Trust Fund.

32. On or about February 19, 2016, Petitioner contacted Ms. Hodges to determine why he was not enrolled in SUSORP. Ms. Hodges explained that since Petitioner "did not make an active retirement plan election within 90 days from hire, [he was] defaulted into the Pension Plan. Ms. Hodges also forwarded Petitioner's request to Eric Kegley, a UF HR Retirement Specialist, for review.

33. Mr. Kegley subsequently investigated Petitioner's allegations that he had been misled by Ms. Higgs into waiting

for his People First password in order to enroll in retirement, faulting IFAS HR for failing to provide him with advice from someone who was knowledgeable in retirement benefits, and faulting UF HR for sending the courtesy reminder to an invalid address.

34. On February 22, 2016, Petitioner completed a SUSORP enrollment form, which UF submitted on his behalf to Respondent. However, following UF HR's investigation, UF determined that its staff were not to blame for Petitioner's failure to make an active retirement election within 90 days of his hire date. Thus, UF did not support Petitioner's instant request to transfer from the FRS to the SUSORP plan.

CONCLUSIONS OF LAW

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

36. Respondent administers the FRS under chapter 121, Florida Statutes.

37. The SUSORP is authorized by section 121.35, Florida Statutes. The plan is an optional retirement plan in which "eligible employees" can elect to participate in lieu of the FRS.

38. Section 121.35 provides, in pertinent part, as follows:

(1) OPTIONAL RETIREMENT PROGRAM ESTABLISHED.—The Department of Management Services shall establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System who elect to participate in the program. The benefits to be provided for or on behalf of participants in such optional retirement program shall be provided through individual contracts or individual certificates issued for group annuity or other contracts, which may be fixed, variable, or a combination thereof, in accordance with s. 403(b) of the Internal Revenue Code.

* * *

(2) ELIGIBILITY FOR PARTICIPATION IN OPTIONAL PROGRAM.—

(a) Participation in the optional retirement program provided by this section shall be limited to persons who are otherwise eligible for membership or renewed membership in the Florida Retirement System and who are employed in one of the following State University System positions:

1. Positions classified as instructional and research faculty which are exempt from the career service under the provisions of s. 110.205(2)(d).

* * *

(3) ELECTION OF OPTIONAL PROGRAM.—

* * *

(c)3. Notwithstanding the provisions of this paragraph, effective July 1, 1997, any employee who is eligible to participate in the Optional Retirement Program and who fails to execute a contract with one of the approved companies and to notify the

department in writing as provided in subsection (4) within 90 days after the date of eligibility shall be deemed to have elected membership in the Florida Retirement System, except as provided in s. [121.051](#)(1)(a).

39. The governing statute is clear that an eligible employee who fails to enroll in the SUSORP within 90 days after the date of eligibility is automatically enrolled in the FRS.

40. Petitioner was directed, via his offer letter on August 14, 2015, to the UF Benefits website, and again by Ms. Higgs via e-mail on October 9, 2015. The website to which Petitioner was directed clearly stated the two-step process for enrolling in the SUSORP, explicitly recited the 90-day deadline, and contained links to the enrollment form, as well as numerous other resources related to the SUSORP. Further, Petitioner admitted that he accessed the GatorStart online tutorial, which included information on retirement enrollment.

41. The undersigned is sympathetic to the overwhelming nature of Petitioner's job transition--relocating his family from out of state, finding housing, choosing and enrolling his children in a new school, setting up a new laboratory and identifying and recruiting other scientists, as well as digesting and making decisions regarding employee benefits. However, Petitioner was responsible to make his retirement election within 90 days of his date of hire and failed to do so.

Petitioner's arguments that he was either misinformed of the steps to be taken, or misled into deferring his election beyond the 90 days, are unpersuasive.

42. Petitioner did not prove by a preponderance of the evidence that he is entitled to membership in the SUSORP rather than the FRS.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Management Services, Division of Retirement, enter a final order denying Petitioner's request to enroll in the SUSORP.

DONE AND ENTERED this 6th day of December, 2016, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of December, 2016.

ENDNOTE

^{1/} Although Petitioner's recollection was unclear of the exact date, Petitioner most likely accessed the system on August 15, 2016, the date that his children began school in Gainesville.

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.