

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF TAMPA GENERAL EMPLOYEES
RETIREMENT FUND,

Petitioner,

vs.

Case No. 16-6667

ROBERT RAMSHARDT,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016), on January 13, 2017, by video teleconference sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner: Luis A. Santos, Esquire
Ford & Harrison LLP
Suite 900
101 East Kennedy Boulevard
Tampa, Florida 33602

For Respondent: Robert Ramshardt, pro se
12925 McMullen Loop
Riverview, Florida 33569

STATEMENT OF THE ISSUE

The issue in this matter is whether Respondent has forfeited his rights and benefits under the City of Tampa General Employees

Retirement Fund pursuant to section 112.3173, Florida Statutes (2009).^{1/}

PRELIMINARY STATEMENT

On November 4, 2016, Petitioner, the City of Tampa General Employees Retirement Fund (the "Fund"), referred this matter to the Division of Administrative Hearings ("DOAH") to conduct a chapter 120 evidentiary hearing. At issue is whether Respondent, Robert Ramshardt, should forfeit his rights and privileges to retirement benefits under the Fund pursuant to section 112.3173.

At the final hearing, the Fund offered the testimony of Kimberly Marple. The Fund's Exhibits 2 through 8 were admitted into evidence. Respondent testified on his own behalf and called no other witnesses. Respondent's Exhibit 1 was admitted into evidence. Respondent, with the undersigned's permission, filed several performance evaluations after the final hearing. These documents supplement Respondent's Exhibit 1 and will be identified as Respondent's Exhibit 2 in the record.

A court reporter recorded the final hearing. A one-volume Transcript of the final hearing was filed with DOAH on February 3, 2017. At the close of the hearing, the parties were advised of a ten-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. The Fund filed a Proposed Recommended Order which was duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Fund is a public retirement system as defined by Florida law. The Fund is charged with administering and managing a pension plan for employees of the City of Tampa (the "City").

2. Respondent was employed with the City from August 1, 1994, through March 16, 2009, when the City terminated his employment. Respondent worked as an Automotive Equipment Operator II in the City's parks and recreation department. Respondent worked a total of 15 years for the City.

3. By reason of his employment with the City, Respondent was enrolled in the pension plan administered by the Fund. After six years of employment, Respondent vested in the pension plan.

4. According to a Notice of Disciplinary Action, dated March 16, 2009, the City terminated Respondent based on a complaint that he had stolen City property. Specifically, in February 2009, the City received information that Respondent was in possession of a City-owned lawn mower at his residence.

5. After receiving the complaint, the City notified the Tampa Police Department ("TPD"). TPD searched Respondent's home. TPD did not find a City lawn mower. However, during its search, TPD did discover a spool of weed eater line on Respondent's porch that he admitted belonged to the City. During a subsequent interview with TPD, Respondent confessed to taking the spool from the City's supplies without permission. Respondent also divulged

that he did occasionally take a lawn mower owned by the City and use it on his property.

6. Following the TPD interview, Respondent was arrested and charged with theft of the City property under section 812.014, Florida Statutes. Respondent, however, was never prosecuted for the crime. After completing a pre-trial intervention program, Respondent's theft charge was dismissed.

7. The City, however, terminated Respondent's employment based, in part, on his admission to stealing the weed eater line. Kimberly Marple, an Employee Relations Specialist Supervisor for the City, testified on behalf of the City and explained that the City maintains a zero tolerance policy for removal of or taking City property for personal use. Consequently, when the City learned of Respondent's admission to TPD that he took City property, he was fired.

8. At the final hearing, Petitioner admitted to "borrowing" the City lawn mower from time to time to use at his home. He expressed, however, that he always returned it to the City. Respondent claimed that he never considered permanently taking the lawn mower. Respondent did, however, confirm that he took the weed eater line from the City, without authority, for personal use and did not intend to return it. Respondent relayed that a spool of weed eater line costs approximately \$80.

9. Respondent voiced that he was an exemplary employee for the City during his 15 years of employment. Respondent represented that, prior to this incident, he had never received any disciplinary action from the City. Respondent's testimony is supported by his annual performance evaluations which record that he dependably and diligently performed his responsibilities for the City parks and recreation department. Respondent's performance was frequently marked as excellent or outstanding.

10. Based on the evidence and testimony presented at the final hearing, the preponderance of the evidence establishes that the City terminated Respondent's employment by reason of his admission to theft of City property. Therefore, the Fund met its burden of proving that Respondent must forfeit all rights and benefits to the Fund's pension plan.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 112.3173(5), Florida Statutes (2016).

12. The Fund initiated this action to determine whether Respondent's pension benefits must be forfeited under section 112.3173(3) based on the termination of his employment by reason of his admission to committing theft from the City.

13. The Florida Constitution and statutes provide the framework for forfeiture of public retirement benefits. Simcox v. City of Hollywood Police Officers' Ret. Sys., 988 So. 2d 731, 733 (Fla. 4th DCA 2008). Forfeiture proceedings are based on article II, section 8 of the Florida Constitution (2009),^{2/} which provides for forfeiture of an employee's rights and privileges under a public retirement system when that employee violates the public trust. Section 8, entitled Ethics in government, states:

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

* * *

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

14. Forfeiture is codified in section 112.3173(3), which states:

Any public officer or employee . . . whose office or employment is terminated by reason of his or her admitted commission, aid, or abetment of a specified offense, shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

15. Section 112.3173(2) (e) defines "specified offense" to include, "[t]he committing, aiding, or abetting of any theft by a

public officer or employee from his or her employer." See also Newmans v. Div. of Ret., 701 So. 2d 573, 574 (Fla. 1st DCA 1997) (a "specified offense" for purposes of forfeiture includes embezzlement, theft, and bribery).

16. Forfeiture statutes are not favored in Florida. "They are considered harsh exactions, odious, and to be avoided when possible. Statutes imposing forfeiture will be strictly construed in a manner such as to avoid the forfeiture and will be liberally construed so as to avoid and relieve from forfeiture." Williams v. Christian, 335 So. 2d 358, 361 (Fla. 1st DCA 1976). Forfeiture statutes "are strictly construed in favor of the party against whom the penalty is sought to be imposed." Cabrera v. Dep't of Nat. Res., 478 So. 2d 454, 456 (Fla. 3d DCA 1985).

17. Respondent, as the plan beneficiary, bears the burden of proving his entitlement to pension benefits. However, in this matter, where Respondent's eligibility to participate in the pension plan is not disputed, the Fund has the burden of proving that Respondent must forfeit all rights to his retirement benefits. Wilson v. Dep't of Admin., Div. of Ret., 538 So. 2d 139 (Fla. 4th DCA 1989). See also Rivera v. Bd. of Trs. of Tampa's Gen. Empl. Ret. Fund, 189 So. 3d 207, 210 (Fla. 2d DCA 2016) (The Fund had the burden of proving that the former employee's retirement benefits should be forfeited.).

18. The preponderance of the evidence standard is applicable to this case. See § 120.57(1)(j), Fla. Stat.; Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996). Preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872 (Fla. 2014).

19. Applying the statutory framework to this matter, the Fund is required to prove: (1) that Respondent was a public employee; (2) that Respondent admitted to committing a "specified offense" under section 112.3173(2)(e); and (3) that the City terminated Respondent's employment by reason of his admission. See Rivera, supra.

20. Based upon the competent substantial evidence in the record, the Fund met its burden of proving, by a preponderance of the evidence, that Respondent must forfeit his rights under the Fund's pension plan under section 112.3173(3). It is undisputed that Respondent was a public employee. The evidence presented at the final hearing also established that Respondent admitted to TPD that he had taken, without permission, certain property that belonged to the City, and intended to appropriate that property for his own use (i.e., he committed theft^{3/}). Finally, the City credibly demonstrated that it terminated Respondent's employment

based on his admission that he committed theft, a "specified offense" under section 112.3173(2)(e)2. Accordingly, the City established that Respondent must forfeit all rights to pension benefits from the Fund.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the City of Tampa General Employees Retirement Fund enter a final order finding that Respondent, Robert Ramshardt, a public employee who, by reason of his admitted commission of a "specified offense" under section 112.3173(2)(e), forfeited all rights and benefits in the pension plan administered by the Fund.

DONE AND ENTERED this 22nd day of February, 2017, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of February, 2017.

ENDNOTES

1/ Unless otherwise noted, all statutory references are to the 2009 codification of the Florida Statutes.

2/ The applicable version of the pension forfeiture statute is the one in effect at the time the offense is committed that led to forfeiture. See Busbee v. State Div. of Ret., 685 So. 2d 914, 916-17 (Fla. 1st DCA 1996).

3/ See Section 812.014, which states:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

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.