

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

ANNE MADDOX,

Petitioner,

Final Order No. DMS – 18-0011

vs.

DOAH Case No. 17-1434

DMS No.: 17-35296

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, Robert S. Cohen, assigned by the Division of Administrative Hearings (DOAH) in the above styled case, entered a Recommended Order on August 25th, 2017, 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. No exceptions have been filed.

APPEARANCES

For Petitioner: Anne L. Maddox
1579 Jeffords Street
Clearwater, Florida 33756-4408

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 chosen by her late husband, Daniel Maddox.

PRELIMINARY STATEMENT

On January 6th, 2017, Department of Management Services, Division of Retirement (Respondent) issued a final agency action letter to Petitioner. The letter informed Anne Maddox that she would not be allowed to change the retirement option chosen by her late husband Daniel Maddox.

The Petitioner timely filed a petition for hearing and the case was referred to the Division of Administrative Hearings on March 8th, 2017. A Final Hearing was held by video teleconference between Tampa and Tallahassee, Florida on August 1st, 2017.

At the final hearing Mrs. Maddox testified and offered 6 exhibits which were admitted. Respondent offered the testimony of David Heidel, Benefits Administrator at the Division of Retirement. Respondent offered two exhibits which were admitted.

Both parties submitted Proposed Recommended Orders. A Recommended Order was issued August 25th, 2017, which is incorporated by reference into this Final Order. No Exceptions have been filed.

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., 1957). 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).

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 Daniel Maddox is hereby DENIED.

DONE AND ORDERED this 5 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 5th day of January, 2018.



Diane Wint
Agency Clerk
Department of Management Services

Copies furnished to:

Anne Maddox
1579 Jeffords Street
Clearwater, Florida 33756-4408

Judge Robert S. Cohen
Division of Administrative Hearings
1230 Apalachee Parkway
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