

FILED

STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION

2018 APR -4 PM 12: 14

DIVISION OF  
ADMINISTRATIVE HEARINGS

SHARON FLEITA, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE BOARD OF ADMINISTRATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

DOAH Case No. 17-5505  
SBA Case No. 2017-0266

**FINAL ORDER**

On February 23, 2018, Administrative Law Judge Suzanne Van Wyk (hereafter "ALJ") submitted her Recommended Order to the State Board of Administration (hereafter "SBA") in this proceeding. A copy of the Recommended Order indicates that copies were served upon the pro se Petitioner, Sharon Fleita, and upon counsel for the Respondent. Respondent timely filed a Proposed Recommended Order. Petitioner did not file a Proposed Recommended Order. Neither party filed exceptions to the Recommended Order which were due March 12, 2018. On March 12<sup>th</sup>, Petitioner did submit a letter to the ALJ that reiterated a few points that Petitioner made during the hearing. The letter stated that Petitioner accepted the ALJ's decision. Petitioner's letter was not submitted to the SBA, as would have been required under Rule 28-106.217(1), F.A.C., if the Petitioner had intended the letter to serve as exceptions. Further, the letter did not clearly identify any disputed portions of the ALJ's recommended order by page number or paragraph, did not identify any legal basis for arguments Petitioner made, and further did not include any specific

citations to the record, as would have been required for valid exceptions under Section 120.57(1)(k), Florida Statutes. As such, Petitioner's letter is not addressed herein.

A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Chief of Defined Contribution Programs for final agency action.

#### **STATEMENT OF THE ISSUE**

The SBA adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

#### **PRELIMINARY STATEMENT**

The SBA adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

#### **STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS**

The findings of fact of an Administrative Law Judge ("ALJ") cannot be rejected or modified by a reviewing agency in its final order "...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence...." See Section 120.57(1)(l), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2<sup>nd</sup> DCA 1995); *Dietz v. Florida Unemployment Appeals Comm*, 634 So.2d 272 (Fla. 4<sup>th</sup> DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1<sup>st</sup> DCA 1987). A seminal case defining the "competent substantial evidence" standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as "such evidence as will establish a substantial basis of fact from which the fact at issue can be

reasonably inferred” or such evidence as is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.”

An agency reviewing a Division of Administrative Hearings (“DOAH”) recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1<sup>st</sup> DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4<sup>th</sup> DCA 19932). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the ALJ’s Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to “reject or modify [an administrative law judge’s] conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.”

### **FINDINGS OF FACT**

The Findings of Fact set forth in the ALJ’s Recommended Order hereby are adopted and are specifically incorporated by reference as if fully set forth herein.

### **CONCLUSIONS OF LAW**

The Conclusions of Law set forth in the ALJ’s the Recommended Order are adopted and are specifically incorporated by reference as if fully set forth herein.

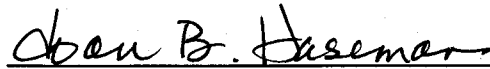
**ORDERED**

The Recommended Order (Exhibit A) hereby is adopted in its entirety. Petitioner has failed to show that she is entitled to the relief requested. The Petitioner's request that she be deemed to have made a valid second election to transfer from the Florida Retirement System ("FRS") Pension Plan to the FRS Investment Plan hereby is denied. At the time Petitioner submitted her second election form in May 2017, Petitioner was on FMLA (Family Medical Leave Act) leave and was not earning either salary or service credits. Petitioner did not return to work after her leave of absence. As such, Petitioner no longer was earning service credits in an employer-employee relationship as is required under Section 121.4501(4)(f), Florida Statutes in order to make a valid second election.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.

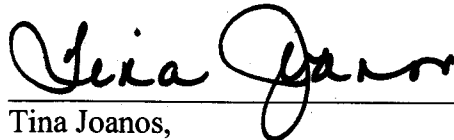
DONE AND ORDERED this 2nd day of April, 2018, in  
Tallahassee, Florida.

**STATE OF FLORIDA  
STATE BOARD OF ADMINISTRATION**



**Joan B. Haseman,**  
Chief of Defined Contribution Programs  
State Board of Administration  
1801 Hermitage Boulevard, Suite 100  
Tallahassee, Florida 32308  
(850) 488-4406

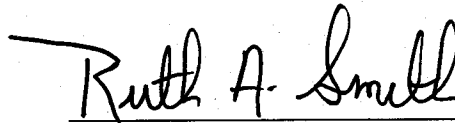
FILED ON THIS DATE PURSUANT TO  
SECTION 120.52, FLORIDA STATUTES  
WITH THE DESIGNATED CLERK OF THE  
STATE BOARD OF ADMINISTRATION,  
RECEIPT OF WHICH IS HEREBY  
ACKNOWLEDGED.



Tina Joanos,  
Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to Sharon Fleita, pro se, by email to [dawglady56@hotmail.com](mailto:dawglady56@hotmail.com) and by U.S. mail to 210 LaCapra Road, Monticello, Florida 32344; by US Mail to Suzanne Van Wyk, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by email transmission to Brian Newman, Esq. ([brian@penningtonlaw.com](mailto:brian@penningtonlaw.com)) and Brandice Dickson, Esq., ([brandi@penningtonlaw.com](mailto:brandi@penningtonlaw.com)) at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 2nd day of April, 2018.



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Assistant General Counsel  
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Suite 100  
Tallahassee, FL 32308