

**CITY OF DANIA BEACH
POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM**

JOHN HASKO,
Petitioner,

DOAH Case No. 18-0559

vs.

CITY OF DANIA BEACH POLICE AND
FIREFIGHTERS' RETIREMENT SYSTEM,
Respondent.

FINAL ORDER

This Cause came before the City of Dania Beach Police and Firefighter's Retirement System Board of Trustees at a public meeting and hearing on December 3, 2018, for final agency action after receipt of a Recommended Order dated September 21, 2018 from the State of Florida Division of Administrative Hearings ("DOAH") and exceptions to that recommended order timely filed with the Board of Trustees by Petitioner.

After receipt, review and consideration of the Recommended Order, the exceptions to that recommended order timely filed on behalf of the Petitioner, the oral arguments from both Petitioner's counsel and the Retirement System's special counsel at the December 3, 2018 hearing and meeting, and the statement made by Petitioner to the Board of Trustees at the December 3, 2018 hearing and meeting, the Board of Trustees, by unanimous vote at its public meeting on December 3, 2018, denied Petitioner's exceptions and adopted the DOAH Recommended Order of September 21, 2018 as the Final Order and final agency action of the Retirement System.

Procedural History. The procedural history and the issues presented in this case are correctly stated in the "Statement of the Issue" and "Preliminary Statement" portions of the

Recommended Order which are in their entireties adopted, attached hereto and incorporated herein by reference.

Findings of Fact & Conclusions of Law: The Findings of Fact and Conclusions of Law of the Recommended Order are in their entireties adopted, attached hereto and incorporated herein by reference by the Board of Trustees as the Findings of Fact and Conclusions of Law of the Retirement System in this case.

Denial of Petitioner's Exceptions. The Petitioner filed Exceptions to the Recommended Order. The Respondent's special counsel did not take exception to the Recommended Order and filed a Notice accepting the Recommended Order as written.

The Board, upon consideration of the Petitioner's three Exceptions, denies the exceptions for the following reasons.

1. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order. Specifically, documentary evidence admitted at the Hearing established that Petitioner signed his name to the Notification of Benefits form used by "the System" to make annuity elections and that the Petitioner chose the "Life Annuity". Administrative Law Judge Cathy M. Sellers found the documentary evidence worthy on its face and in doing so called Petitioner's testimony into question on the main issue. Judge Sellers found that several pieces of evidence placed Petitioner on Notice that he had elected the "Life Annuity" long before November of 2015 when he claimed to first become aware of this fact. A fact finder must consider evidence admitted in all its forms.

2. Petitioner's claim that his testimony is "unrebutted and uncontradicted" is incorrect. It

is clear that the multiple documentary exhibits admitted into evidence and considered by Judge Sellers as the finder of fact contradict Petitioner's testimony. Therefore, Petitioner's assertion that "his un rebutted and uncontradicted testimony must be accepted as proof of the issue" is rejected .

3. Petitioner's three exceptions are "based on the same grounds", disputing findings of fact made by the Administrative Law Judge in the Recommended Order. This Retirement System, as the administrative agency that administers the Retirement System, may not reject or modify the Administrative Law Judge's ("ALJ's") findings of fact 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 upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. See e.g. § 120.57(1)(l), Fla. Stat. (2016). The Retirement System declines to reject or modify the Findings of Fact in the Recommended Order because there is substantial and competent record evidence to support the Findings of Fact in the Recommended Order, as shown by the references to the documents in the record and testimony at the hearing made in the Recommended Order itself.

4. Essentially, Petitioner asks this Board to reweigh the evidence and testimony and their credibility. The agency is not permitted to reweigh the evidence or judge the credibility of the witnesses. Aldrete v. Dep't of Health, Board of Medicine, 879 So.2d 1244, 1246, (Fla. 1st DCA 2004). If there is competent substantial evidence in the record to support the ALJ's findings of fact, the agency may not reject them, modify them, substitute its findings, or make new findings. Pillsbury v. Dep't of Health, 744 So.2d 1040, 1041 (Fla. 2d DCA 1999); Fonte v. Dep't of Env'tl. Regulation, 634 So.2d 663 (Fla. 2d DCA 1994) (noting that an agency may only reject a hearing officer's findings of fact if it determines from a review of the complete record that the findings were not based upon competent, substantial evidence).

For the above stated reasons, after consideration of the written exceptions filed by Petitioner and the oral arguments presented at the December 31, 2018 meeting and hearing, all of Petitioner's exceptions are denied.

FINAL ORDER

Based upon the Findings of Fact and Conclusions of Law above, as adopted in their entirety from the Recommended Order, the Board of Trustees also adopts in its entirety, attaches hereto and incorporates herein by reference the "Recommendation" of the Recommended Order.

Wherefore, the Board of Trustees of the Dania Beach Police & Firefighters' Retirement System hereby enters its Final Order, constituting its final agency action, DENYING Petitioner's request for reclassification of the form of the pension benefit that he is currently receiving from life annuity to joint and last survivor annuity.

It is hereby ORDERED that Petitioner's request for reclassification of the form of the pension benefit that he is currently receiving from life annuity to joint and last survivor annuity is DENIED. Petitioner John Hasko shall continue to receive his life annuity pension for the rest of his life and he is not entitled to and his survivor, if any, shall not receive a Joint and Last Survivor Annuity.

RIGHT TO APPEAL. Petitioner may appeal this Final Order within 30 days to the Appellate Division of the Circuit Court of the 17th Judicial Circuit of Florida, 205 S.E. 6th Street, Ft. Lauderdale pursuant to Rules 9.030(c), 9.110(c) and other applicable rules of the Florida Rules of Appellate Procedure. The address for filing with the administrative agency is Cathy David, Administrator, City of Dania Beach Police and Fire Fighters Retirement System, 111 S.W. 1 Street, Dania Beach, Florida 33004.

DONE and ORDERED this 14th day of January 2019.


Larry Rogers, Chairman
Board of Trustees