



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RON DESANTIS
GOVERNOR

JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

ASHLEY MOODY
ATTORNEY GENERAL

ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

June 30, 2020

Lawrence P. Stevenson
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Adrian Wagner vs. State Board of Administration; DOAH Case No. 19-4954

Dear Judge Stevenson:

As required by section 120.57(1)(m), Florida Statutes, attached is the Final Order issued by the State Board of Administration in regards to the above referenced case.

Please let us know should you need anything further.

Sincerely,

Tina Joanos
Agency Clerk

DIVISION OF
ADMINISTRATIVE HEARINGS

2020 JUL -2 PM 2:56

FILED

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**

ADRIAN WAGNER,)	
)	
Petitioner,)	
)	
vs.)	DOAH Case No. 19-4954
)	SBA Case No. 2019-0195
STATE BOARD OF ADMINISTRATION,)	
)	
Respondent.)	
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FINAL ORDER

On January 8, 2020, Administrative Law Judge Lawrence P. Stevenson (hereafter "ALJ") submitted his 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 counsel for the Petitioner and upon counsel for the Respondent. Both Petitioner and Respondent filed Proposed Recommended Orders. Petitioner was granted a one day extension to file exceptions on January 24, 2020. 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 State Board of Administration 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 State Board of Administration 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 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)(I), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla. 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm.*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1st 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. 1st DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4th 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)(I), 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.”

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides that “...an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

RULINGS ON PETITIONER’S EXCEPTIONS TO THE RECOMMENDED ORDER

Petitioner’s Exception 1: Exception to Conclusion of Law Paragraph 49

Without any discussion or authority, Petitioner argues that the language set forth in Section 121.4501(4)(f), Florida Statutes, that provides that elections “... are effective on the first day of the month following receipt of the election by the third party administrator” [emphasis supplied], does not “as a matter of law” refer to the “ISP provider Alight Solutions” but rather to an “[a]pproved provider” that has been selected to offer investment products or services to the FRS Investment Plan, as provided under Section 121.4501(2)(a), Florida Statutes.

Section 121.4501(4)(f), Florida Statutes, clearly refers to a “third party administrator.” When the language of the statute conveys a clear and definite meaning, the statute must be given its plain and obvious meaning. *See, e.g., McKenzie Check Advance of Florida, LLC v. Betts*, 928 So.2d 1204 (Fla. 2006). Section 121.4501(8)(a), Florida Statutes, allows the SBA to select and contract with a third party administrator that will, *inter alia*, enroll eligible employees into the FRS Investment Plan. The third party administrator selected by the SBA to provide administrative services to the FRS Investment Plan is Alight

Solutions. [Hearing Transcript, page 86, lines 5-9]. Thus, elections into the FRS Investment Plan are effective on the first day of the month following receipt of such election by Alight Solutions, the third party administrator.

Petitioner's argument is erroneous, and Petitioner fails to identify the legal basis for Petitioner's exception. Therefore, Petitioner's Exception 1 hereby is rejected.

Petitioner's Exception 2: Exception to Conclusion of Law 51

Again, without discussion or citing any authority, Petitioner argues that the provisions of Rule 19-11.007(2), F.A.C., that provide that a valid second election may be made only if an FRS Investment Plan member makes such election and such election is processed by the Plan Choice Administrator during a month in which the member is actively employed and earning salary and service credit, were inapplicable to Petitioner's situation. Petitioner states that such provisions only are applicable to a situation in which a member makes an election at the end of the member's last day of employment with the state, and such election is not processed until the next day when the member's employment has terminated. Petitioner exception merely consists of Petitioner's unsupported opinion, and Petitioner does not identify any legal basis for the exception. Therefore, Petitioner's Exception 2 hereby is rejected.

FINDINGS OF FACT

The State Board of Administration adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The State Board of Administration adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

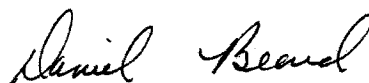
ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner's Florida Retirement System Investment Plan Petition for Hearing hereby is dismissed. Petitioner has failed to establish that she was entitled to the relief requested.

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 6th day of April, 2020, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Daniel Beard
Chief of Defined Contribution Programs
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

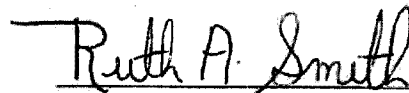
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent to N. Albert Bacharach, Jr., Counsel for Petitioner, both by email transmission to N.A.Bacharach@att.net and by U.P.S. to N. Albert Bacharach, Jr., P.A., 4128 NW 13th Street, Gainesville, Florida 32609-1807; and by email transmission to Deborah Minnis, Esq. (dminnis@ausley.com) and Ruth Vafek (rvafek@ausley.com; jmcvaney@ausley.com), Ausley & McMullen, P.A., 123 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, this 6th day of April, 2020.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308