

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES)
AUTHORITY,)
)
Petitioner,)
)
vs.) Case No. 06-2219
)
MARC HUGHES,)
)
Respondent.)
_____)

REPORT TO THE EMERALD COAST UTILITY AUTHORITY

Pursuant to the certain contract between the Division of Administrative Hearings and Emerald Coast Utilities Authority (ECUA) and after written Notice of Hearing, a fact-finding hearing for the purpose of taking testimony and receiving exhibits was conducted in this case on August 30, 2006, in Pensacola, Florida, before Diane Cleavinger, Administrative Law Judge with the Division Of Administrative Hearings.

APPEARANCES

For Petitioner: John E. Griffin, Esquire
Carson & Adkins
2958 Wellington Circle, North
Suite 200
Tallahassee, Florida 32308-6885

For Respondent: Marc Hughes
280 East Ten Mile Road
Pensacola, Florida 32534

STATEMENT OF THE ISSUE

The issue in this case was to determine whether Respondent violated Sections A-5(B) and F-4(4), (19), (27) and (33) of the ECUA Human Resources Policy Manual.

PRELIMINARY STATEMENT

On April 10, 2006, Respondent, Marc Hughes, was placed on administrative leave with pay to permit Petitioner to investigate whether Respondent had tapped into an ECUA water line and used such unmetered water. By certified letter dated April 26, 2006, Respondent was notified that the Petitioner intended to take employment action against him for use of an unmetered water tap in violation of the ECUA Human Resources Policy Manual, Section A-5(B) Code of Ethics; Section F-4(4) Conduct Unbecoming an ECUA Employee; Section F-4(27) Theft or Stealing and Section F-4(33) Violation of ECUA Rules or Policies or State and Federal Law. The letter also advised Respondent of his right to a predetermination/liberty interest hearing.

On May 3, 2006, a predetermination/liberty interest hearing was held at ECUA's Human Resources and Administrative Services Department. Petitioner participated in the hearing. After the hearing, by letter dated May 19, 2006, Respondent was terminated for his use of an unmetered water tap in violation of the ECUA Human Resources Policy Manual, Section A-5(B) Code of Ethics; Section F-4(4) Conduct Unbecoming an ECUA Employee; Section F-

4(27) Theft or Stealing and Section F-4(33) Violation of ECUA Rules or Policies or State and Federal Law. The letter further advised Respondent of his right to appeal Petitioner's employment action and request a fact finding hearing before an Administrative Law Judge with the Division of Administrative Hearings.

By letter dated, May 29, 2006, Respondent, timely filed a request for hearing. The request indicated that Respondent did not feel he was treated the same as other similarly situated employees. The case was forwarded to the Division of Administrative Hearings.

As indicated earlier, the hearing was held on August 30, 2006, and was electronically recorded. At the hearing, Petitioner presented the testimony of Tina Shelton, ECUA Director of Human Resources; Jeremy Stewart, an ECUA employee; Ernest Dawson, ECUA Director of Regional Services; and Harry Shoemore, ECUA Region 1 Supervisor. Petitioner also introduced 14 exhibits into evidence, consisting of:

1. Human Resources Policy Manual
2. Employee Handbook
3. Acknowledgement of receipt of The Employee Handbook signed by Respondent
4. Transcript of the May 3, 2006, Predetermination Hearing
- 5-11. Various photographs of 280 East Ten Mile Road

12. Memorandum dated April 10, 2006 to Respondent suspending him with pay.

13. Letter dated April 28, 2006, regarding outcome of investigation, recommendation of termination and right to a predetermination hearing.

14. Letter of termination dated May 19, 2006.

FINDING OF FACT

1. In 2000, Respondent was employed by Petitioner. At the time, Respondent was given a copy of the employee handbook, receipt of which was acknowledged by Respondent. The Handbook is a summary of Petitioner's human resource policies. Specific human resources policies are contained in Petitioner's Human Resources Policy Manual. Both documents reference a Code of Ethics that is to be adhered to by employees (page 2 of the Employee Handbook and page 5 of the Human Resources Policy Manual). Likewise, both documents contain provisions for discipline of an employee (page 32 of the Employee Handbook and page 52 of the Human Resources Policy Manual). The Human Resource Manual states, in relevant part, as follows:

Section A-5 Code of Ethics

* * * *

B. No ECUA employee shall use or attempt to use their position to secure special privilege or exemptions for themselves or others, except that which may be provided by policy and/or law.

* * * *

Section F-4 Disciplinary Offenses

* * * *

(4) Conduct Unbecoming an ECUA Employee

Any act or activity on the job or connected with the job that involves moral turpitude, or any conduct, whether on or off the job, that adversely affects the employee's effectiveness as an ECUA employee. . . . Conduct unbecoming an ECUA employee includes any conduct which adversely affects the morale or efficiency of the ECUA, or any conduct which has a tendency to destroy public respect or confidence in the ECUA, in its employees, or in the provision of ECUA services.

* * * *

(19) Unauthorized use of ECUA Property or Equipment

The unauthorized use of any ECUA property or equipment for any reason other than ECUA business.

* * * *

(27) Theft or Stealing

The unauthorized taking of any material or property of the ECUA, other employees, or the public with the intent to permanently deprive the owner of possession or to sell or to use for personal gain.

* * * *

(33) Violation of ECUA Rules or Policies or State or Federal Law.

The failure to abide by ECUA rules, policies, directives or state or federal statutes. This may include, but is not limited to, misuse of position, giving or

accepting a bribe, discrimination in employment, or actual knowledge of failure to take corrective action or report rule violations and employee misconduct.

* * * *

2. Sometime in 2003 or 2004, Respondent moved to his residence located at 280 East Ten Mile Road. The home had a 10,000 gallon pool. The home's waterline was attached to a metered water tap on a three-inch ECUA waterline. At some point Respondent became dissatisfied with his home water service and wanted to connect his home's waterline to a 12-inch ECUA water line that also ran in front of his home.

3. Respondent asked Steve Castro, a crew supervisor for Region 1, the region Respondent's house was in, about "what I needed to do" to transfer his house waterline from the three-inch line to the 12-inch line. Respondent was informed that when the work in that region was caught up, Mr. Castro would have the new tap put in. About two days later, Jeremy Stewart, an ECUA service technician, installed a tap on the 12-inch line in front of Respondent's home. No meter was installed on the new tap. At the time, Respondent's houseline was not hooked to the new tap, leaving the tap unused.

4. In 2004 and 2005, the Pensacola area was hit with multiple hurricanes that caused damage to Respondent's home. His pool developed black algae, which generally requires

pressure washing and chemical treatment to remove. In preparation for removal of the algae, Petitioner drained his pool about half way.

5. Sometime in late March or early April, 2006, Petitioner asked Harry Shoemore, his supervisor, to find out how to apply for water service from the 12-inch line and how much it would cost in fees to obtain the new water service. Mr. Shoemore obtained the information for Respondent and radioed him with the information. The fees for the new service would exceed 1000.00 dollars and had to be paid prior to service being installed.

6. On April 9, 2006, Respondent, with full knowledge that he had not paid for any tap, hooked a waterline to the 12-inch tap that had been installed earlier. The line ran around the house to the backyard and into the pool. He did not attach a meter to the tap and did not pay any fees to ECUA. Respondent used water from the tap to pressure wash his pool and fill it. An estimated amount of water used by Petitioner to accomplish these tasks would be over 7,000 gallons of water.

7. On April 10, 2006, Mr. Dawson received a telephone call that there was an unmetered tap at 280 Ten Mile Road. Mr. Dawson and Mr. Shoemore drove to the address to investigate the call. They arrived at Respondent's house around 8:30 a.m. and saw the ECUA'S one-inch black service tubing from the 12-inch line attached to white PVC piping extending to the backyard

of Respondent's home and emptying into Respondent's pool. The pool was being filled and water had overflowed into the backyard. There was no meter on the service line.

8. Respondent's father met Mr. Dawson and Mr. Shoemore at the door to the house. He advised them that he had called Respondent and that Respondent was on his way to his house.

9. Respondent drove up to the house in an ECUA work truck. As he approached Mr. Dawson and Mr. Shoemore, Respondent stated, "You caught me." Respondent also admitted to attaching the PVC pipe to the line and using the water to pressure wash and fill his pool. He admitted he was wrong for making the attachment and using the water without paying for it. Respondent indicated he was willing to pay for the water and service. There is no question that Respondent illegally connected to and used ECUA property, stole water from ECUA, and deprived ECUA, as well as the County, the connection and impact fees related to such use.

10. Respondent was immediately placed on Administrative Leave with Pay, pending further investigation by Petitioner. Later Respondent was afforded his due process rights by ECUA.

11. Petitioner did review prior disciplinary action against other employees who were allegedly "caught stealing," including two past incidents that Respondent indicated had not resulted in termination of the employee. One of the incidents could not be verified. The other incident was vague, was not

brought to the attention of the past administration for discipline and occurred well prior to the current administration's policy against theft and employee conduct. Respondent also referenced two employment actions that involved the falsification of time records. At least one of these actions resulted in some form of hearing. However, the evidence was vague regarding these disciplinary actions and any similarity between these cases cannot be determined from the evidence.

CONCLUSION

12. As indicated, both the ECUA Human Resource Manual and the Employee Handbook contain provisions which prohibit an employees from stealing, misusing ECUA property and/or otherwise, behaving in a manner that is unbecoming to an ECUA employee. Petitioner had notice of and knew about these policies.

13. In this case, while there was one incident of theft, that act violated multiple sections of the ECUA Human Resources Policy Manual. There can be no doubt that stealing from one's employer is an act of moral turpitude falling well below any social norm for honesty and integrity. Respondent's theft was both knowing and intentional. Unquestionably, such action is conduct unbecoming to an ECUA employee and violates the Code of Ethics contained in the ECUA Human Relations Policy Manual,

Sections A-5(B) and F-4(4). Likewise, such theft involved the illegal use of ECUA water, lines and equipment since Petitioner had not paid for the connection, had no meter on the tap so that ECUA could measure Respondent's usage, and had not paid the required impact fees to ECUA for such tap. Such illegal use constitutes both a misuse of ECUA property and theft of ECUA property in violation of Sections F-4(19) and (27). Finally, because Respondent's theft violated the above-referenced policies of ECUA and violated state law regarding theft, Respondent's act violated Section F-4(33) of the ECUA Human Resources Policy Manual.

REPORT SUBMITTED this 29th day of September, 2006.



DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of September, 2006.

COPIES FURNISHED:

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