

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES)
AUTHORITY,)
)
Petitioner,)
)
vs.) Case No. 07-1154
)
JOHN CROSBY,)
)
Respondent.)
_____)

FINDINGS OF FACT AND
RECOMMENDED CONCLUSIONS OF LAW

This cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, pursuant to a contract entered into by the Petitioner Agency and the Division of Administrative Hearings, as provided in Section 120.65, Florida Statutes (2006). After proper notice, the formal hearing was conducted in Pensacola, Florida, on July 26, 2007. The appearances were as follows:

APPEARANCES

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

For Respondent: Ronnie L. Williams, Esquire
814 Saint Francis Street
Mobile, Alabama 36602-1226

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Respondent is guilty of conduct which violates certain provisions of the Emerald Coast Utilities Authority (ECUA) policy manual amounting to conduct unbecoming an ECUA employee; theft; and violation of ECUA rules or policies concerning outside employment, by allegedly securing outside employment without completing a proper form and receiving advance approval for such outside employment.

PRELIMINARY STATEMENT

This cause arose upon the results of an investigation whereby the above-named Petitioner Agency determined that its employee, the Respondent, had allegedly engaged in the theft of un-metered water on property owned by the Respondent and his wife at 319 West Clay Street, Pensacola, Florida. The theft was purportedly accomplished by the use of a "straight pipe" device in the meter box, which allegedly allowed ECUA supplied water to be diverted and not metered, resulting in a pecuniary gain to the Respondent. Additionally, it was alleged by the Petitioner that the Respondent violated the human resources policies of the Petitioner by engaging in conduct involving securing outside employment (with Tom Thumb Stores, Inc.) without seeking advance approval and without filing the appropriate outside employment form with the Petitioner.

It is thus alleged that the Respondent, by securing a special benefit for himself by obtaining free, un-metered water through his action in using the straight pipe arrangement to bypass the Petitioner's water meter, violated the Petitioner's code of ethics; has engaged in conduct unbecoming a ECUA employee; theft; and has violated Section A-9(5) of the Petitioner's policy manual by obtaining outside employment without the approval of his employer.

The cause came on for hearing as noticed. At the hearing the Petitioner presented eight witnesses and 18 exhibits which were admitted into evidence and the Respondent presented one witness and had no exhibits. The record of the proceeding was preserved by tape recording which has been supplied to the undersigned. Additionally, the record of the proceeding was kept open for a period of seven days after the hearing date of July 26, 2007, in the event the Respondent wished to file a written response to the Petitioner's Exhibits 12 and 13 which were admitted into evidence. No such responses were submitted and the record closed as of the close of business on August 2, 2007. Accordingly, these Findings of Fact and Conclusions of Law are now entered.

FINDINGS OF FACT

1. The Petitioner Emerald Coast Utilities Authority (formerly Escambia County Utilities Authority) is an Agency of

local government established pursuant to an enabling act of the Florida Legislature at Chapter 81-376 Laws of Florida, as amended. It is a Regional Water Supply Authority for purposes of Sections 163.01 and 373.1962, Florida Statutes (2006). It is thus given authority to supply utility services to persons and businesses residing in a defined area in Escambia County, Florida, including the provision of water utility service. It is authorized in that Act to employ personnel to secure the provision of such utility services and to regulate the conditions and terms of their employment, their retention, their hiring, and their termination, as well as other forms of employee discipline. It has provided for such regulation of its personnel through the adoption of a "Human Resources Policy Manual" (Manual). That Manual was adopted in accordance with Part 3, Chapter 112, Florida Statutes.

2. The Respondent, at times pertinent hereto, was a utility service technician employed by the ECUA. During his tenure with the ECUA he worked for a number of different supervisors and essentially every district of the ECUA's service area.

3. On April 1, 2006, the Respondent, John Crosby and his wife Patricia Crosby, took title by deed to residential property at 319 West Clay Street, in Pensacola, Florida. They begin renovating that house located at that address for use as a

residence. Sometime during the next several months, either because work was being performed on the plumbing or because of inability to pay the water bill, the Respondent had the water service temporarily stopped. The account remained open, however, and was not closed or inactivated on the records of the ECUA. There was an amount billed and outstanding which was unpaid.

4. On or about November 28, 2006, due to the unpaid water bill becoming significantly delinquent, a "cut-off order" to stop water service to the address at 319 West Clay Street was issued and an employee of the ECUA, Donald George, was sent to that address to cut-off the water service. When Mr. George went to 319 West Clay Street and opened the meter box, he saw a "straight pipe" device installed in the meter box and connected to the water line from the street to the house. This straight pipe, thus connected, had the effect of bypassing the water meter so that any water used at that address or residence would not be registered on the water meter and, therefore, it would be impossible to bill for that water.

5. Mr. George called his supervisor, Joe Creary, and asked for instructions concerning this situation. Mr. Creary ordered him to remove the water meter and leave the premises. The next day he was sent back to those premises to turn the water off and to take the straight pipe out of the water line and utility box.

He did so and gave the straight pipe device to Mr. Creary.

6. Joel Roberts does Risk Management investigations, as well as performing as a work place Safety and Training Specialist for the ECUA. He received a report regarding the use of the straight pipe at 319 West Clay Street from Mr. Creary. He went to that address and observed the straight pipe installed in the water meter box in the water line to the house at that address and took pictures of it and the residence. He prepared an incident report and then made an investigation to establish who the last customer of record was. The last customer of record was the Respondent, John Crosby, who was still a customer of record on November 28, 2006, when the straight pipe was discovered. The photos of the straight pipe installed were taken November 29, 2006, before it was removed by Mr. George.

7. The Respondent acknowledged that he had a straight pipe device in his possession. He kept it in his personal tool box. He maintained that he used it for making emergency service calls in the area near his home, using his own personal vehicle.

8. He stated during the course of the investigation that he did not know how his straight pipe device became installed at the meter box at the subject property. He speculated that someone was trying to cast him in a bad light or playing a joke possibly, but he did not know who could have done it. During the investigatory phase of this proceeding, he acknowledged that

the straight pipe device was his own. Later, he changed his story, to the effect that although he possessed a straight pipe device kept in his personal tool box, that the one placed in the meter box on his water line was not the same one. He maintained that later contention through his testimony at hearing.

9. Several of the ECUA regional supervisors testified, essentially all of whom who had previously supervised the Respondent. Uniformly they established that there was no policy which permitted employees, such as the Respondent, to use their personal vehicles to make service calls after regular working hours or otherwise. They also established that there was no policy which allowed employees to keep or maintain company equipment in their personal possession away from the employment premises of the ECUA as, for instance, a straight pipe device such as the Respondent had possessed at times pertinent to this proceeding.

10. During a February 9th, 2007, hearing conducted by the Petitioner, the Respondent denied placing the straight pipe in the meter box and denied knowledge of who may have done so. He did admit that the straight pipe was property of ECUA which he had previously used in the performance of official duties after hours when responding to "dirty water complaints." He admitted that the straight pipe, ECUA property, had been kept in his personal tool box, but later he changed his story to say that

the straight pipe in the meter box was not his own because he had since found his own straight pipe device in another tool box.

11. The fact remains, however, that the Respondent has had difficulty in his ability to keep his water service account current for the above address, and there is a delinquent outstanding balance on that account. The Respondent was the only person who could have benefited from installing the straight pipe in place of his water meter in order to obtain water free of charge, which he did.

12. While it is possible that another person installed the straight pipe in place of the Respondent's water meter and that the testimony of the Respondent's fellow employees is untruthful, the preponderant, persuasive evidence reflects that the Respondent had the greatest motive and the best opportunity to install the straight pipe device and to thus wrongfully obtain free water service at his property. His explanations of how the straight pipe device might have been theoretically placed by some unidentified third party is self-serving testimony. It is testimony which defies logic and which is outweighed by that of his co-workers to the contrary. The Respondent's testimony in these particulars is thus discounted and not accepted because of insufficient credibility.

13. It has thus been established by preponderant, persuasive evidence that the Respondent is the party who installed the straight pipe device in the water meter box at the property at 319 West Clay Street, Pensacola, Florida, in order to divert un-metered water to the use of persons at that property which belonged to the ECUA. Such water has not been paid for in accordance with the approved rate structure of the ECUA for metered water.

14. The testimony of Tina Shelton establishes that the Petitioner has adopted a code of ethics and a body of personal rules and regulations. These are incorporated in its Human Resources Policy Manual. She established that the current Manual is supplied to all employees; and also established, through Petitioner's Exhibit 11 and her testimony, that the Respondent received the Manual on July 20, 1999. She also established that the Respondent's outside employment with Tom Thumbs Stores, Inc., has not been the subject of any approval form submitted by the Respondent. She established that outside employment had not been approved by the Petitioner and that therefore the Respondent has violated Section A-9(5), of the referenced manual concerning outside employment.

CONCLUSIONS OF LAW

15. The Petitioner Agency has adopted personnel rules and regulations and a code of ethics embodied in its Human Resources

Policy Manual. Such rules and regulations in the policy manual are adopted pursuant to the ECUA's authority provided in Chapter 81-376, Laws of Florida, as amended. See also §§ 163.01 and 373.1962, Fla. Stat (2006). The code of ethics embodied in that policy manual is in accord with Part 3, Chapter 112, Florida Statutes.

16. The preponderant, persuasive evidence culminating in the above Findings of Fact establishes that the Respondent has committed conduct amounting to a violation of the code of ethics embodied in Section A-5(B) of the Manual; has committed conduct unbecoming an ECUA employee for purposes of Section F-4(4); has been guilty of theft for purposes of Section F-4(27); and because of these matters has also derivatively violated "ECUA rules or policies" for purposes of Section F-4(33). Such violations are predicated on the factual findings that the Respondent installed the straight pipe device in his water meter box and on his water line in order to avoid "and did avoid" the metering and proper billing of water used by him or others on his property. This conduct amounts to a violation of the sections referenced above of the subject policy manual.

17. Additionally, the preponderant, persuasive evidence of record also establishes a violation of Section F-4(19) of the manual because of proof that the Respondent engaged in unauthorized use of ECUA property or equipment by retaining

possession of an ECUA issued device, the straight pipe device, without authorization. He used it to secure a special benefit for himself, free unmetered water at his property at 319 West Clay Street, in Pensacola, Florida, to the detriment of his employer, the Petitioner.

18. It has also been established that he violated Section A-9(5) of the policy Manual by engaging in outside employment without having secured approval in the proper fashion, or at all, from the Petitioner ECUA. This finding relates to the established fact that he was employed by Tom Thumb Stores, Inc., without receiving advanced approval for outside employment from the Petitioner.

19. It has been established by Petitioner's Exhibit 18 in evidence that the Respondent has a prior disciplinary history. That disciplinary history reflects that on April 25, 2002, he was determined to have been loud, angry, and disrespectful in front of his supervisors and co-workers. He also was found to have falsified ECUA records on January 28, 2003.

20. In summary, the Respondent is concluded to have violated the policy manual rules and regulations referenced above. In accordance with the contract between the Division of Administrative Hearings and the Emerald Coast Utilities Authority, it is the province of the Respondent's employer, the

Petitioner, to determine what, if any, disciplinary action to take pursuant to the above Findings of Fact and Conclusions of Law.

DONE AND ENTERED this 31st day of August, 2007, in Tallahassee, Leon County, Florida.



P. MICHAEL RUFF
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with Clerk of the
Division of Administrative Hearings
this 31st day of August, 2007.

COPIES FURNISHED:

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

Ronnie L. Williams, Esquire
814 Saint Francis Street
Mobile, Alabama 36602-1226

Stephen E. Sorrell, Executive Director
Emerald Coast Utilities Authority
Post Office Box 15311
9255 Sturdevant Street
Pensacola, Florida 32514-7346

NOTICE OF RIGHT TO WRITTEN ARGUMENT

All parties have the right to submit written argument as to appropriate penalty within 10 days from the date hereof. Any written argument should be filed with the executive director of the Emerald Coast Utilities Authority.