

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES )  
AUTHORITY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-0002  
 )  
EMMETT R WOODS, JR., )  
 )  
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(7), Florida Statutes (2008). After appropriate notice, the formal hearing was conducted in Pensacola, Florida, on March 27, 2009. 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: Emmett R. Woods, Jr., pro se  
10601 Silver Creek Drive  
Pensacola, Florida 32506

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 a ECUA employee" and "sexual harassment."

PRELIMINARY STATEMENT

This cause arose upon the results of an investigation whereby the above-named Petitioner determined that its employee, the Respondent, Emmett R. Woods, Jr., had violated the following provisions of the ECUA Policy Manual: Section F-4(4) (conduct unbecoming an ECUA employee) and Section F-4(24) (sexual harassment). Specifically, the Respondent is alleged to have engaged in sexual harassment of a co-employee, (a female), by the name of Deni Deron. He is alleged to have engaged in repetitive inappropriate touching of the complainant, Ms. Deron, on almost a daily basis during October and November 2008, when they worked for the Petitioner on the same work truck or "camera truck." He is charged with reaching under her shirt, touching her breasts, unclasping her bra through her shirt, grabbing her crotch, and inappropriate kissing. The investigation was initiated when the complainant, Ms. Deron, made a written statement of complaint on December 3, 2008.

The Respondent's defense is that, although some of the conduct alleged was engaged in, it was consensual and that "me and Deni did fool around some." He thus maintains that the conduct was consensual and not uninvited by the complainant.

Upon conclusion of the investigation, the Petitioner determined that cause existed for termination of the Respondent. This was after a hearing had been conducted by the Petitioner in order to afford the Respondent an opportunity to present facts and argument in his defense, as part of the investigation. The investigation was concluded with a letter issued to the Respondent advising him that he would be terminated from his position of employment, effective December 19, 2008. The termination letter of December 18, 2008, advised the Respondent of his right to have a hearing to contest his termination before the Division of Administrative Hearings. The Respondent availed himself of that opportunity and this hearing ensued.

The cause came on for hearing as noticed. The Petitioner presented six witnesses and seven exhibits at the hearing. All seven exhibits were admitted into evidence without objection. The Respondent presented the testimony of six witnesses, including the Respondent. No exhibits were offered into evidence by the Respondent. The record of the proceeding was preserved by tape recording, which has been supplied to the undersigned. Based upon the testimony and evidence adduced at

the hearing of March 27, 2009, these Findings of Fact and Conclusions of Law are now entered. Pursuant to the contractual arrangement between the Division of Administrative Hearings and the ECUA, no recommendation as to penalty is determined or made. That determination is contractually reserved for the discretion of the agency head.

#### FINDINGS OF FACT

1. The Petitioner, ECUA, 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 (2008). It is thereby given authority to supply utility services to persons and businesses residing in a defined area in Escambia County, Florida, including the provision of water and wastewater 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 III, Chapter 112, Florida Statutes. The Petitioner also has promulgated an "Employee Handbook," in evidence as ECUA

Exhibit Two. Page 32 of that Handbook addresses "rules of conduct" and Rule 4 of those rules of conduct precludes an employee from engaging in "conduct unbecoming a ECUA employee." Sexual harassment is also prohibited, by Employee Handbook Rule 24, at page 32. Sexual harassment is then defined at Section A-4, page 4 of the Human Resources Policy Manual, in evidence as ECUA Exhibit 1.

2. Ms. Deni Deron was hired as a "Utility Worker I" beginning on June 1, 2008. Nathan Thomas, a witness in this case, was hired as a Utility Worker I on a permanent basis on June 16, 2008. He had been a temporary worker before that time. The Respondent, Emmett R. Woods, Jr. (Woods or Respondent), was the supervisor of Ms. Deron and Mr. Thomas. Both were probationary employees for six months after their hiring date.

3. The Respondent's job title was "Lead Worker," which is a sort of foreman. He was assigned responsibility for a "camera truck," a work truck carrying a television camera projection apparatus, designed to use a television camera to observe inside waste water mains, accessible at manholes, in order to determine sources of leakage, breakage or other issues related to wastewater main repair and maintenance.

4. Sometime in early October 2008, Ms. Deron, the complainant, was assigned to the Respondent's camera truck, to be supervised by him in the duties performed through the use of

that truck. Early in her period of assignment to the truck and the company of the Respondent, probably on the first day, while they were alone in the truck, the Respondent began kissing her without her permission. This made her uncomfortable, although she did not take any particular overt action about it at the time. Later in that day, however, she told the Respondent that it had made her feel uncomfortable and that he should leave her alone and "be just friends." The Respondent behaved in a normal fashion for the next couple of days and engaged in no harassment of her. Thereafter, however, he began inappropriately touching her on one occasion or another, principally while they were riding in the work truck, on almost a daily basis. He engaged in vulgar, sexually related conversation with her. This was without her invitation, although she admittedly engaged in some of such conversation with him as well. Such talk on her part, however, was in a joking vein and was usually in a situation where several employees were together at lunch, or on occasions of that nature, when such joking conversation would begin, in which she admittedly participated. This was not the situation when the Respondent and Ms. Deron were alone in the work truck and elsewhere on the job.

5. The Respondent engaged in inappropriate touching of Ms. Deron on a frequent basis. He touched her by unclasping her bra through her shirt, by unexpectedly running his hand beneath

her shirt and grabbing her breast, and at various times grabbing her breast and crotch. All this activity was uninvited and uninitiated by Ms. Deron. She was upset by it and did not enjoy it, as her testimony shows, as corroborated by that of her co-worker, Nathan Thomas, who observed much of the conduct. Nathan Thomas, in fact, observed such conduct make her cry on a number of occasions.

6. The Respondent alluded to his close relationship with the director of their department and intimated to both Ms. Deron and Mr. Thomas that he and the director fished together, were good friends, and that he could get them fired if he chose.

7. Ms. Deron told Nathan Thomas about the Respondent's conduct about two weeks after they had been assigned to his truck (and he observed much of it as well). She told him that she was going to try to video his conduct when it happened again. Mr. Thomas described her demeanor as being upset and crying at the time. In fact, Ms. Deron did use her video cell phone to video some of the Respondent's inappropriate touching and conduct, both physical and verbal. This was stored on an ECUA computer and displayed to the undersigned, and all parties, at the hearing. This tends to corroborate the testimony of Ms. Deron and Nathan Thomas. Nathan Thomas, in fact, testified

that he observed the Respondent touch Ms. Deron inappropriately, in one way or another, approximately every other day.

8. Ms. Deron admitted that she did some flirting when she first came to work at ECUA. She described it as being a function of being single and was flirting mostly as a mechanism to "fit in, in an all male staff." That fact, however, does not obviate the clear import of her testimony, that of Nathan Thomas, and that of Sharon Griffin.

9. Ms. Griffin is a Human Relations Generalist II, working in employee relations for ECUA. She does recruiting, knows Ms. Deron and helped her get hired and "processed-in" to her job. Just before Thanksgiving in November 2008, she observed Ms. Deron outside her office and had a conversation with her. She noticed Ms. Deron appeared somewhat nervous and asked her how she was getting along with an all male crew. At that point they agreed to have a private talk within Ms. Griffin's office. Ms. Deron at that point tearfully told her of the conduct of the Respondent. Ms. Deron also gave Ms. Griffin access to the video made on Ms. Deron's cell phone. The gravamen of Ms. Griffin's testimony is that Ms. Deron clearly appeared sincere and genuinely upset about the matter and this helped to convince Ms. Griffin that it was a truthful account of what had happened.

10. Nathan Thomas, in his testimony, stated that the Respondent made him afraid for his job so he did not report what



he had observed. He testified that he felt, at first, that it was not his place to report the Respondent's conduct. When he saw how upset Ms. Deron was he apologized to her for not reporting it, and realizes that he should have.

11. The Respondent's testimony, and that of his witnesses, was to the general effect that Ms. Deron was not a "quiet person" and freely engaged in sexually suggestive joking conversation with them, and other workers, regarding sexual matters such as "penis size" and how long it had been since one had sex. The Respondent and his witnesses described Ms. Deron as being flirtatious. The Respondent, for his part, testified that "me and Deni did fool around" but the Respondent contends that it was just flirting, was not forced and was consensual.

12. In considering the testimony of Ms. Griffin, Ms. Deron and Mr. Thomas, versus that of the Respondent and the Respondent's witnesses, it is observed that the Respondent's witnesses are his co-workers, in a relationship that pre-dates Ms. Deron's employment. Their testimony may cast Ms. Deron in a less favorable light by inferring that the activity may have been consensual. It does not establish that fact, however, and does not refute the Respondent's perpetration of the above-described conduct. They did not observe the conduct. Ms. Deron and Mr. Thomas did observe it and the manner of its occurrence is corroborated by Ms. Griffin's testimony. The testimony of

Ms. Deron, Mr. Thomas, and Ms. Griffin is more germane, credible and worthy of belief and is accepted. It is thus established that the inappropriate touching and other sexually-related behavior, inflicted by the Respondent on Ms. Deron occurred in the manner described above. It was not consensual.

13. Even if Ms. Deron attracted such behavior, or seemed to invite it, based upon being somewhat flirtatious, the behavior of the Respondent was still not appropriate and, by any measure, constitutes sexual misconduct and harassment, occurring in the course of employment. This is particularly so since the Respondent occupied a position of superior power, as the supervisor of Ms. Deron and Mr. Thomas, and in fact threatened their employment, at least implicitly, if they revealed the subject conduct.

14. Moreover, even if the Respondent's version were somewhat true (which is not accepted), and Ms. Deron invited this conduct, and was a willing participant in it, it is still a violation of the above-referenced rules applying to ECUA employees. Engaging in such conduct, even if consensual, on the employer's truck, when attention should be paid to duties, and with all the negative circumstances that such sexually-related conduct can cause, displays extremely bad judgment on the part of the Respondent. Such a lavish display of poor judgment, even if the conduct did not amount to sexual harassment, clearly is

conduct unbecoming a ECUA employee within the meaning of the Petitioner's above-referenced rule.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. § 120.65(7), Fla. Stat. (2008) and the subject contract.

16. The Petitioner has adopted personnel rules and regulations and a code of ethics embodied in its Human Resources Policy Manual. Those rules and regulations are adopted pursuant to ECUA's authority provided in Chapter 81-376, Laws of Florida, as amended. See also §§ 163.01 and 373.1962, Fla. Stat. (2008). The code of ethics embodied in the Policy Manual is in accord with Part III, Chapter 112, Florida Statutes.

17. The preponderant, persuasive, evidence, culminating in the above Findings of Fact, establishes that the Respondent engaged in conduct amounting to a violation of Section F-4(24) of the Manual related to sexual harassment and has committed conduct unbecoming an ECUA employee for purposes of Section F-4(4) of the Manual.

18. There is no question that the above-found facts, based upon preponderant, persuasive evidence, establish that the Respondent engaged in blatant sexual misconduct or harassment with regard to the incidents at issue. There is also no

question that such conduct is clearly conduct unbecoming an employee of the ECUA for purposes of the above-cited rules and policies.

19. In summary, it is concluded that the Respondent violated the Policy Manual, rules and regulations referenced above, in the manner alleged by the Petitioner. Accordingly, in light of the contract between the Division of Administrative Hearings and the Emerald Coast Utilities Authority, no penalty is recommended, as it is the province of the Respondent's employer, the Petitioner, and its Director, to determine what, if any, disciplinary action is warranted, in light of the above Findings of Fact and Conclusions of Law.

DONE AND ENTERED this 1st day of May, 2009, in Tallahassee, Leon County, Florida.



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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 the Clerk of the  
Division of Administrative Hearings  
this 1st day of May, 2009.

COPIES FURNISHED:

Richard C. Anderson, SPHR  
Director of Human Resources &  
Administrative Services  
Emerald Coast Utilities Authority  
9255 Sturdevant Street  
Pensacola, Florida 32514-0311

Steve Sorrell, Executive Director  
Emerald Coast Utilities Authority  
9255 Sturdevant Street  
Pensacola, Florida 32514-0311

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

Emmett R. Woods, Jr.  
10601 Silver Creek Drive  
Pensacola, Florida 32506

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.