

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES)
AUTHORITY,)
)
Petitioner,)
)
vs.) Case No. 09-4671
)
OTIS PAUL WHATLEY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This cause came on for final hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on November 5, 2009, in Pensacola, Florida.

APPEARANCES

For Petitioner: John E. Griffin, Esquire
Carson & Adkins
2930 Wellington Circle, North
Suite 201
Tallahassee, Florida 32309

For Respondent: Otis Whatley, pro se
8655 Ramblewood Place
Pensacola, Florida 32514

STATEMENT OF THE ISSUE

The issue is whether the termination of Respondent, Otis Paul Whatley, was in accordance with the personnel procedures established by the Emerald Coast Utilities Authority.

PRELIMINARY STATEMENT

Emerald Coast Utilities Authority (ECUA) informed Respondent Otis Paul Whatley (Mr. Whatley), of its intention to terminate his employment effective at the close of business August 14, 2009. This action was based on an allegation that Mr. Whatley's conduct violated "Section F-4(4) [Conduct Unbecoming an ECUA Employee] and Section F-4(13) [Falsification of Records] of the ECUA Human Resources Policy Manual."

On August 21, 2009, Mr. Whatley asserted his right to a hearing. Pursuant to an Administrative Law Judge Services Contract, effective March 3, 2006, ECUA forwarded Mr. Whatley's request for a hearing and allied papers to the Division of Administrative Hearings in a letter dated August 24, 2009.

The matter was set for hearing on November 5, 2009, in Pensacola, Florida, and heard as scheduled. ECUA offered and had accepted into evidence nine exhibits. ECUA offered the testimony of Cindy Sutherland, Harry Shoemore, and Ernest Dawson. Mr. Whatley testified. He offered no exhibits and called no witnesses. The law applicable to the hearing is contained in ECUA's Human Resources Policy Manual.

FINDINGS OF FACT

1. ECUA was created in 1981 pursuant to Chapter 81-376, Laws of Florida. By law, it provides utility services throughout Escambia County, Florida.

2. Mr. Whatley was employed by ECUA. On October 31, 2001, Mr. Whatley signed an acknowledgement that he received the ECUA Employee Handbook. The ECUA Employee Handbook is a summary of benefits, policies, procedures, and rules, which are more fully set forth in ECUA's Human Resources Policy Manual.

3. While on the ECUA Rotation Schedule Standby List on Sunday, July 26, 2009, Mr. Whatley, and his co-worker Jonathan Wheat, were required to be available to make repairs when summoned by ECUA customers.

4. Mr. Whatley submitted a Daily Overtime Report dated July 26, 2009, which indicated that he worked on that day from 9:00 a.m. until 10:30 a.m. at 926 Lake Terrace, in Pensacola, Florida. The overtime report further stated that he worked from 10:30 a.m. until 11:00 a.m. at 1283 La Paz Street, in Pensacola. He further asserted that he worked at 402 West Lloyd Street, from 6:00 p.m. until 11:00 p.m.

5. According to the Global Positioning System (GPS) installed on the ECUA truck assigned to Mr. Whatley, he did not depart his residence at the time he claimed to be working at 926 Lake Terrace or at 1283 La Paz Street. Moreover, the evidence provided by the GPS indicated that he was at the 402 West Lloyd Street for four hours rather than the five claimed as overtime.

6. Mr. Whatley's co-worker, Jonathon Wheat, did work at 926 Lake Terrace and at 1283 La Paz Street, but he worked alone. Mr. Wheat joined in Mr. Whatley's prevarication with regard to the quantity of time expended at 402 West Lloyd Street. Mr. Wheat confessed to his prevarication when confronted. Mr. Whatley lied about his whereabouts when initially confronted, but eventually admitted that his timesheet contained false entries.

7. It is found as a fact that Mr. Whatley, on his time sheet for July 26, 2009, claimed one hour and a half overtime for work at 926 Lake Terrace, one-half-hour overtime for work or at 1283 La Paz Street, and an hour more overtime than actually worked at 402 West Lloyd Street. None of the forgoing periods were worked by Mr. Whatley. Accordingly, these entries on his time sheet were false.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. See Administrative Law Judge Services Contract effective March 3, 2006.

9. On page 32 of the ECUA Employee Handbook there is a list of disciplinary offenses that may lead to suspension or dismissal of an ECUA employee. Included on that list are

(4), Conduct Unbecoming an ECUA Employee, and (13),
Falsification of Records.

10. Section F-4 of the ECUA Human Resources Policy Manual, entitled Disciplinary Offenses, lists as an offense, at subparagraph (4), Conduct Unbecoming an ECUA Employee. This is illuminated by the following:

Any act or activity on the job or connected with the job which involves moral turpitude, or any conduct, whether on or off the job, that adversely affects the employee's effectiveness as an ECUA employee, or that adversely affects the employee's ability to continue to perform their job, or which adversely affects the ECUA's ability to carry out its assigned mission. 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.

The seriousness of the conduct which constitutes a "conduct unbecoming an ECUA employee" offense determines the appropriate penalty. Further, the repetition of the same or similar conduct may lead to progressive discipline. If an employee repeatedly engages in conduct unbecoming, but the acts or conduct which are unbecoming are dissimilar to each other, cumulative discipline may be imposed.

11. Section F-4 of the ECUA Human Resources Policy Manual, entitled Disciplinary Offenses, lists as an offense at subparagraph (13), Falsification of Records. This is illuminated by the following:

The knowing, willful, or deliberate misrepresentation or omission of any facts with the intent to misrepresent, defraud or mislead. Records include, but are not limited to, Employment Applications, Employee Attendance and Leave Reports, Travel Vouchers, Requests for Reimbursements, plant logs, operation logs and other official records.

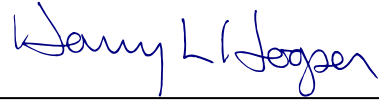
12. The falsification of overtime records engaged in by Mr. Whatley constitutes "Conduct Unbecoming an ECUA Employee" and "Falsification of Records," as described in both the ECUA Employee Handbook and the ECUA Human Resources Policy Manual. It is a serious offense warranting dismissal.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Executive Director of the Emerald Coast Utility Authority, based on the findings of fact found herein, impose such penalty on Otis Paul Whatley, as he or she determines to be appropriate.

DONE AND ENTERED this 24th day of November, 2009, in
Tallahassee, Leon County, Florida.



HARRY L. HOOPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of November, 2009.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 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.