

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES )  
AUTHORITY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-5184  
 )  
TERRANCE D. PEACE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to that certain contract between the Division of Administrative Hearings and Emerald Coast Utilities Authority, a fact-finding hearing for the purpose of taking testimony and receiving exhibits was conducted in this case on March 31, 2010, in Pensacola, Florida, before Diane Cleavinger, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Terrance D. Peace, pro se  
5748 Juergen Way  
Milton, Florida 32570

STATEMENT OF THE ISSUE

The issue in this case is whether the termination of Respondent was in accordance with the personnel policy and procedures established by Emerald Coast Utility Authority.

PRELIMINARY STATEMENT

By certified letter dated September 3, 2009, Respondent Terrance D. Peace (Respondent), was notified that Petitioner Emerald Coast Utility Authority (ECUA or Petitioner), intended to terminate him for violations of ECUA's drug policy based on positive results from the Respondent's drug test. ECUA's action was based on ECUA Human Relations Policy Manual, Section F-4(29) for use of or being under the influence of any controlled substance and Section F-4(33) for violation of ECUA Rules or Policies or State and Federal Law by violating the drug and alcohol abuse policy contained in Section G of the Policy Manual. The letter also advised Respondent of his right to a predetermination/liberty interest hearing.

On September 8, 2009, 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 certified letter dated September 9, 2009, Respondent was terminated for violations of the above referenced sections of the ECUA Policy Manual. 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 September 15, 2009, Respondent timely filed a request for hearing. The case was forwarded to the Division of Administrative Hearings.

As indicated earlier, the hearing was held on March 31, 2010, and was electronically recorded. At the hearing, Petitioner presented the testimony of John Heller, ECUA field operations specialist; Pat Smith, an employee of Lab Corporation; Ernest Dawson, ECUA Director of Regional Services; Carol Law, Ph.D., president of Drug Free Workplaces; and Cynthia Sutherland, ECUA Human Resources Manager. Petitioner also introduced 14 exhibits into evidence. Respondent testified in his own behalf and introduced 3 exhibits into evidence.

#### 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. On September 25, 2006, Respondent was employed by Petitioner as a lead service worker. At the time, Respondent was given a copy of the employee handbook and the Drug Free Work Place Program notice. Receipt of both documents was acknowledged by Respondent. Until the time of the incident

described in this order, Respondent was considered an excellent employee with high potential for advancement.

3. The handbook is a summary of Petitioner's human resource policies. Specific human resource policies are contained in Petitioner's Human Resource Policy Manual. The Human Resource Policy Manual states, in relevant part, as follows:

\* \* \*

#### Section F-4 Disciplinary Offenses

(29) Use of or Being Under the Influence of any Controlled Substance as Defined in Section 893.03, Florida Statutes or Federal regulation, Not Pursuant to Lawful Prescription While on Duty; or Possession, Sale,

'Illegal drug' means any controlled substance as defined in Section 893.03, Florida Statutes or Federal regulation, which is not possessed, sold, distributed, or dispensed in accordance with law.

\* \* \*

(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 . . . .

#### Chapter G Drug and Alcohol Abuse Policy

It is a condition of employment with the Escambia County Utilities Authority for an employee to refrain from reporting to work or working with the presence of drugs and alcohol in his or her body.

If an employee tests positive for alcohol or drugs, his or her employment may be terminated . . .

Section G-2 Definitions

B. 'Drug abuse' means the use of any controlled substance as defined in Section 893.03, Florida Statutes, as amended from time to time, not pursuant to lawful prescription. The term 'drug abuse' also includes the commission of any act prohibited by Chapter 893.03, Florida Statutes, as amended from time to time. The use of illegal drugs, or being under the influence of illegal drugs on the job, by ECUA employees is strictly prohibited.

Section G-5 Rehabilitative/Corrective Action

B. Any employee found to have possessed, used or been under the influence of illegal drugs or alcohol while on duty shall be subject to disciplinary action, up to and including dismissal . . . .

E. Any employee who tests positive for alcohol or who tests positive for illegal drugs on a confirmation test shall be subject to disciplinary action, up to and including dismissal . . . .

4. On August 14, 2009, Respondent was driving an ECUA vehicle while performing his job duties for Petitioner. Respondent did not see a low-hanging tree branch and struck the branch with the vehicle, causing minor damage to the vehicle. Respondent contacted his supervisor to report the accident.

5. Respondent's supervisor met Respondent at the accident site. He did not observe any behavior by Respondent that would

indicate he was under the influence of any substance. However, because a vehicle accident had occurred, Respondent was required by ECUA policy to undergo a urine test for drugs and alcohol.

6. That day, Respondent reported to LabCorp, ECUA's occupational testing services company. LabCorp is a licensed facility under state and federal law to obtain urine samples for drug-testing purposes.

7. Respondent was seen by a LabCorp technician who was well-qualified to obtain and process urine samples. The technician checked Respondent's identification and had him empty his pockets prior to the test. The technician gave Respondent a sample cup, with a temperature strip on it. The temperature strip helps ensure that the liquid in the cup is close to body temperature indicating the liquid is urine and has not been adulterated.

8. Respondent took both cups in the bathroom and urinated in them. Respondent returned the sample to the technician. In the presence of Respondent, the technician checked the temperature of the sample, which was normal. The technician then split the sample into two test tubes, sealed each tube, labeled them and had Respondent initial each tube. The technician recorded her activity in processing the sample on a custody and control form which Respondent then signed, acknowledging the sample-taking process. Again in the presence

of Respondent, both the custody and control form and the two samples were placed in a sample bag which was sealed with an evidence sticker and placed in a locked specimen box for transport to a licensed testing facility in North Carolina. There was no evidence that appropriate procedures were not followed by LabCorp in processing Respondent's urine sample.

9. Respondent's sample arrived at LabCorp's testing facility at Triangle Park in North Carolina on August 17, 2009. Sample A was used for initial testing and Sample B was frozen to preserve it for later testing if required. The sample was tracked through the test process by number and the name of Respondent is not known to the technician performing the tests.

10. The first test performed on Respondent's sample A was an immunoassay test. The sample was initially tested with a cut-off level of 15 nanograms per milliliter. The cut-off level is used to limit the possibility of a positive result due to secondhand exposure. Respondent's sample tested positive for Cannabis. Since the sample was positive, it was sent for gas chromatography/mass spectrometry (GCMS) confirmation testing. GCMS tests for the presence of THC, the exact metabolite of marijuana. Respondent's sample produced a positive result for THC. The results were reported to ECUA's medical review officer and to ECUA.

11. Upon learning of the positive test results, Respondent requested that the second sample be tested by another lab. The sample was sent to another LabCorp testing facility in Houston, Texas. Unfortunately, the second sample tested positive for marijuana. Respondent had no explanation for the positive test results and testified that he had not used marijuana for some 15 years. However, no credible evidence was produced at hearing that demonstrated the samples were adulterated, mixed up or improperly tested. Given these facts, Petitioner has established that Respondent tested positive for marijuana and that such results violate its drug policy.

#### CONCLUSIONS OF LAW

12. 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; § 120.65(7), Fla. Stat. (2009).

13. As indicated, the ECUA Human Resource Policy Manual contains provisions which prohibit an employee from using controlled substances. Petitioner had notice of and knows about these policies.

14. Finally, because Respondent violated the above-referenced policies of ECUA and violated state law regarding the use of controlled substances, Respondent's act violated Section F-4(33) of the ECUA Human Resources Policy Manual.



RECOMMENDATION

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

Recommended that the Executive Director of the Emerald Coast Utility Authority find that Respondent violated its Human Resource Policies F-4 (29) and (33) and impose such discipline on Respondent as determined appropriate.

DONE AND ENTERED this 27th day of May, 2010, in Tallahassee, Leon County, Florida.



---

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

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of May, 2010.

COPIES FURNISHED:

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

Terrance D. Peace  
5748 Juergen Way  
Milton, Florida 32570

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

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

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.