

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST )  
UTILITIES AUTHORITY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-6054  
 )  
RON E. WILLIAMS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on October 6, 2010, in Pensacola, Florida, before Barbara J. Staros, 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: Ron E. Williams, pro se  
7041 Andros Drive  
Pensacola, Florida 32506

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent has committed the violations as charged.

PRELIMINARY STATEMENT

By certified letter dated July 16, 2010, Respondent, Ron E. Williams, was notified that Petitioner, Emerald Coast Utility Authority (ECUA), intended to terminate him from employment. The letter stated that ECUA's action was based on ECUA Human Relations Policy Manual, Section F-4(4) for Conduct Unbecoming An Employee and Section F-4(33) for violation of ECUA Rules or Policies or State and Federal Law. These violations were based upon a conviction of a third-degree felony. The letter also advised Respondent of his right to a predetermination/liberty interest hearing.

On July 13, 2010, a predetermination/liberty interest hearing was held in ECUA's Board Room. Respondent participated in the hearing.

After the hearing, by certified letter dated July 16, 2010, 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 formal hearing before an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

By letter dated July 19, 2010, Respondent timely filed a request for hearing. The case was forwarded to DOAH on or about July 22, 2010.

A Notice of hearing was issued on July 27, 2010, scheduling the hearing for October 6, 2010. The hearing took place as scheduled. The hearing was electronically recorded, but not transcribed. At the hearing, Petitioner presented the testimony of Deputy Ronald Ross of the Escambia County Sherriff's Office; Randall Rudd, ECUA Sanitation Director; and Richard C. Anderson, ECUA Human Resources Director. Petitioner's Exhibits numbered 1 through 7 were admitted into evidence. Respondent testified on his own behalf. Respondent's Exhibit numbered 1 was admitted into evidence. Official Recognition was taken of Chapter 81-376, Laws of Florida, Section 827.03(1), Florida Statutes, and the on-line docket maintained by the Escambia County Clerk of Court in the case of State of Florida v. Ron Edward Williams, Case. No. 2009-CF-005673-A.

#### 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. In July 2008, Respondent was hired by Petitioner as a sanitation equipment operator. At the time, Respondent was given a copy of the employee handbook. Receipt of this document was acknowledged by Respondent.

3. The handbook is a summary of Petitioner's human resource policies. Specific human resource policies are contained in Petitioner's Human Resources Policy Manual. The July 16, 2010 letter, which informed Petitioner of his termination, cited to the following provisions of the Human Resources Policy Manual, which state as follows:

Section F-4 Disciplinary Offenses

\* \* \*

(4) Conduct Unbecoming an ECUA Employee

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.

\* \* \*

(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 and failure to take corrective action or report rule violations and employee misconduct.

4. The termination letter concluded that the facts and circumstances surrounding Respondent's conviction of a third-degree felony constitute a violation of the above-quoted provisions.

5. On November 30, 2009, Respondent was arrested and charged with 1) "sexual assault/sexual battery, victim over 12 years of age, physical force"; and 2) "cruelty toward child abuse without great harm."

6. On June 16, 2010, the State filed a nolle prosequi regarding the first charge of sexual assault/sexual battery, victim over 12 years of age, physical force. Thus, this charge was dropped, resulting in no conviction of this charge.

7. Also on June 16, 2010, Respondent pled nolo contendere/no contest to the second charge of cruelty toward child abuse without great harm. This plea resulted in a conviction of this charge, which is a third-degree felony. The court placed Respondent on probation for three years.

8. Ronald Ross is a deputy with the Escambia County Sheriff's Office. In October 2009, Deputy Ross worked in the special victims unit concerning crimes of a sexual nature against children and the elderly. Deputy Ross interviewed Respondent on October 30, 2009, regarding the incident that led to criminal charges being filed. At the time of the interview, Respondent was not under arrest. The interview took a little over an hour.

9. During the interview, Deputy Ross described the allegations: that Respondent touched and fondled the breast and vaginal area of a 16-year old victim; that his finger penetrated the victim's vagina; and that Respondent exposed his penis to the victim. According to Deputy Ross, Respondent initially denied all of the allegations, but, as the interview went on, he admitted to some of the allegations. That is, Respondent admitted to touching the girl, denied exposing himself, and asserted that the girl was a willing participant in the encounter.

10. Despite Respondent's initial reluctance to admit to the offense, Deputy Ross described Respondent as very cooperative during the interview.

11. At hearing, Respondent did not wish to discuss the specific facts and circumstances of the incident in detail, which is his right. He insists, however, that he was not

looking for trouble, that the "young lady" approached him, and that he pled out only because he did not have the financial resources to pay his attorney to go to trial. Despite the above, Respondent is remorseful for his actions.

12. Respondent is concerned that the investigation of this incident conducted by ECUA was not complete. In particular, he is concerned that ECUA relied only on the Deputy's investigative interview of him, and did not review depositions in the court file that led to the prosecutor dropping the more serious charge. He also questions whether he is the only ECUA employee with a third-degree felony who was fired. There is no evidence in the record to establish whether Respondent was treated any differently than other employees who were convicted of offenses of the same category, i.e., third degree felonies.

13. Respondent had a felony conviction prior to becoming employed by ECUA. In 2000, Respondent was convicted of a drug conspiracy charge and served a prison sentence for that crime. He disclosed his criminal background to ECUA when he was hired.

14. Randall Rudd is the Sanitation Director for ECUA. He was aware of Respondent's prior conviction, but despite this, made the decision to hire Respondent in 2008.

15. When Mr. Rudd learned of Respondent's 2010 conviction, he became concerned that this conviction could have an impact on Respondent's job. Specifically, Respondent was assigned yard

trash collection. This involved regular interaction with the public, in that customers regularly ask questions of the sanitation operator, and the driver is often the only employee on the truck.

16. In addition to the conviction itself, Mr. Rudd was concerned about the nature of the offense, Respondent's contact with the public, how the public might view ECUA, and potential liability to ECUA.

17. Mr. Rudd acknowledged that Respondent was a good employee who never had any problems dealing with the public, and that his decision to terminate Respondent was not an issue of job performance.

#### CONCLUSIONS OF LAW

18. 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. (2010). ECUA has the burden of proof by a preponderance of the evidence. See Paragraph 7(j), contract between ECUA and DOAH.

19. As set forth above, ECUA relied on Section F-4(4), Conduct Unbecoming an ECUA Employee, and Section F-4(33), Violation of ECUA Rules or Policies or State or Federal Law of the ECUA Human Resource Policy Manual.



20. Chapter F of the ECUA Human Resource Policy Manual also provides for progressive and cumulative discipline, and reads in pertinent part:

Section F-1 Progressive and Cumulative Discipline

In determining the severity of the discipline to be applied, the supervisor should take into account the following variables:

- (a) The seriousness of the offense.
- (b) The circumstances surrounding the offense.
- (c) The effect of the employee's actions on the ECUA's operations and ability to carry out its responsibilities, and on other employees.
- (d) The overall work record of the employee.
- (e) If the offense is not a first offense for the employee, the length of time since earlier disciplinary actions, the similarity or dissimilarity of offenses, and the severity of earlier offenses shall be considered.
- (f) Other factors may be considered as appropriate.

Progressive discipline is based on the idea that once employees have been informed of the performance and behavior expected of them, discipline will generally be administered progressively from minor to major penalties. However, the seriousness of the offense or the cumulative nature of the offense in light of the employee's

disciplinary history may warrant more severe discipline eliminating progressive discipline as an option.

For example, major disciplinary infractions, because of their serious nature, may warrant suspension or dismissal on the first occurrence even though the employee has no prior record for discipline. . . .

21. Regarding the determination that Respondent violated Section F-4 (4), conduct unbecoming an ECUA employee, the preponderance of the evidence establishes that Respondent did violate this policy. Because of the nature of his job which requires regular contact with the public, his conduct comes within the phrase "conduct which has a tendency to destroy public respect or confidence in the ECUA" of Section F-4(4) of the ECUA Human Resources Policy manual.

22. Regarding the determination that Respondent violated Section F-4 (33), violation of ECUA rules or policies or state or federal law, Respondent's conviction of a third-degree felony violated state law. Thus, Respondent's act violated Section F-4(33) of the ECUA Human Resources Policy Manual.

23. Finally, Section F-1 of the ECUA Human Resource Policy Manual also comes into play. Respondent does not have any previous disciplinary actions against him while an employee of ECUA. Thus, the progressive discipline policy does not apply.

24. In making the final determination as to appropriate penalty, Section F-1(f) instructs that the seriousness of the offense must be determined in making the decision as to whether "suspension or dismissal on the first occurrence even though the employee has no prior record for discipline" is warranted.

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 (4) and (33) and impose such discipline on Respondent as determined appropriate under the provisions of the Human Resource Policy Manual.

DONE AND ENTERED this 4th day of November, 2010, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of November, 2010.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

Pursuant to Paragraph 7(m) of the contract between ECUA and DOAH, all parties have the right to submit written argument within 10 days of the issuance of this Recommended Order with the Executive Director of the ECUA as to any appropriate penalty to be imposed. The Executive Director will then determine the appropriate level of discipline to be imposed upon the Respondent.