

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES )  
AUTHORITY, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 10-10839  
 )  
WILLIE R. LEIGH, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this matter before Diane Cleavinger, Administrative Law Judge with the Division of Administrative Hearings, on March 1, 2011, in Pensacola, Florida.

APPEARANCES

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

For Respondent: Willie R. Leigh, pro se  
2101 Scenic Highway, Apartment C108  
Pensacola, Florida 32503

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent has violated the personnel policy established by Emerald Coast Utilities Authority.

PRELIMINARY STATEMENT

By letter dated November 30, 2010, Respondent, Willie R. Leigh (Respondent), was advised that his supervisor recommended a three-day suspension without pay of his employment with Petitioner, Emerald Coast Utilities Authority (ECUA or Petitioner), for alleged violations of the ECUA personnel policy. Specifically, the letter alleged that Respondent violated ECUA policy section F-4(33), violation of ECUA Rules or Policies, or State or Federal Law, when he failed to coordinate with his supervisor and follow the procedure for obtaining annual leave from work. The letter also advised Respondent of his right to a predetermination/liberty interest hearing.

On December 6, 2010, a predetermination/liberty interest hearing was held at ECUA. Respondent participated in the hearing.

By certified letter dated December 9, 2010, Respondent was notified that his employment with Petitioner was suspended for three days without pay. The letter stated that ECUA's action was based on ECUA Human Resources Policy Manual, section F-4(33). 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 December 17, 2010, Respondent timely filed a request for hearing. The case was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner presented the testimony of three witnesses and offered 13 exhibits into evidence. Respondent testified on his own behalf and offered three 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. Respondent was hired by Petitioner as a utility service worker. Currently, Respondent works on the "manhole truck" on the 7:00 a.m. to 3:30 p.m. shift. At some point in time, Respondent was given a copy of the employee handbook.

3. The handbook is a summary of Petitioner's human resources policies. Specific human resources policies are contained in Petitioner's Human Resources Policy Manual. The manual is available to all employees; both documents provide for the discipline of employees. The Human Resources Policy Manual states as follows:

SECTION F-4 DISCIPLINARY OFFENSES

\* \* \*

(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 . . . .

4. ECUA has a policy that annual leave must be requested in advance and coordinated with an employee's supervisor. The reason for the requirement is to ensure that a sufficient number of employees are present to perform necessary and ongoing maintenance repairs on ECUA's sewage and water system. Such coordination is especially important during holiday time periods, such as Thanksgiving and Christmas. In particular, the utility wastewater service department requires employees seeking annual leave to put their request in the computer, fill out a leave request slip, discuss the request with the supervisor, and post the request on the board in the supervisor's office.

5. These requirements were verbally given to all wastewater utility employees by their supervisor Doug Gibson beginning about five years ago. Since that time, employees, including Respondent, were periodically reminded of these requirements during the time periods when many employees seek time off, such as major holidays and hunting season.

6. Indeed, the evidence was clear that Respondent knew about these requirements since he had been personally counseled and/or reprimanded for not following them on April 26, 2010; May 12, 2010; June 25, 2010, and July 21, 2010.

7. Around mid-November 2010, Mr. Gibson met with his employees, including Respondent, to remind them of the leave requirements and the necessity to schedule such leave in advance since many employees wanted the same time off during the upcoming holidays and hunting season. His goal was to develop a list of employees who wanted time off so that required utility work during that time period could be maintained.

8. On November 17, 2010, Mr. Gibson again met with his employees, including Respondent, to advise them that this was the last chance to schedule annual leave during the holiday period and that no further leave would be granted unless there was an "extreme" emergency. At that time, Respondent did not request any time off.

9. On November 22, 2010, Respondent worked his regular shift. He did not mention that he wanted to take November 23 off and did not fill out a leave request slip or follow any of the other procedures for such leave. In particular, he did not discuss such leave with his supervisor.

10. On November 23, 2010, Respondent arrived at work before his supervisor and filled out a leave slip requesting

annual leave for that day. Respondent intentionally dated the slip for November 22, 2010, to make it appear that he had filled it out the day before. He placed the slip in his supervisor's box and left work. When his supervisor arrived at work, he found the leave slip and denied Respondent's request for annual leave.

11. On November 24, 2010, Respondent was questioned by his supervisor about the request. Respondent told his supervisor that he had a doctor's appointment on November 23, 2010. Respondent did not indicate that the appointment was unanticipated or for an emergency. Respondent did indicate that he should have requested a different type of leave for the doctor's appointment. Additionally, later in this disciplinary process, Respondent indicated the doctor's appointment was not his, but was for his girlfriend who had some sort of dental problem on November 23. There was no evidence that the girlfriend's dental problem was an emergency or one that she could not handle herself. In fact, the only evidence regarding a medical appointment attended by Respondent reflected an appointment after 3:00 p.m. on November 23rd, close to the end of Respondent's regular shift. Such evidence indicates that Respondent did not have a medical emergency on November 23rd. Additionally, Respondent's basis for missing work is not credible, given Respondent's changing story about his absence

from work on November 23 and/or whether such absence was due to an emergency medical issue for either himself or his girlfriend.

12. On November 30, 2010, Respondent again did not follow ECUA policy for requesting leave. On that day, Respondent left a leave slip in his supervisor's box asking for one hour of leave at the end of his shift. He did not discuss the leave with his supervisor. Respondent returned to the ECUA office about an hour before the end of his shift because he thought it was not a problem to ask for time off without following procedure. Respondent's supervisor advised him his request was denied and instructed Respondent to "get back on the truck" and finish his shift.

#### CONCLUSIONS OF LAW

13. 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).

14. As set forth above, ECUA relied on section F-4(33), contained in the ECUA Human Resources Policy Manual. Section F-4(33) imposes discipline on an employee for violations of ECUA policies or directives.

15. Additionally, chapter F of the ECUA Human Resources Policy Manual 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. . . .

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

17. In this case, the evidence demonstrated that Respondent violated section F-4(33), on multiple occasions, including November 23, 2010.

RECOMMENDATION

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

Recommended that the Executive Director of the Emerald Coast Utilities Authority find that Respondent violated its human resources policy F-4(33), and impose such discipline on Respondent as determined appropriate under the provisions of the Human Resources Policy Manual.

DONE AND ENTERED this 22nd day of April, 2011, in Tallahassee, Leon County, Florida.

*Diane Cleavinger*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of April, 2011.

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.