

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

Case No. 14-1461

vs.

CHRISTOPHER L. PRYOR,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was conducted in this case on August 27, 2014, in Pensacola, Florida, before James H. Peterson, III, 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: Christopher L. Pryor, pro se
1980 Kathleen Avenue
Cantonment, Florida 32533

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

By certified letter dated March 17, 2014 (Termination Letter), Petitioner, Emerald Coast Utilities Authority (ECUA or Petitioner), notified Respondent, Christopher L. Pryor (Respondent), that his employment with ECUA was terminated effective March 13, 2014. The Termination Letter stated that ECUA's action was based on Respondent's violations of ECUA Human Resources Policy Manual, sections B-2 B [unauthorized absence from work], B-13 A(4) [conduct unbecoming an ECUA employee], B-13 A(16) & (21) [insubordination and neglect of duty], B-13 A(17) [leaving work station without authorization], B-13 A(22) [negligent operation of ECUA vehicles or equipment], B-13 A(33) [violation of ECUA rules, guidelines, and directives], and B-16 G(2) [failure to submit to a post-accident drug test]. The Termination Letter further advised Respondent that he had 10 days from his receipt of the letter within which to submit a written request for a formal evidentiary hearing on ECUA's employment decision before an administrative law judge with the Division of Administrative Hearings (DOAH).

By email to ECUA dated March 24, 2014, Respondent timely submitted a request for an evidentiary hearing. The case was forwarded to DOAH on March 28, 2014. The hearing was initially scheduled for June 24, 2014, but was twice continued and eventually rescheduled to be heard on August 27, 2014.

At the beginning of the hearing, Petitioner's Request that Administrative Law Judge Take Official Notice of Chapters 2001-324 and 2004-401, Laws of Florida, was granted. During the hearing, ECUA presented the testimony of nine witnesses and offered 25 exhibits received into evidence as Exhibits P-1 through P-25.^{1/} Respondent testified on his own behalf, presented the testimony of some of the witnesses called by ECUA through direct examination, and offered 10 exhibits received into evidence as Exhibits R-1 through R-10.

FINDINGS OF FACT

1. Escambia County Utilities Authority was declared an independent special district with transferred assets and enumerated powers by chapter 2001-324, Laws of Florida. Escambia County Utilities Authority's name was changed to ECUA by chapter 2004-398. By law, ECUA provides utility services throughout Escambia County, Florida, and has the power to appoint, remove, and suspend its employees, and fix their compensation within the guidelines of Escambia County Civil Service Rules. Id.

2. Respondent was hired by Petitioner as a Utility Service Technician Trainee on February 14, 2011, and remained in that position until he received the Termination Letter.

3. On the first day of his employment, Respondent acknowledged receipt of a copy of ECUA's Employee Handbook

(Handbook) and ECUA's Policies and Procedures for ECUA's South Region, where Respondent was employed. Respondent also acknowledged receipt of revisions to those documents in effect at all pertinent times.

4. The Handbook is a summary of ECUA's human resources benefits, policies, procedures, and rules found in ECUA's Human Resource Manual (Manual), a copy of which is available for review by all employees. Both the Handbook and Manual provide for discipline of employees.

5. Policies from the Manual, in effect during all times pertinent to the facts of this case, and referenced in the Termination Letter, include the following numbered paragraphs found under subsection A entitled "Disciplinary Offenses" in Manual section B-13 entitled "Discipline Guidelines":

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 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 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.

* * *

16. Insubordination:

An employee's unwillingness or deliberate refusal to comply with a direct order, directive, or instruction of the immediate or higher-level supervisor whether in writing or orally communicated. Insubordination also includes an expressed refusal to obey a proper order, as well as, willful or direct failure to do an assigned job or to follow orders. Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by and with proper authority. Insubordination is a serious offense.

17. Leaving work station without authorization:

The unauthorized absence by an employee from their work station or duty assignment during the established work period or leaving a work station for a lunch or break period without being properly relieved where that station must be manned during such period. The seriousness of this offense depends upon the employee's assigned duties.

* * *

21. Neglect of duty:

Failure to perform an assigned duty. Carelessness or intentional action which results in the violation or nonobservance of ECUA guidelines, procedures, or rules.

22. Negligent operation of ECUA vehicles or equipment:

The negligent operation of ECUA vehicles or equipment which may or may not result in

personal injury. "Negligent operation" means a failure to operate ECUA vehicles or equipment with proper care.

* * *

33. Violation of ECUA rules or guidelines or state or Federal law:
The failure to abide by ECUA rules, guidelines, directive, 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.

6. The Termination Letter also references paragraph 2 of subsection G entitled "Disciplinary Action" under Manual section B-16 entitled "Drug & Alcohol Abuse." That paragraph states:

Any employee who refuses to submit to drug or alcohol testing provided by this directive shall be subject to disciplinary action, up to and including termination of employment, and shall forfeit eligibility for medical and indemnity benefits under the Florida Workers' Compensation Act. Invalid test results of an employee who admits tampering with or adulterating their test are treated as a refusal to be tested.

7. In addition, the Manual has the following provisions under section B-13, Discipline Guidelines:

2. Abuse of Leave:

This includes: (a) Failure to obtain approval prior to any absence from work, except in the case of an emergency where the employee must be absent prior to receiving supervisor/manager approval for the absence; (b) failure to notify or call in to the

office on the first day of an absence; (c) obtaining leave based on a misrepresentation (falsification) or taking unauthorized leave after the employee's request for leave has been denied; and (d) abandonment of position.

* * *

12. Failure to report any on the job accident, injury, or illness within 24 hours.

Manual, § B-13, ¶¶ A.2. and A.12.

8. The Manual provisions under section D-9, Leaves of Absence, include the following language under paragraph 2 of subsection I regarding employees' responsibilities for sick leave:

2. Employee Responsibilities

Employees must recognize they have an obligation to their department and employer which requires they give reasonable advance notice of their absence. It is the employee's responsibility to be certain that information concerning their inability to work because of illness be communicated to their supervisor. Exceptions to this guideline in case of extreme emergency or injury will be evaluated by the department director.

a. In order to be granted sick leave, employees must notify their supervisor of their disability prior to the next scheduled work shift. Employees must notify their supervisor each subsequent day they are absent prior to their next scheduled work shift and inform them of their condition and when they expect to return to work. Department directors may make

modifications to this reporting guideline for operational reasons.

Manual, § D-9, ¶ I.2.a.

9. Further, the Manual provides for drug testing of an employee when there is "reasonable suspicion" that an employee is using alcohol or drugs at work. "Reasonable suspicion," as defined in the Manual, includes "[i]nformation that an employee has caused, contributed to, or been involved in an accident while at work." Manual, § B-16, ¶ B.5.e.

10. ECUA's South Region has written procedures for operating crew trucks. Paragraph 5 of those procedures states: "Secure all material on the back of the truck." Respondent signed copies of those procedures in effect during the pertinent time period, acknowledging his awareness of the procedures.

11. In his employment with ECUA as a Utility Service Technician Trainee, Respondent was required to perform semi-skilled work in the installation, maintenance, and repair of water and sewer utility lines and meters under immediate supervision. In order to perform his job, Respondent was required to obtain and maintain a Class 3 Distribution System Operator license (Class 3 license) issued by the Florida Department of Environmental Protection (DEP). Respondent was issued a Class 3 license on October 10, 2012. It is valid until April 30, 2015.

12. In order to maintain a Class 3 license and other water and wastewater treatment licenses, licensees are required to obtain certain continuing education units (CEUs) every two years.

13. ECUA's division of Regional Services arranged for training for its employees to be held in Panama City on February 18, 2014, in order for them to obtain CEUs to maintain their licenses issued by DEP. The name of the course was "Focus on Change." ECUA paid for the course and its attending employees received their normal daily pay to attend. Five employees from ECUA's South Region were signed up for the course, including Respondent. Four of the employees traveled to the course together that day in an ECUA vehicle, but Respondent drove his own vehicle to the course after receiving permission to do so.

14. The course began in Panama City at 8:00 a.m., local time, on February 18, 2014, and lasted until approximately 4:00 p.m. that day. Respondent and the other four ECUA South Region employees arrived prior to the start of the course.

15. That morning, at the beginning of the course, a roster was passed around for all who attended to sign. Approximately 200 people attended the course. Respondent signed the morning roster. There were two or three scheduled breaks in the course

that morning. In addition to those breaks, Respondent took two or more bathroom breaks during the morning session.

16. The course recessed for lunch from approximately 12:00 noon until 1:00 p.m. Respondent attended lunch. While in the lunch line, Respondent bumped into a large placard with the lunch menu on it which struck Respondent on the neck or head. He grabbed his neck, but did not seem to be injured.

17. After lunch, the course resumed. Approximately 45 minutes to an hour into the afternoon session, another roster was passed around for attendees to sign. Respondent pushed ahead in line to sign the afternoon roster and was seen leaving the course a short time later, over an hour before the course ended. Although Respondent testified that he stayed until the end, all of the other testifying witnesses that attended the course said that they did not see Respondent return after leaving the course before the end.

18. At the end of the course, a CEU certificate was handed out to the attendees to sign as evidence of completion of the course, with a pink copy to return to ECUA. While the other attendees from the South Region submitted their copies to ECUA upon their return, Respondent did not have one. Respondent insisted that he never received a certificate even though he stayed until the end, but a preponderance of the evidence showed that the reason that he did not receive a certificate is because

he left the course over an hour before it was over and never returned.

19. On February 21, 2014, after investigation, the ECUA Director of Regional Services issued a Notice of Predetermination/Liberty Interest {Name Clearing} Hearing (First Predetermination Notice) to Respondent stating that investigation had disclosed that Respondent left the February 18, 2014, training class early without authorization and that the Director intended to recommend that Respondent receive a three-day suspension. The First Predetermination Notice also notified Respondent that a predetermination hearing was scheduled for February 26, 2014, during which Respondent would have the "opportunity to address [his] alleged violations."

20. Thereafter, on the morning of February 25, 2014, while Respondent was working with a co-worker who was driving an ECUA service truck, a ground-penetrating radar device (GPR) that was in the back of the truck fell out and was damaged. The GPR was about the size of a push lawn mower. The GPR lost its handle and one of its control knobs was damaged when the GPR fell out of the truck.

21. According to the driver, Respondent was the one who placed the GPR into the back of the truck and was responsible for securing it in a lockbox and closing the tailgate while the

driver was up front in the driver's seat filling out paperwork. Respondent, on the other hand, testified that both he and the driver loaded the GPR into the truck. Under either scenario, it is clear that Respondent was at least partly responsible for placing the GPR into the truck and securing the lockbox and tailgate.

22. That morning, prior to the GPR incident, Respondent complained to the driver that he had something wrong with his arm.

23. In 2013, Respondent missed approximately six months from work while on workers' compensation leave ending in December 2013, as he was recovering from an infection from a mosquito bite. At the time of the GPR incident, Respondent was still experiencing weakness in one of his hands and arm, and his weight-lifting capacity was restricted.

24. Although damaged, the GPR was still operating after falling from the truck. Therefore, Respondent and the driver performed a couple more jobs with the GPR that day. Before returning to the shop, Respondent suggested to the driver that they report that the GPR was damaged because Respondent dropped it as a result of the weakness in his hand. The driver declined to go along with the story.

25. According to Respondent, around 10:30 a.m. that morning, he told the driver that Respondent had just received

word from his doctor that there was an appointment opening that afternoon at 2:00 p.m. and that Respondent planned to attend the appointment to have his arm checked. Although, in his testimony, the driver recalled that Respondent had complained about his arm that day, he did not recall Respondent telling him about the alleged doctor's appointment.

26. That same morning, Respondent sent an email to the ECUA human resources director requesting postponement of his predetermination hearing that was scheduled to occur the next day. The email is dated February 25, 2014, at 11:17 a.m. The evidence is insufficient to determine whether the email was sent before or after the GPR fell out of the truck. It is clear, however, that the email was sent after the time Respondent allegedly told the driver that he had a doctor's appointment. There is no mention of a doctor's appointment or any medical problem in the email.

27. Just after 1:00 p.m. that day, February 25, 2014, the driver decided to return to the ECUA Warrington Plant (the shop). In his testimony, the driver recalled that he decided to return to the shop to report the accident involving the GPR to his supervisors.

28. According to Respondent, the decision to return to the shop was so that Respondent could clock-out and attend his doctor's appointment.

29. When they got back to the shop, the driver and Respondent told their supervisors about what had happened to the GPR. When their supervisors, ECUA South Region Senior Utilities Technician Thomas Taylor, and his boss, ECUA South Region Superintendent Harry J. Shoemore, heard about the incident, they asked Respondent to fill out an accident report and to undergo a drug test.

30. Respondent responded by telling them he had no time to fill out an accident report and that he could not take a drug test because he had to leave for a doctor's appointment. That was the first time that Respondent mentioned to either of the supervisors that he had a doctor's appointment.

31. Respondent then left and clocked-out of work at approximately 1:30 that afternoon without permission.

32. The fact that Respondent did not mention his alleged doctor's appointment to his supervisors until after being asked to fill out an accident report and undergo a drug test casts doubt on Respondent's contention that he had a doctor's appointment. Considering that fact, along with the driver's lack of recall that Respondent had mentioned a doctor's appointment, and Respondent's lack of reference to a doctor's appointment in his email sent to the ECUA human resources director earlier that day, it is found that Respondent did not mention his alleged doctor's appointment to anyone at ECUA prior

to being asked to fill out an accident report and undergo a drug test. And, the evidence does not reasonably suggest that Respondent was experiencing a medical emergency that day.

33. It is further found that it is improbable that Respondent had a scheduled doctor's appointment that day and that Respondent used his alleged doctor's appointment as an excuse to ignore the directives of his supervisors to fill out an accident report and undergo a drug test.

34. Later that afternoon, Respondent faxed a doctor's hand written note naming Christopher Pryor and purportedly signed by Dr. Roy R. Reyes, M.D., stating, "to whom it may concern: Please excuse from work 2/25/14 thru 2/28/14 due to sickness. thanks, [signed] R. Reyes." Dr. Reyes was not Respondent's regular doctor who was treating him for his workers' compensation injury involving the mosquito bite.

35. Respondent never filled out an accident report regarding the GPR incident and never underwent a drug test as directed.

36. Respondent did not attend the pre-determination hearing scheduled for February 26, 2014. Thereafter, ECUA sent Respondent an amended predetermination notice dated February 28, 2014 (Second Predetermination Notice), which added additional grounds for discipline, including Respondent's early departure from work, failure to fill out an accident report, and failure

to submit to a drug test on February 25, 2014, as well as reference to Respondent's discipline history. The Second Predetermination Notice recommended Respondent's termination from employment and scheduled another predetermination hearing for Friday, March 7, 2014. Respondent requested postponement of the March 7, 2014, predetermination hearing and it was rescheduled for March 13, 2014. After Respondent failed to attend the rescheduled hearing on March 13, 2014, ECUA sent Respondent the Termination Letter dated March 17, 2014, following which this proceeding was initiated.

CONCLUSIONS OF LAW

37. The Division of Administrative Hearings (DOAH) has jurisdiction over the subject matter and parties to this proceeding. See Administrative Law Judge Services Contract effective March 3, 2006; § 120.65(6), Fla. Stat. (2014).

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

39. In this case, ECUA demonstrated by a preponderance of the evidence that Respondent left the "Focus on Change" CEU course over an hour before it was over and never returned. He then insisted that he attended the entire course, but the evidence showed otherwise. These acts constitute absence from work without authorization and a violation of a number of the ECUA Manual sections, quoted above, including section B-13 A(2),

for failing to obtain approval prior to his absence; B-13 A(4), for conduct unbecoming an ECUA employee; B-13 A(16), for insubordination; B-13 A(21), for neglect of duty; and B-13 A(33), for violation of ECUA rules, guidelines and directives.

40. Moreover, Respondent's actions in cutting line to sign the afternoon roster during the "Focus on Change" course also constituted conduct unbecoming an ECUA employee in violation of Manual section B-13 A(4).

41. Respondent's role in failing to properly secure the GPR in the back of the truck on February 25, 2014, resulting in an accident, constituted a violation of paragraph 5 of ECUA's South Region's written procedures for operating crew trucks which requires employees to "[s]ecure all material on the back of the truck." It also constituted a violation of Manual section B-13 A(21), for neglect of duty; B-13 A(22), for negligent operation of ECUA vehicles or equipment; and B-13 A(33), for failure to follow ECUA rules.

42. Further, Respondent's early departure for an alleged doctor's appointment without prior notice or permission and his failure to fill out an accident report and submit to a drug test as directed on the afternoon of February 25, 2014, violated a number of ECUA Manual provisions. Respondent's early departure on February 25, 2014, constituted a violation of Manual section B-13 A(2), abuse of leave; B-13 A(17), leaving work station

without authorization; section D-9, failure to give proper notice of his alleged sick leave; and B-13 A(33), for violation of ECUA rules, guidelines and directives.

43. Moreover, it is concluded that Respondent's failure to fill out the accident report or submit to a post-accident drug test as directed constituted violations of Manual section B-13 A(12), failure to report an accident within 24 hours; B-13 A(16), insubordination; B-13 A(21), neglect of duty; B-16 G(2), failure to submit to a post-accident drug test; and B-13 A(33), violation of ECUA rules, guidelines and directives.

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 those provisions of its ECUA Human Resources Policy Manual and ECUA's South Region written procedures for operating crew trucks, as concluded above, and impose such discipline on Respondent as determined appropriate under the provisions of said Manual.

DONE AND ENTERED this 24th day of September, 2014, in
Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of September, 2014.

ENDNOTE

^{1/} All of ECUA's exhibits were received into evidence without limitation except for P-5, which was deemed to be hearsay and admitted for corroborative purposes only.

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.