

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES  
AUTHORITY,

Petitioner,

vs.

Case No. 14-3100

RODERICK E. BILLUPS,

Respondent.

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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 September 15, 2014, in Pensacola, Florida.

APPEARANCES

For Petitioner: John Edmund Griffin, Esquire  
Carson and Adkins  
Suite 201  
2930 Wellington Circle, North  
Tallahassee, Florida 32309

For Respondent: Joseph L. Hammons, Esquire  
The Hammons Law Firm, P.A.  
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent has failed to comply with the personnel policy established by Emerald Coast Utilities Authority.

PRELIMINARY STATEMENT

By letter dated June 3, 2014, Respondent, Roderick E. Billups (Respondent), was advised that his supervisor recommended termination of his employment with Petitioner, Emerald Coast Utilities Authority (ECUA or Petitioner), for alleged failure to comply with ECUA personnel policies. Specifically, the letter alleged that Respondent failed to comply with ECUA policy section B-13(10) and (33) when, due to an on-the-job injury, he could no longer perform the required functions of his job as required by ECUA policy; and section D-16 when, again due to his injury, he was unable to return to work for a period longer than six months. The letter also advised Respondent of his right to a predetermination/liberty interest hearing.

On June 19, 2014, a predetermination/liberty interest hearing was held at ECUA. Respondent participated in the hearing.

By certified letter dated June 23, 2014, Respondent was notified that his employment with Petitioner was terminated. The letter stated that ECUA's action was based on ECUA Human Resources Policy Manual, sections B-13(10), B-13(33) and D-16. 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 June 23, 2014, 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 two witnesses and offered 21 exhibits into evidence. Respondent did not testify but offered six exhibits into evidence. On September 22, 2014, a CD containing the transcript of the hearing was filed with the Division.

#### 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 1995, Respondent was hired by Petitioner as a utility service technician II. The position involved skilled work of average to considerable difficulty in the installation, maintenance, and repair of water and waste service lines. The job also required a significantly strong person with sufficient strength, fitness and mobility to work in a field environment involving all types of weather and temperature conditions and with slippery, uneven or rough surfaces and terrain. Additionally, the job required a person who could walk, stand, and sit for prolonged periods of time; frequently stoop, bend,

kneel, crouch, crawl, climb, reach, twist, grasp, and make repetitive hand movements; and lift, carry, push, and/or pull moderate to heavy amounts of weight, which could exceed 50 pounds. Finally, the job required a person to be able to drive commercial vehicles and maintain a commercial driver's license.

3. Around June 28, 2012, Respondent was given a copy of the ECUA's revised Human Resources Manual and Employee Handbook.

4. The manual is a publication containing all of Petitioner's human resource policies, including discipline and termination of employees. The manual states, in pertinent part, as follows:

B-13(10) - Failure to maintain job qualifications:

Failure to maintain required licenses, certifications, or other similar requirements such that an employee is no longer qualified for a position or can no longer perform assigned duties.

\* \* \*

B-13(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.

\* \* \*

D-16 A.2. - Leave

\* \* \*

Employees will return to work anytime they are medically able, up to six (6) months from the date of injury. At that point, if unable to return to work the employee must retire, resign, or be terminated. The department head, after consultation with the Human Resources Director, may extend this time based on evaluation of the employee's ability to return to work.

5. On December 18, 2013, while repairing an ECUA line, something snapped in Respondent's right arm which caused him severe pain in that arm to the extent he could not lift it or perform his job duties. That same day, Respondent reported the injury to ECUA and saw Dr. Bruce Albrecht, M.D., at Sacred Heart Medical Group. Dr. Albrecht initially diagnosed Respondent with a strain of the right shoulder and released Respondent to return to work with light duty conditions, including no lifting, pushing or pulling over 15 pounds with both arms (5 pounds with the right arm), no stooping, kneeling, climbing or crawling, and no commercial driving. Such conditions prevented Respondent from performing the essential requirements of his job.

6. As a result of the injury, Respondent took authorized leave beginning December 19, 2013, and continued to be followed by medical staff over the next several months. He also received physical therapy for his shoulder and arm.

7. Around January 23, 2014, Dr. Albrecht recommended that Respondent be seen by an orthopedic specialist. By that time,

Respondent's diagnosis included rupture of the right biceps tendon.

8. Ultimately, after evaluation by an orthopedic specialist and some unspecified delay due to the approval process used by ECUA's workers' compensation coordinator, Respondent was referred to an orthopedic surgeon and scheduled for surgery on March 14, 2014. The surgery was to reconstruct Mr. Billups's shoulder by performing a biceps tenodesis and revision acromioplasty, as well as debriding a torn labrum (cartilage rim of the shoulder socket).

9. Biceps tenodesis is a procedure that removes part of the biceps tendon and cuts the normal attachment of the biceps tendon on the labrum of the shoulder socket. After detachment, the biceps tendon is reattached to the arm bone, thereby removing the pressure of the biceps attachment off of the shoulder socket labrum. Revision acromioplasty is a surgical reshaping of the acromion, the bone which forms the point of the shoulder blade that covers the shoulder joint.

10. As indicated, Respondent's surgery was scheduled for March 14, 2014. However, that surgery was delayed due to cardiovascular concerns over Respondent's ability to undergo surgery. Ultimately, Respondent had surgery on his right shoulder and bicep on April 16, 2014.

11. After the surgery, Respondent's physician, Dr. Kirby Turnage, M.D., prescribed physical therapy to build up strength and increase range of motion in his shoulder and arm. Additionally, Respondent was not released by his doctor to return to work even at a sedentary level. By May 27, 2014, slightly more than five months after Respondent went on leave, he was released to work but only at a sedentary or light duty level. Respondent's physician indicated that it would be at least six (6) weeks before Respondent could possibly return to work without restrictions. At the time, ECUA did not have any light duty jobs that Respondent could perform and it was unlikely that such jobs would be available in the future given the nature of the work performed by ECUA and the department in which Respondent was employed.

12. During Respondent's leave, the Pensacola area experienced a 100-year rain event which placed significant pressure on ECUA's wastewater system creating a backlog of repairs and wastewater compliance requirements placed on ECUA by the Florida Department of Environmental Protection. At some point, temporary employees were assigned to help in the work Respondent's section had to perform. However, the temporary employees were insufficient to meet the work loads of that section and a fully trained utility service technician was needed in the department.

13. Due to the utility service department's needs, Respondent's supervisor determined that Respondent's position needed to be filled by a person who could physically perform all of the duties the position required. On June 3, 2014, Respondent's supervisor advised Respondent that, if he could not return to work by June 18, 2014, six months from the date of his injury, he would be terminated under sections B-13(10), B-13(33) and D-16 of ECUA's employee handbook. The letter also scheduled a predetermination hearing for June 19, 2014, to provide Respondent the opportunity to demonstrate that he was released for work or demonstrate circumstances for extending Respondent's inactive work status beyond the six months permitted in the employee handbook.

14. The predetermination hearing was held on June 19, with Respondent in attendance. Up to that date, ECUA had not received a medical clearance for Respondent to return to full duty. Respondent indicated that his physical therapy was proceeding well and he felt that he would be cleared to return to work very soon. In light of Respondent's representation, he was given until June 20, 2014, to provide medical clearance for work to ECUA.

15. On June 20, Respondent provided a letter from Sacred Heart Occupational Health Strategies, his physical therapy provider. The letter stated that Respondent's shoulder was



improving and that the physical therapist anticipated Respondent could possibly return to work without restrictions following completion of such therapy. However, the physical therapist further stated that a medical release to full duty from Dr. Turnage was required before such return to work. However, his next appointment with Dr. Turnage was not scheduled until July 8, 2014, more than seven months after the date of Respondent's injury. Further, the evidence did not demonstrate that Respondent was medically cleared by Dr. Turnage to perform full work duties without restriction at the July appointment. Notably, the evidence showed that Respondent was not discharged from physical therapy until August 13, 2014, almost eight months after his injury.

16. These facts demonstrate that Respondent could not perform the essential requirements of his job after six months of inactive status. Additionally, the evidence did not demonstrate a reasonable basis to extend Respondent's inactive work status beyond the six months already provided. Such inability to perform his work duties caused Respondent not to comply with sections B-13(10), B-13(33) and D-16.

#### CONCLUSIONS OF LAW

17. 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).

18. As set forth above, ECUA relied on section B-13(10), contained in the ECUA Human Resources Policy Manual. Section B-13(10) requires that an employee maintain his ability to perform the essential functions of his job. Failure to maintain such ability violates section B-13(33) of the ECUA manual. Further, failing to maintain the ability to perform the essential requirements of such job for more than six months causes an employee to not comply with section D-16 of the manual.

19. ECUA has the burden of proof by a preponderance of the evidence to demonstrate the facts underlying the action it outlined in its letter of termination. See paragraph 7(j), contract between ECUA and DOAH.

20. In this case, the evidence demonstrated that Respondent failed to comply with section B-13(10), B-13(33) and D-16.

#### RECOMMENDATION

Based on 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 could not return to work within six months from the date of his injury, did not

comply with ECUA's human resources policy B-13(10), B-13(33) and D-16, and impose such action as determined appropriate under the provisions of the Human Resources Manual and Employee Handbook.

DONE AND ENTERED this 27th day of October, 2014, in Tallahassee, Leon County, Florida.

*Diane Cleavinger*

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DIANE CLEAVINGER  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of October, 2014.

COPIES FURNISHED:

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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.