

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

vs.

Case No. 17-4231

SEAN A. WARD,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, this case was heard on September 21, 2017, in Pensacola, Florida, before Garnett W. Chisenhall, a designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Diane Marie Longoria, Esquire
Quintairos, Prieto, Wood & Boyer, P.A.
114 East Gregory Street
Pensacola, Florida 32502

For Respondent: James Sylvian Owens, Esquire
5240 Willing Street
Milton, Florida 32570

STATEMENT OF THE ISSUES

Whether Respondent committed the violations of Emerald Coast Utility Authority's Human Resources Manual as alleged in the agency action letter dated July 17, 2017.

PRELIMINARY STATEMENT

Via a letter dated July 17, 2017, Emerald Coast Utilities Authority ("ECUA") notified Sean Ward of its intent to terminate his employment with ECUA. ECUA's action was motivated by a determination that Mr. Ward had violated the following provisions of ECUA's Human Resources Manual: Section B-13 A (4) (conduct unbecoming an ECUA employee), Section B-13 A (13) (falsification of records), Section B-13 A (18) (loafing), Section B-13 A (26) (substandard quality or quantity of work), and Section B-13 A (33) (violation of ECUA rules or guidelines or state or federal law).

Mr. Ward timely filed a request for a hearing to challenge ECUA's intended action. In accordance with the terms of the "Administrative Law Judge Services Contract" ("the Contract"), entered into between ECUA and DOAH, ECUA forwarded the hearing request to DOAH.

On August 16, 2017, the undersigned issued a Notice of Hearing scheduling the final hearing to occur on September 20, 2017, in Pensacola, Florida, on the campus of ECUA.

On August 18, 2017, counsel for ECUA filed an "Agreed Motion for Continuance" notifying the undersigned that a conflict arose with regard to the room in which the final hearing was to be held. Accordingly, the undersigned issued an

Amended Notice of Hearing scheduling the final hearing to occur on September 21, 2017.

The final hearing took place as scheduled on September 21, 2017. Neither party called any witnesses or attempted to move any exhibits into evidence.

FINDINGS OF FACT

1. At the outset of the hearing, Mr. Ward's attorney announced that Mr. Ward no longer wished to challenge ECUA's intent to terminate his employment. In other words, Mr. Ward withdrew his request for a hearing.

2. Furthermore, Mr. Ward made a statement consistent with his attorney's announcement.

3. The undersigned finds that Mr. Ward's decision to withdraw his hearing request was voluntarily made and uncoerced.

CONCLUSIONS OF LAW

4. DOAH has jurisdiction over the parties and the subject matter of these proceedings pursuant to sections 120.65(6) and 120.57(1), Florida Statutes (2017).^{1/}

5. As the party asserting the affirmative of a factual issue, ECUA has the burden of proof in this case to demonstrate by a preponderance of the evidence that Mr. Ward engaged in the violations alleged in the letter dated July 17, 2017. See Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977).^{2/}

6. Because Mr. Ward has withdrawn his hearing request, ECUA no longer has to satisfy any burden of proof in order to follow through with its intent to terminate Mr. Ward's employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Executive Director of Emerald Coast Utilities Authority find that Mr. Ward violated Section B-13 A (4) (conduct unbecoming an ECUA employee), Section B-13 A (13) (falsification of records), Section B-13 A (18) (loafing), Section B-13 A (26) (substandard quality or quantity of work), and Section B-13 A (33) (violation of ECUA rules or guidelines or state or federal law) of the ECUA's Human Resources Manual.^{3/}

DONE AND ENTERED this 28th day of September, 2017, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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(850) 488-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of September, 2017.

ENDNOTES

^{1/} Section 120.65(6) provides that DOAH "is authorized to provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this section."

^{2/} The Contract specifies that "ECUA has the burden of proof by a preponderance of the evidence."

^{3/} The Contract further specifies that "the ALJ will determine whether the employee has committed the violation as charged, but the ALJ will not comment on, or recommend, any disciplinary penalty."

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.