

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

vs.

Case No. 18-2717

ROBERT D. BOYD, II,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Garnett W. Chisenhall in Pensacola, Florida, on August 17, 2018.

APPEARANCES

For Petitioner: Diane Marie Longoria, Esquire
Quintairos, Prieto, Wood & Boyer, P.A.
114 East Gregory Street, 2nd Floor
Pensacola, Florida 32502

For Respondent: Robert D. Boyd, II, pro se
Post Office Box 18025
Pensacola, Florida 32523

STATEMENT OF THE ISSUE

Whether Respondent knowingly submitted an inaccurate timesheet for April 4, 2018, as charged in the agency action letter dated May 11, 2018.

PRELIMINARY STATEMENT

Via a letter dated May 7, 2018, Emerald Coast Utilities Authority ("ECUA") notified Robert D. Boyd, II, of allegations that he violated multiple provisions of ECUA's Human Resources Manual ("the Manual"):

ECUA initiated an investigation on April 17, 2018, regarding another matter. Information from this other investigation prompted a review of all timesheet records for employees who were involved in work performed on April 4, 2018, at the ECUA Bayou Marcus Water Reclamation Facility (BMWRF).

On April 4, 2018, you and three other coworkers were assigned to report to the BMWRF to work on the drum thickener sludge tank pursuant to work order #133581. On the time sheet you signed, you reported working eight regular hours and three overtime hours on April 4, 2018.

A review of the security video at [the Central Wastewater Reclamation Facility] shows you and another coworker returned to [the Central Wastewater Reclamation Facility] at 5:07 p.m. to end your day on April 4, 2018, for you to have worked three hours of overtime, you would have remained working until 6:30 p.m. on April 4, 2018. You did not.

After a predetermination hearing,^{1/} ECUA notified Mr. Boyd via a letter dated May 11, 2018, of its intention to terminate his employment:

In summary, and as detailed in your Notice dated May 7, 2018, the findings from the investigation confirm you knowingly submitted an inaccurate timesheet for

April 7, 2018, claiming you worked three hours of overtime, when you did not. The video recording from the security system captured your return to [the Central Wastewater Reclamation Facility] at 5:07 p.m. on April 4, 2018. Although you offered some evidence regarding your conduct at the beginning of the day, you remained unable to offer any credible explanation as to how you calculated working three hours of overtime on April 4, 2018. Instead, it is undisputed that you did not work 11 hours that day, as you represented in your signed timesheet.

Mr. Boyd timely requested a hearing to challenge ECUA's decision. In accordance with the terms of the "Administrative Law Judge Services Contract" ("the contract"), entered into between ECUA and the Division of Administrative Hearings ("DOAH"), ECUA forwarded the request for hearing to DOAH, which scheduled and conducted the hearing.

At the final hearing, which took place as scheduled on August 17, 2018, ECUA called two witnesses: Cynthia Sutherland, ECUA's Director of Human Resources and Administrative Services; and Gerry L. Piscopo, ECUA's Deputy Executive Director for Maintenance and Construction.

ECUA's Exhibits 1 through 5, 6a through 6c, and 7 through 13 were admitted into evidence.

Mr. Boyd testified on his own behalf and offered two exhibits that were accepted into evidence as Respondent's Exhibits 1 and 2.

ECUA made a digital audio recording of the proceedings and provided it to the undersigned immediately after the conclusion of the final hearing.^{2/}

FINDINGS OF FACT

1. ECUA is a public utility that provides water, wastewater, and sanitation services to customers in Escambia and Santa Rosa counties.

2. ECUA's mission statement specifies that the Board and employees of ECUA "are committed to providing the highest quality service" and that "ECUA will always provide cost-effective services."

3. The Manual sets forth the terms and conditions of employment with ECUA.

4. The Manual specifies that:

Overtime work should be for emergency or unforeseen situations and to solve problems which are not a part of the daily activities. Supervisors are expected to use overtime work sparingly and employees should respond when called upon. Overtime and compensatory time authorization will be established by the supervisor with the approval of the department director.

5. During the relevant time period, ECUA employed Mr. Boyd as an Industrial Plant Mechanic I.

6. On June 26, 2012, Mr. Boyd signed a document acknowledging that a copy of the Manual was available to him in

his supervisor's office, via ECUA's intranet, in ECUA's Human Resources Department, and via compact disc upon request.

7. Mr. Boyd also acknowledged on June 26, 2012, that it was his "responsibility to read the entire Manual/Handbook and to comply with the plans, guidelines, directives, and procedures contained in the Manual/Handbook and any revisions to it."

8. As an Industrial Plant Mechanic I, Mr. Boyd works under the supervision of a senior mechanic. He normally begins his workday by reporting to the Central Wastewater Reclamation Facility ("CWRF") at 7:00 a.m. and is dispatched to assigned worksites. He uses an ECUA truck to travel to and from those sites.

9. Mr. Boyd has a 30-minute lunch break for which he is not compensated. He is also allowed one 15-minute break in the morning and another in the afternoon.

10. Mr. Boyd's typical workday ends at 3:30 p.m. With a 30-minute lunch break, that amounts to an eight-hour workday.

11. In April of 2018, ECUA needed to replace all of the diffusers at its Bayou Marcus Water Reclamation Facility ("the BMWRF").

12. Mack H. Weeks, ECUA's Plant Maintenance Manager at the time, had supervisory authority over Mr. Boyd.

13. Shortly before April 4, 2018, Mr. Boyd mentioned to Mr. Weeks that he wanted to stop at the BMWRF on April 4, 2018,

prior to reporting to the CWRP, in order to see if the water level had decreased to a point where the diffusers in question were visible. According to Mr. Boyd, that information would enable him and the three other members of his four-person work crew to ascertain what parts they needed to complete the repair.

14. However, there was no benefit for Mr. Boyd to stop at the BMWRF prior to reporting to the CWRP.^{3/}

15. At 6:32 a.m. on April 4, 2018, ECUA's security system recorded Mr. Boyd passing through a gate at the BMWRF.

16. Mr. Boyd took a picture of a portion of the BMWRF a few minutes later.

17. The security system at the CWRP recorded Mr. Boyd entering the facility at 7:13 a.m. on April 4, 2018.

18. Mr. Boyd traveled back to the BMWRF with Kevin Spinks, an ECUA co-worker, in an ECUA work truck that had been assigned to Mr. Spinks.

19. Carl Ayliffe and another ECUA employee were the remainder of the four-person work crew assigned to that job, and they traveled to the BMWRF in a separate ECUA truck.

20. The tank at the BMWRF was on-line by 3:00 p.m. on April 4, 2018.

21. Every ECUA truck has a global positioning system that enables ECUA to know precisely where each truck is at virtually any given point in time.

22. The GPS on Mr. Spinks' truck was not functioning because the antenna had been disconnected.

23. However, the GPS on Mr. Ayliffe's truck was functioning and recorded that he was done working at 4:29 p.m., on April 4, 2018.^{4/} Rather than returning his truck to the CWRF, Mr. Ayliffe drove the truck to his home because he was on call that night.

24. A camera at the back gate of the CWRF recorded Mr. Spinks returning his truck at 5:07 p.m. on April 4, 2018.

25. ECUA's security system recorded Mr. Boyd using his employee badge to enter the CWRF through the southeast shop door at 5:09 p.m. on April 4, 2018.

26. In consideration of a need to gather any belongings and/or complete paperwork, Mr. Boyd's work on April 4, 2018, should have ended at approximately 5:30 p.m. on April 4, 2018.

27. On April 16, 2018, Mr. Boyd, Mr. Spinks, and Mr. Ayliffe submitted timesheets indicating that they each worked eight regular hours and three overtime hours on April 4, 2018.

Ultimate Findings

28. The greater weight of the evidence demonstrates that there was no benefit to Mr. Boyd stopping at the BMWRF on April 4, 2018, prior to reporting for work at the CWRF. The

greater weight of the evidence also demonstrates that his stop at the BMWRF was unauthorized by anyone who supervised Mr. Boyd.

29. As a result, Mr. Boyd's stop at the BMWRF on April 4, 2018, was an attempt to accumulate unnecessary overtime pay.

30. The undisputed evidence demonstrates that Mr. Boyd began his workday at 7:13 a.m. on April 4, 2018, and his workday should have ended at approximately 5:30 p.m. after he reported back to the CWRP at 5:09 p.m. Given that Mr. Boyd was entitled to a 30-minute, unpaid lunch break, the undisputed evidence indicates that he worked 9.75 hours on April 4, 2018, rather than the 11 hours indicated on his timesheet.

CONCLUSIONS OF LAW

31. 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 (2018).

32. As the party asserting the affirmative of a factual issue, ECUA has the burden of demonstrating by a preponderance of the evidence that Mr. Boyd engaged in the violations cited in the May 11, 2018, letter. Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977).^{5/} "Proof by a 'preponderance' of the evidence means proof which leads the factfinder to find that the existence of a contested fact is more probable than its nonexistence." Smith v. State, 753 So. 2d 703, 704 (Fla. 5th DCA 2000).

33. ECUA alleges that Mr. Boyd violated the following provisions within the Manual: Section B-3, attendance records; Section B-13 A (4), conduct unbecoming an ECUA employee; Section B-13 A (13), falsification of records; and Section B-13 A (33), violation of ECUA rules or guidelines or state or federal law.

34. Section B-3 of the Manual states in pertinent part that "[e]ach employee is required to verify his or her hours worked for each biweekly pay period, and notify his or her supervisor of any discrepancies."

35. Section B-13 A (4) prohibits conduct unbecoming an ECUA employee and refers to "[a]ny 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."

36. Section B-13 A (13) prohibits the falsification of records and refers to "[t]he knowing, willful, or deliberate misrepresentation or omission of any facts with the intent to misrepresent, defraud or mislead." The section defines the term "records" to include "employee attendance and leave records."

37. Section B-13 A (33) prohibits the "violation of ECUA rules or guidelines or state or federal law" and refers to

"[t]he failure to abide by ECUA rules, guidelines, directive, or state or federal statutes." The section states such violations include, but are not limited to, "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."

38. The preponderance of the evidence demonstrates that Mr. Boyd violated all of the aforementioned provisions.^{6/}

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 Robert D. Boyd, II, violated Section B-3, attendance records; Section B-13 A (4), conduct unbecoming an ECUA employee; Section B-13 A (13), falsification of records; and Section B-13 A (33), violation of ECUA rules or guidelines or state or federal law.

DONE AND ENTERED this 17th day of September, 2018, in
Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of September, 2018.

ENDNOTES

^{1/} Non-exempt and non-key employees of ECUA alleged to have violated a provision within the Manual are entitled to notice of the allegations and a pre-determination hearing conducted by ECUA. If an employee is dissatisfied with the outcome of the predetermination hearing, the employee is entitled to a hearing before the Division of Administrative Hearings ("DOAH") after making a timely request. The parameters of the hearing are governed by the contract entered into between ECUA and DOAH.

^{2/} The undersigned disregarded any information regarding past violations of the Manual by Mr. Boyd in ascertaining whether he committed the violation alleged in the May 11, 2018, letter.

^{3/} Gerry L. Piscopo, the ECUA's Deputy Executive Director for Maintenance and Construction, testified that Mr. Boyd's stop at the BMWRF prior to reporting to the CWRP on April 4, 2018, served no useful purpose. Mr. Piscopo's testimony was supplemented by an affidavit from Mr. Weeks. While the affidavit is hearsay, the contract provides that "[h]earsay evidence, whether received over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless within a hearsay exception in Chapter 90, Florida Statutes."

Mr. Boyd testified that another supervisor, Joe Peaden, gave him authorization to begin his workday early on April 4, 2018. However, Mr. Piscopo contradicted Mr. Boyd by testifying that Mr. Peaden was not working that week. Mr. Piscopo's testimony was more credible than Mr. Boyd's.

^{4/} The GPS reports are not hearsay. See Gayle v. State, 216 So. 3d 656, 659-60 (Fla. 4th DCA 2017) (explaining that a machine is not a "declarant" for hearsay purposes).

^{5/} The contract specifies that "ECUA has the burden of proof by a preponderance of the evidence."

^{6/} The contract between ECUA and DOAH specifies that the ALJ "will determine whether the employee has committed the violation as charged, but the ALJ will not comment on, or recommend, an disciplinary penalty."

COPIES FURNISHED:

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NOTICE OF RIGHTS 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.