

EMERALD COAST UTILITIES AUTHORITY

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

v.

TADAREL S. PAGE,

Respondent.

DOAH Case No.: 18-3309

2018 OCT 23 PM 2: 11
DIVISION OF
ADMINISTRATIVE HEARINGS

FILED

FINAL ORDER

Emerald Coast Utilities Authority (hereinafter "ECUA"), terminated Tadarel S. Page (hereinafter either "Page" or "Respondent"), from his employment with ECUA via a letter dated June 21, 2018. Page timely requested a hearing regarding that termination, and the case was forwarded to the Florida Division of Administrative Hearings. A formal hearing was held on August 21, 2018 in Pensacola, Florida, before Garnett W. Chisenhall, Administrative Law Judge with the Florida Division of Administrative Hearings.

On September 18, 2018 Administrative Law Judge Chisenhall submitted a Recommended Order, which included Findings of Fact and Conclusions of Law. As one of his ultimate Findings of Fact, Judge Chisenhall concluded that "ECUA has proven by a preponderance of the evidence that Mr. Page wasted an excessive amount of time on May 10, 2018." Judge Chisenhall also concluded that "[t]he preponderance of the evidence demonstrates that Mr. Page failed to verify the accuracy of his time entry for May 24, 2018." Accordingly, the Administrative Law Judge recommended that Page be found to have violated Section B-3 (attendance records), Section B-13A(4) (conduct unbecoming an ECUA employee), Section B-13A(13) (falsification of records), Section B-

13A(18) (loafing), Section B-13A(21) (neglect of duty), Section B-13A(26) (substandard quality and/or quantity of work), and Section B-13A(33) (violation of ECUA rules or guidelines or state or federal law) of the ECUA Human Resources Manual and Employee Handbook.

The parties were subsequently afforded the opportunity to present written argument prior to the rendering of this Final Order. The time-frame within which to present submissions has expired, and none have been received.

BASED ON THE FOREGOING, it is ORDERED:

1. That the September 18, 2018 Recommended Order submitted to the Emerald Coast Utilities Authority by the Administrative Law Judge be, and is hereby, adopted and made a part of and incorporated in this Order, with the following corrections:

A. Paragraph Number 1.

The first numbered paragraph under Findings of Fact is hereby edited as follows:

1. Chapter 2001-324, Laws of Florida, declared the Escambia County Utilities Authority an independent special district with transferred assets and enumerated powers. Chapter 2004-398, Laws of Florida, changed the Escambia County Utilities Authority's name to ECUA. 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.

See, e.g., Chapter 2004-422, Laws of Florida (repealing Civil Service).

B. Paragraph Number 16.

The sixteenth numbered paragraph under Findings of Fact is hereby rejected, as it is not supported by competent and substantial evidence based upon a review of the entire record. In fact, paragraph 16 is entirely

based on paragraphs 14 and 15, in which the Administrative Law Judge solely considered whether Mr. Page's stopping at his residence on May 11 for seven minutes constituted a violation of ECUA policy and concluded that it did not (disregarding Page's travel time to and from his residence, as well as his use of ECUA's fuel and equipment to engage in this personal endeavor). Those factual findings, however, failed to consider the language in the June 21, 2018 letter deemed by the Administrative Law Judge to be "the functional equivalent of a charging document," which asserted that Mr. Page was "loafing and performed a substandard quantity of work" on May 11, 2018 by engaging in "an excessive amount of wasted time when driving aimlessly to fill [his] day without a work purpose" on May 11, 2018.

These charges were supported by the record in Exhibits 12 and 13 as well as the testimony of Mr. Reid and Mr. Willette. Specifically, on that portion of the first audio recording from 1:28:15 to 1:52:49 (approximately) Mr. Reid highlighted the great discrepancies between the work orders Page submitted for May 11 (Exhibit 12) and the GPS data for the vehicle he was driving that day. (Exhibit 13). In particular, Page claimed to have worked two hours on Hill Drive filling a hole and laying sod, whereas Exhibit 13 showed Page spent only 8 minutes on Hill Drive.¹ The remainder of the time Page attributed to working on Hill Drive was actually spent merely driving around. Mr. Reid's testimony on these

¹Primarily, the testimony on this subject is on the hearing's first audio recording from 1:45:13 to 1:49:45 (approximately).

points stood un rebutted. Mr. Reid further testified (and it was un rebutted) that Mr. Page was expected to make good use of his workday (tape 2 at 09:30 to 09:50), and a comparison of Exhibits 12 and 13 shows that there were wide gaps in productive time usage on May 11, 2018. Moreover, Mr. Willette's un rebutted testimony was that Page performed no meaningful work on May 11, 2018. (Tape 2 at 24:30 to 24:38).

Unfortunately, the Administrative Law Judge failed to address these Exhibits and this testimony insofar as they pertained to the allegation that Page had "engaged in an excessive amount of wasted time when driving aimlessly to fill [his] day without a work purpose on May ... 11, 2018." Because the Administrative Law Judge failed to address that allegation and because of the un rebutted facts on this point, I hereby affirmatively find that ECUA has proven by a preponderance of the evidence that Mr. Page wasted an excessive amount of time on May 11, 2018.

C. Adoption of Recommended Order, as revised.

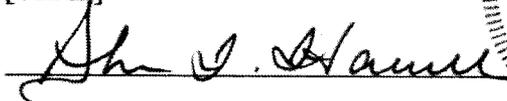
Otherwise, the Recommended Order is adopted in its entirety, as revised by subparagraphs 1A and B, above.

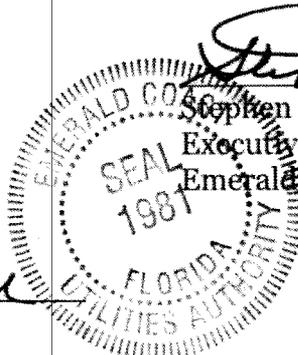
2. Consistent with the Recommended Order, I find that Respondent violated Section B-3 (attendance records), Section B-13A(4) (conduct unbecoming an ECUA employee), Section B-13A(13) (falsification of records), Section B-13A(18) (loafing), Section B-13A(21) (neglect of duty), Section B-13A(26) (substandard quality and/or quantity of work), and Section B-13A(33) (violation of ECUA rules or guidelines or state or federal law) of the ECUA Human Resources Manual and Employee Handbook.

3. I further find that the termination of Respondent is appropriate and warranted. Accordingly, the termination of the employment of Tadarel S. Page is hereby upheld and Affirmed, and he shall go forth without day.

DONE AND ENTERED this 8th day of October, 2018.

[SEAL]




Stephen E. Sorrell, P.E., M.P.A.
Executive Director
Emerald Coast Utilities Authority

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF ECUA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE CIRCUIT COURT OF ESCAMBIA COUNTY. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED:

Tadarel S. Page
2419 North Tarragona Street
Pensacola Beach, Florida 32503

Cynthia Sutherland, Director
Emerald Coast Utilities Authority
9255 Sturdevant Street
Pensacola, Florida 32514

Diane Marie Longoria, Esq.
Quintairos, Prieto, Wood & Boyer, P.A.
114 East Gregory Street
Pensacola, Florida 32502