

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

vs.

Case No. 18-3309

TADAREL S. PAGE,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Garnett W. Chisenhall, of the Division of Administrative Hearings, in Pensacola, Florida, on August 21, 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: Tadarel S. Page, pro se
2419 North Tarragona Street
Pensacola, Florida 32503-3761

STATEMENT OF THE ISSUE

Whether Respondent committed the violations alleged in the agency action letter dated June 21, 2018.

PRELIMINARY STATEMENT

Via a letter dated June 13, 2018, Emerald Coast Utilities Authority ("ECUA") notified Tadarel S. Page of allegations that he violated multiple provisions of ECUA's Human Resources Manual ("the Manual") on May 10, 11, and 24, 2018. ECUA also notified Mr. Page that a predetermination hearing was scheduled for June 18, 2018, and that Mr. Page would have an opportunity at the predetermination hearing to contest the allegations.

After the predetermination hearing,^{1/} ECUA issued a letter on June 21, 2018, stating its intention to terminate Mr. Page's employment:

In summary, the findings from the investigation have confirmed you were loafing and performed a substandard quantity of work on May 10, 2018, and May 11, 2018. The G.P.S. report for your assigned vehicles (#1624 and #1622) clearly showed you engaged in an excessive amount of wasted time when driving aimlessly to fill your day without a work purpose on May 10 and 11, 2018. The G.P.S. report further shows you drove to your residence on May 11, and there was no business purpose for that excursion. In fact, such behavior would not appear to have been atypical for you, as records show you drove to your home address thirty times in thirty days during the period of May 9, 2018, through June 9, 2018. Your testimony during the hearing regarding your lack of productivity on May 10-11, 2018, was entirely self-serving and was not credible.

Additionally, it has been confirmed that you knowingly submitted an inaccurate timesheet for May 24, 2018, when you claimed you worked until 3:30 p.m., when you did not. On

May 24, 2018, surveillance video captured your departure from your ECUA workplace at 12:59 p.m. and you did not return. At the hearing, you confirmed you left work early and admitted your timesheet was inaccurate. It is undisputed your timesheet for May 24, 2018, is false, and you never notified your supervisor of the discrepancy. As specified in Section B-3 [Attendance Records] in the Human Resources Manual, it is every employee's responsibility to verify his or her hours worked *"and notify his or her supervisor of any discrepancy."*^[2/1]

(italics in original).

Mr. Page 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 20, 2018, ECUA called three witnesses: Kimberly Scruggs, ECUA's Assistant Director of Human Resources and Administrative Services; Brian J. Reid, ECUA's Director of Regional Services; and Terry Willette, private investigator.

ECUA's Exhibits 1 through 17 were admitted into evidence.

Mr. Page appeared at the final hearing but voluntarily left prior to the completion of ECUA's case-in-chief and the initiation of his own case. A discussion ensued between the undersigned and counsel for ECUA as to whether Mr. Page had

waived his right to an administrative hearing. In an abundance of caution, the undersigned elected to complete the administrative hearing and make findings as to whether ECUA proved its allegations by a preponderance of the evidence. The ECUA may ultimately determine that Mr. Page waived his right to an administrative hearing and dismiss the matter.^{3/}

Unless otherwise indicated, all statutory references are to the 2017 version of the Florida Statutes.^{4/}

FINDINGS OF FACT

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 within the guidelines of Escambia County Civil Services Rules.

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. ECUA has adopted standards set forth in the Manual in order to govern employee conduct.

4. During the relevant time period, ECUA employed Mr. Page as the utility service worker in the patch services division ("the patch crew").

5. Mr. Page acknowledged on October 10, 2016, that a copy of the Manual was made available to him.

6. The patch crew normally works from 7:00 a.m. to 3:30 p.m., with a 30-minute lunch break. The patch crew also receives two 15-minute breaks each day.

7. Mr. Page would normally begin each workday by reporting to an ECUA building on Sturdevant Street where the patch crew's trucks are maintained. The patch crew would use one or more of those vehicles to complete the day's assignments and return them to the Sturdevant Street location at the end of each day.

8. ECUA's management received information in May of 2018, that members of the patch crew were leaving work early without authorization. This information led ECUA's management to initiate an investigation.

9. Part of that investigation involved the installation of tamper-proof global positioning devices ("GPS") in ECUA vehicles. Those devices transmit a vehicle's precise location to ECUA at two-minute intervals. The GPS devices also inform ECUA whether a vehicle is moving, idle, or stopped.

10. ECUA's management also hired a private investigator, Terry Willette, to observe and record the activities of the patch crew.

Findings Regarding the Allegations from May 10, 2018

11. On May 10, 2018, Mr. Page received at least four assignments to fill holes at locations in Pensacola. Mr. Page recorded in ECUA's work tracking system that he spent two hours completing two of those jobs and one hour completing the other two.

12. Mr. Willette followed Mr. Page that day, and his observations contradict those time entries. Mr. Willette observed Mr. Page driving all over Pensacola, stopping on several occasions, and performing significant work at only one location.

13. ECUA has proven by a preponderance of the evidence that Mr. Page wasted an excessive amount of time on May 10, 2018.

Findings Regarding the Allegations from May 11, 2018

14. The May 11, 2018, GPS report for truck #1624 indicates that it stopped at or near Mr. Page's residence from approximately 9:21 a.m. to 9:28 a.m.

15. It is possible that Mr. Page used one of his 15-minute breaks to stop at his residence, and there is no evidence that ECUA expressly prohibits employees from stopping at their homes.

16. The preponderance of the evidence does not demonstrate that Mr. Page violated any Manual provisions on May 11, 2018.

Findings Regarding the Allegations from May 24, 2018

17. The patch crew employees use an electronic timekeeping system to record the amount of hours they work each day. The Manual specifies that every ECUA employee is responsible for verifying the accuracy of those time entries.

18. Mr. Page's entry for May 24, 2018, indicates he worked eight hours that day.

19. Mr. Willette observed Mr. Page leaving work at 12:59 p.m. on May 24, 2018.

20. Also, one of the ECUA trucks often utilized by Mr. Page was in use from 7:01 a.m. until 12:57 p.m. on May 24, 2018, and was not used again that day.

21. The preponderance of the evidence demonstrates that Mr. Page failed to verify the accuracy of his time entry for May 24, 2018.

CONCLUSIONS OF LAW

22. 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.

23. As the party asserting the affirmative of a factual issue, ECUA has the burden of demonstrating by preponderance of the evidence that Mr. Page committed the violations cited in the June 21, 2018, letter. Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). "Proof by a 'preponderance' of the evidence

means proof which leads the factfinder to find that the existence of the contested fact is more probable than its nonexistence.”

Smith v. State, 753 So. 2d 703, 704 (Fla. 5th DCA 2000).

24. ECUA alleges that Mr. Page violated several provisions within the Manual.

25. 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.”

26. The preponderance of the evidence demonstrates that Mr. Page violated Section B-3 of the Manual by failing to verify that his timesheet for May 24, 2018, was accurate.

27. 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 affect ECUA’s ability to carry out its assigned mission.”

28. The preponderance of the evidence demonstrates that Mr. Page violated Section B-13 A (4) by performing virtually no work on May 10, 2018, and by failing to verify the accuracy of his timesheet for May 24, 2018.

29. 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."

30. The preponderance of the evidence demonstrates that Mr. Page violated Section B-13 A (13) by falsely recording the amount of work he performed on May 10, 2018, and by submitting a false timesheet on May 24, 2018.

31. Section B-13 A (18) prohibits "loafing" and refers to "[t]he continued or repeated idleness or non-productiveness during work hours which diverts the employee from performing assigned tasks."

32. The preponderance of the evidence demonstrates that Mr. Page violated Section B-13 A (18) by performing virtually no work on May 10, 2018.

33. Section B-13 A (21) prohibits "neglect of duty" and refers to "[f]ailure to perform an assigned duty."

34. The preponderance of the evidence demonstrates that Mr. Page violated Section B-13 A (21). He received at least four work assignments on May 10, 2018, but the preponderance of the evidence demonstrates that he only completed one.

35. Section B-13 A (26) refers to "[s]ubstandard quality and/or quality of work" without elaboration.

36. The preponderance of the evidence demonstrates that Mr. Page violated Section B-13 A (26) by performing virtually no work on May 10, 2018.

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. Page violated Section B-13 A (33) through his violations of Sections B-3, B-13 A (4), B-13 A (13), B-13 A (18), B-13 A (21), and B-13 A (26).

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 Tadarel S. Page violated Section B-3, attendance records; 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 (21), neglect of duty; Section B-13 A (26), substandard quality and/or

quantity of work; and Section B-13 A (33), violation of ECUA rules or guidelines or state or federal law.

DONE AND ENTERED this 18th 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 18th 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 predetermination 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 considers the June 21, 2018, letter to be the functional equivalent of a charging document.

^{3/} Mr. Page gave a short statement regarding his version of the events on May 10, 11, and 24, 2018, during his cross examination of a witness and left the hearing room. Because that statement was made before Mr. Page's case-in-chief, the undersigned must disregard the statement because it was not under oath.

^{4/} The undersigned disregarded any information regarding past violations of the Manual by Mr. Page in ascertaining whether he committed the violations alleged in the June 21, 2018, letter. Also, the contract between ECUA and DOAH specifies that the Administrative Law Judge "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 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.