

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

vs.

Case No. 18-3315

ROBERT D. BOYD, SR.,

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 22, 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, Sr., pro se
8378 Carl Dean
Pensacola, Florida 32514

STATEMENT OF THE ISSUE

Whether Respondent violated provisions of Petitioner's Human Resources Manual and Employee Handbook ("the Manual") on April 27, 2018, and on May 3, 4, 8, 9, 12, 16, 17, 24, and 31, 2018, as charged in the agency action letter dated June 22, 2018.

PRELIMINARY STATEMENT

Via a letter hand-delivered on June 13, 2018, the Emerald Coast Utilities Authority ("ECUA") notified Robert D. Boyd, Sr., of allegations that he violated multiple provisions of the Manual between April 27, 2018, and May 31, 2018. The letter informed Mr. Boyd of a predetermination hearing^{1/} scheduled for June 18, 2018, at which he would have an opportunity to address the allegations.

Following the predetermination hearing, ECUA notified Mr. Boyd via a letter dated June 22, 2018, of its intention to terminate his employment:

In summary, the findings from the investigation have confirmed you falsified records on April 27, 2018, when you claimed you worked until 8:30 p.m., when you did not. The surveillance video captured your departure from ECUA at 7:38 p.m. It is undisputed your timesheet for April 27, 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."*

On May 3-4, 2018, the findings from the investigation confirmed you performed a substandard quantity of work on May 3, 2018, and May 4, 2018, when you claimed you worked 15.5 hours of overtime at three worksites. Your testimony during the hearing regarding your lack of productivity on May 3, 2018, and May 4, 2018, was entirely self-serving and was not credible. In fact, I believe you deliberately [dragged] your work out in order

to increase your overtime and to eliminate the need for you to work the next day pursuant to policy.

Additionally, the investigative findings confirmed you were loafing and claimed time spent on personal business as time worked, and stole ECUA property on May 8, 2018. At the hearing, surveillance video showed, and you confirmed, you were driven to Boyd's Motorsports by Mr. Cody Fincher where numerous bags of cement were unloaded from your assigned ECUA vehicle (#1674), and loaded into a private vehicle. As specified in Section B-13 A (27) [Theft or stealing] in the Human Resources Manual, the unauthorized taking of any material or property of the ECUA is a violation of policy. The surveillance video showed on May 8, 2018, your assigned ECUA vehicle drove to a CVS Pharmacy where you spent 16 minutes inside plus travel time associated therewith. There was no business purpose for either of those excursions on May 8, 2018.

On May 9, 2018, the findings from the investigation confirmed you falsified records when you claimed you worked until 6:00 p.m., when you did not. The surveillance video captured your departure from ECUA at 5:49 p.m. It is undisputed your timesheet for May 9, 2018, is false, and you never notified your supervisor of the discrepancy.

On May 12, 2018, the investigative findings confirmed you spent excessive time in your ECUA vehicle idling, loafing and you performed a substandard quantity of work. The G.P.S. report showed your ECUA assigned vehicle was stopped on Chase Street from 6:13 a.m. until 10:26 a.m. and surveillance video showed no work being performed from 9:08 a.m. until 10:20 a.m. The G.P.S. report showed your ECUA assigned vehicle was stopped on Creighton Road from 10:48 a.m. until 11:38 a.m. You testified you removed one form board and spread dirt on the backside

edge of the concrete while stopped on Creighton Road. Surveillance video confirms your lack of meaningful work at this location. Additionally, the G.P.S. report showed your ECUA assigned vehicle was stopped on Spanish Trail from 11:48 a.m. until 1:45 p.m. You testified you framed and poured a 3 ft. by 3 ft. or 3 ft. by 4 ft. section of sidewalk. For a two-man crew to perform such little work in essentially a 2-hour period is wholly unacceptable and demonstrates a lack of effort to efficiently perform one's work.

On May 16, 2018, the investigative findings confirmed you were loafing and claimed time spent on personal business as time worked, left work without authorization, and falsified records. Surveillance video showed you stopped in your assigned ECUA vehicle (#1674) at Dodge's Fried Chicken, and there was no business purpose for that excursion. Later that day, surveillance video and G.P.S. records show you took a lunch break from approximately 11:30 a.m. until 12:14 p.m. Surveillance video also captured your departure from ECUA at 3:15 p.m. Nevertheless, your time records showed you claimed you worked until 3:30 p.m. that day and claimed a 30-minute lunch break. Your timesheet was clearly false in many respects. Despite clearly not having worked 8 hours that day, you were nonetheless paid as if you had.

On May 17, 2018, the findings confirmed you were loafing and claimed time spent on personal business as time worked. You testified you went to a personal doctor's appointment at Baptist Hospital on the morning of May 17, 2018 until around 8:15 a.m. and confirmed you went to Boyd's Motorsports at least two times during your workday on May 17, 2018. Your time records showed you claimed a 30-minute lunch period and worked from 7:00 a.m. until 9:00 p.m. that day. It is undisputed your timesheet

for May 17, 2018, is false, and you never notified your supervisor of the discrepancy. Your testimony about your activities on May 17, 2018 is entirely self-serving and is not credible.

On May 24, 2018, the findings confirmed you were loafing, claimed time spent on personal business as time worked, and falsified records when you claimed a 30-minute lunch period, but took much longer as you admitted. In fact, the G.P.S. report for your assigned ECUA vehicle and surveillance video showed you took a lunch period at Miller's Ale House from 11:08 a.m. until 12:17 p.m. It is undisputed your timesheet for May 24, 2018, is false, and you never notified your supervisor of the discrepancy. Again, this is a violation of Section B-3 [Attendance Records] in the Human Resources Manual.

On May 31, 2018, surveillance video confirmed you were loafing, claimed time spent on personal business as time worked, left work without authorization, and falsified records. The surveillance video showed Mr. Fincher dropped you off at your personal vehicle at 7:09 a.m. and you departed ECUA property promptly thereafter. You acknowledged you went to Boyd's Motorsports to attend to personal business. You later called Mr. Fincher to drive an ECUA vehicle to retrieve you from your personal excursion. G.P.S. shows that you were not picked up until 9:25 a.m. You thus admitted that you performed no ECUA business for more than the first two hours of your workday. Nevertheless, a timesheet was submitted indicating you had worked your normal workday plus overtime. You were thus paid accordingly, even though your timesheet was false.

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.

At the final hearing, which took place as scheduled on August 22, 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 7, 9, 11, 14 through 16, 18 through 21, 23, 25 through 28, 30 through 39, and 41 through 43 were admitted into evidence.

During the final hearing, the undersigned reserved ruling on the admissibility of ECUA's Exhibit 8, which consisted of documents describing previous misconduct by Mr. Boyd. If the undersigned were charged with recommending a penalty associated with the allegations at issue in the instant case, then evidence of past misconduct could be relevant to penalty aggravation. However, 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, any disciplinary penalty." Therefore, the undersigned rules that ECUA's Exhibit 8 is irrelevant.

Mr. Boyd testified on his own behalf and offered no exhibits into evidence.

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

Unless otherwise indicated, all statutory references are to the 2017 version of the Florida Statutes.

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. Mr. Boyd has worked for ECUA since at least November of 1997 and acknowledged on June 25, 2012, that a copy of the Manual was available to him.

5. During all times relevant to the instant case, Mr. Boyd was assigned to ECUA's patch services division ("patch crew"). A significant part of the patch crew's work involves filling holes left after other ECUA employees have performed utility work.

6. The patch crew consists of eight people who normally work from 7:00 a.m. to 3:30 p.m., with a 30-minute lunch break and two 15-minute breaks.

7. In addition to his employment with ECUA, Mr. Boyd owns an automobile mechanic shop in Pensacola, Florida, known as Boyd's Motorsports.

8. An anonymous e-mail to Gerry Piscopo, ECUA's Deputy Executive Director of Maintenance and Construction, alleged that the patch crew was leaving work early and incurring overtime by intentionally being lackadaisical in completing work assignments. As a result, ECUA initiated an investigation of the patch crew's daily activities.

9. ECUA retained a private investigator, Terry Willette, to surveil the patch crew and videotape their daily activities. From April of 2018 to some point in June of 2018, Mr. Willette routinely surveilled the patch crew for 4 to 12 hours a day.

10. Mr. Willette's work was facilitated by global positioning devices ("GPS") that ECUA installed on every truck utilized by the patch crew. The GPS 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.

Findings Regarding the Allegations from April 27, 2018

11. Mr. Boyd filed a "Daily Overtime Report" noting that he worked from 3:30 p.m. to 8:30 p.m. on April 27, 2018. Because the patch crew's workday normally ends at 3:30 p.m., Mr. Boyd claimed five hours of overtime.

12. Mr. Willette was following Mr. Boyd that night and observed him arriving at Boyd's Motorsports in an ECUA truck at 7:38 p.m.

13. Mr. Boyd left Boyd's Motorsports at 8:02 p.m. Soon afterward, Mr. Willette lost visual contact with the ECUA truck driven by Mr. Boyd and was unable to follow Mr. Boyd to his next destination.^{2/}

14. Mr. Boyd testified that he was preparing for the next day's work assignments when he arrived at Boyd's Motorsports that evening. According to Mr. Boyd, he and other ECUA employees would freely use resources available at Boyd's Motorsports in order to further ECUA work.

15. Mr. Boyd also testified that he was either: (a) in route to address a customer complaint when he left Boyd's Motorsports at 8:02 p.m.; or (b) driving the ECUA truck to his

home because he had been ordered to proceed directly to a particular worksite the next morning.

16. Mr. Boyd's testimony about the extent to which he and other ECUA employees freely utilized the resources of Boyd's Motorsports to facilitate ECUA work lacked credibility.^{3/}

17. As a result, the preponderance of the evidence demonstrates that Mr. Boyd was not working on ECUA business when he stopped at Boyd's Motorsports from 7:38 p.m. to 8:02 p.m. on April 27, 2018. Therefore, Mr. Boyd erroneously reported working five hours of overtime that day.

Findings Regarding the Allegations from May 3 and 4, 2018

18. Mr. Boyd filed a "Daily Overtime Report" indicating he worked 8.5 hours of overtime from 3:30 p.m. to 12:00 a.m. on May 3, 2018. He filed another "Daily Overtime Report" indicating he worked seven hours of overtime from 12:00 a.m. to 7:00 a.m. on May 4, 2018.

19. The majority of the claimed overtime pertained to an assignment on Cervantes Street in downtown Pensacola involving a sewer system repair. Another crew led by Michael Killen was responsible for performing the primary repair work, and the patch crew was to move in after Mr. Killen's crew had completed its work.

20. Mr. Killen's crew arrived at the worksite at 7:00 p.m. on May 3, 2018, and finished its work at 3:30 a.m.

21. Even though Mr. Killen's crew was still working, the patch crew arrived onsite several hours prior to Mr. Killen's crew completing its work. While the patch crew provided whatever assistance it could during that downtime, it spent most of that time waiting for Mr. Killen's crew to leave. When Mr. Killen's crew left at 3:30 a.m., the patch crew began actively working.

22. Given that the worksite was in downtown Pensacola, it is reasonable to infer that the work needed to be completed as quickly as possible. Therefore, it was not unreasonable for the patch crew to be onsite and ready to immediately begin its work.^{4/} In addition, the testimony indicated this was a complex assignment for all concerned and that the patch crew may have provided valuable assistance to Mr. Killen's crew.

23. The preponderance of the evidence does not demonstrate that Mr. Boyd erroneously reported the overtime he worked on May 3 and 4, 2018.

Findings Regarding the Allegations from May 8, 2018

24. On May 8, 2018, Mr. Willette observed Mr. Boyd and a coworker driving an ECUA truck with several bags of concrete to Boyd's Motorsports. Mr. Willette shot video of Mr. Boyd and his son Tony loading the concrete bags onto a pickup truck driven by Tony Boyd.

25. Mr. Boyd testified that the concrete had to be disposed of because the bags had become wet and the concrete inside was

ruined. Rather than using the ECUA truck to transport the concrete to a landfill or some other disposal area, Mr. Boyd had his son, who was not an ECUA employee, dispose of the concrete. As for why he did not use the ECUA truck to take the concrete directly to a disposal area, Mr. Boyd explained it would have been too time consuming given the locations of the patch crew's work assignments that morning.

26. Multiple aspects of Mr. Boyd's testimony lacked credibility: (a) that ECUA routinely allowed concrete to become ruined through exposure to moisture; (b) that Mr. Boyd enlisted someone not employed by ECUA to dispose of ECUA property; (c) that Mr. Boyd did not need authorization in order to dispose of the concrete; and (d) that Mr. Boyd was concerned about spending an excessive amount of time in transit from a landfill to a worksite. The preponderance of the evidence demonstrates Mr. Boyd did not have authorization to take the concrete.

27. Mr. Willette also observed Mr. Boyd driving the same ECUA truck to a CVS pharmacy and spending 16 minutes there on May 8, 2018. While Mr. Boyd had no business purpose for stopping at the pharmacy, it is certainly possible that this stop occurred during one of his authorized 15-minute breaks or that it was a bathroom stop.^{5/}

28. The preponderance of the evidence does not demonstrate that Mr. Boyd violated any Manual provisions when he stopped at a pharmacy on May 8, 2018.

Findings Regarding the Allegations from May 9, 2018

29. Mr. Boyd filed a "Daily Overtime Report" indicating he worked 2.5 hours of overtime on May 9, 2018. However, ECUA did not present any exhibits to substantiate its allegation that Mr. Boyd left work at 5:49 p.m.

30. The preponderance of the evidence does not demonstrate that Mr. Boyd filed an erroneous timesheet on May 9, 2018.

Findings Regarding the Allegations from May 12, 2018

31. On May 12, 2018, Mr. Willette began following Mr. Boyd at 9:08 a.m.

32. After completing an assignment on East Chase Street, Mr. Boyd testified that he worked on three other assignments on Creighton Road, Spanish Trail, and Davis Highway before finishing his workday at 3:05 p.m.

33. Mr. Willette testified that he did not see Mr. Boyd performing any meaningful work on Creighton Road, Spanish Trail, and Davis Highway. The relevant GPS report indicates the ECUA truck utilized by Mr. Boyd that day was idling when no work was being performed.

34. Because Mr. Willette's testimony was more credible, the preponderance of the evidence demonstrates that Mr. Boyd did no work after leaving East Chase Street on May 9, 2018.

Findings Regarding the Allegations from May 16, 2018

35. Mr. Boyd's timesheet for May 16, 2018, indicates he arrived at work at 7:00 a.m. and left at 3:30 p.m. It also indicates he worked eight hours that day.

36. Mr. Willette surveilled Mr. Boyd on May 16, 2018. He observed Mr. Boyd and a coworker leaving ECUA that morning and driving directly to Dodge's Chicken Store. Mr. Boyd remained inside the store for a few minutes and left appearing to be carrying two food items.

37. Mr. Willette observed Mr. Boyd having lunch with an unidentified female from 11:30 a.m. until 12:16 p.m.

38. Mr. Boyd drove his personal vehicle from ECUA property at 3:15 p.m. and arrived at a J.C. Penny's store at approximately 3:29 p.m. Mr. Boyd drove away from the store at approximately 3:33 p.m. with another unidentified female.

39. The preponderance of the evidence demonstrates that Mr. Boyd did not work eight hours on May 16, 2018. The stop at Dodge's Chicken Store could have been one of Mr. Boyd's 15-minute breaks. However, as noted above, patch crew members have a 30-minute lunch break, and Mr. Boyd spent 46 minutes at lunch

that day. Also, while a patch crew member's day usually ends at 3:30 p.m., Mr. Boyd left work at 3:15 p.m.

Findings Regarding the Allegations from May 17, 2018

40. Mr. Boyd's timesheet for May 17, 2018, indicates he arrived at work at 7:00 a.m. and left at 3:30 p.m. It also indicates he worked eight hours that day.

41. Mr. Willette surveilled Mr. Boyd that day and observed him leaving Baptist Hospital at 8:11 a.m. following a medical appointment. Mr. Boyd then proceeded to Boyd's Motorsports.

42. The preponderance of the evidence demonstrates that Mr. Boyd's May 17, 2018, timesheet is inaccurate. He was not continuously working from 7:00 a.m. to 3:30 p.m. on May 17, 2018.

Findings Regarding the Allegations from May 24, 2018

43. Mr. Boyd's timesheet for May 24, 2018, indicates he reported to work at 6:57 a.m. and left work at 3:30 p.m. It also indicates he worked eight hours that day. Therefore, his time entries indicate he took a standard 30-minute lunch break that day.

44. Mr. Willette observed Mr. Boyd and a coworker meeting a third man for lunch at Miller's Ale House at 11:08 a.m. that day. The trio left the restaurant at 12:17 p.m.

45. Mr. Boyd testified that the third man was an ECUA supervisor and that work was discussed over lunch. Even if that

assertion is accurate, there is no dispute that Mr. Boyd's lunch on May 24, 2018, exceeded 30 minutes.

46. The preponderance of the evidence demonstrates that Mr. Boyd's May 24, 2018, timesheet is inaccurate.

Findings Regarding the Allegations from May 31, 2018

47. Mr. Boyd's timesheet for May 31, 2018, indicates he arrived at work at 6:57 a.m. and left at 3:30 p.m.

48. Mr. Willette photographed Mr. Boyd driving his personal vehicle from ECUA property at 7:10 a.m. A coworker picked up Mr. Boyd at Boyd's Motorsports approximately two hours later.

49. The preponderance of the evidence indicates that Mr. Boyd's May 31, 2018, timesheet is inaccurate.

CONCLUSIONS OF LAW

50. 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.

51. 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 committed the violations cited in the June 22, 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).

52. ECUA alleges that Mr. Boyd violated the following Manual provisions: 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 (17), leaving a work station without authorization; 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; Section B-13 A (27), theft or stealing; Section B-13 A (33), violation of ECUA rules or guidelines or state or federal law; and Section B-37, vehicle and equipment idle reduction.

53. 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."

54. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-3 on April 27, 2018; May 16, 2018; May 17, 2018; May 24, 2018; and May 31, 2018.

55. 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."

56. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (4) on April 27, 2018; May 8, 2018; May 12, 2018; May 16, 2018; May 17, 2018; May 24, 2018; and May 31, 2018.

57. 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."

58. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (13) on April 27, 2018; May 12, 2018; May 16, 2018; May 17, 2018; May 24, 2018; and May 31, 2018.

59. Section B-13 A (17) prohibits leaving work without authorization and refers to "[t]he unauthorized absence by an employee from their work station . . . during the established work period or leaving of a work station for a lunch break or break period without being properly relieved"

60. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (17) on May 16, 2018; May 24, 2018, and May 31, 2018.

61. 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.”

62. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (18) on April 27, 2018; May 12, 2018; May 16, 2018; May 17, 2018; May 24, 2017; and May 31, 2018.

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

64. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (21) on May 12, 2018.

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

66. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (26) on May 12, 2018.

67. Section B-13 A (27) prohibits theft or stealing and refers to “[t]he unauthorized taking of any material or property of [] ECUA . . . with the intent to permanently deprive the owner of possession or to sell or to use for personal gain.”

68. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (27) on May 8, 2018.

69. Section B-37 pertains to “vehicle and equipment idle reduction” and specifies that “ECUA employees shall avoid all unnecessary vehicle and equipment idling.”

70. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-37 on May 12, 2018.

71. 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."

72. The preponderance of the evidence demonstrates that Mr. Boyd violated Section B-13 A (33) through the violations enumerated above.

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, Sr., 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-13A (17), leaving a work station without authorization; 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; Section B-13 A (27), theft or stealing; Section B-13 A (33), violation of ECUA rules or guidelines or state or federal law; and Section B-37, vehicle and equipment idle reduction.

DONE AND ENTERED this 21st 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 21st day of September, 2018.

ENDNOTES

^{1/} Non-exempt and non-key employees of ECUA alleged to have violated a provision of 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/} ECUA did not move to introduce a GPS report for April 27, 2018, into evidence.

^{3/} Mr. Boyd testified that he and other ECUA employees would use tools at Boyd's Motorsports to fabricate items to be used for ECUA work assignments. According to Mr. Boyd, this enabled work assignments to be completed much faster than if he and his co-workers solely relied on the resources available at ECUA. Mr. Boyd also testified that the patch crew frequently used water from Boyd's Motorsports to fill a 150-gallon tank carried by a truck assigned to the patch crew. When asked how often this occurred, Mr. Boyd testified that the patch crew had used the water at Boyd's Motorsports 20 to 30 times over the last two years. As justification for Mr. Boyd donating water from Boyd's

Motorsports to ECUA, Mr. Boyd cited the difficulty in drawing water from a fire hydrant and the long wait associated with obtaining water from an outlet at ECUA's facility. Mr. Boyd also characterized the expense associated with filling a 150-gallon tank as being a miniscule portion of the total water expense incurred at Boyd's Motorsports. The undersigned finds that this testimony lacks credibility.

^{4/} Mr. Boyd testified that the patch crew was following orders from its supervisor when it arrived well before Mr. Killen's crew had completed its work. ECUA raised a hearsay objection to that testimony, and the undersigned has not based any findings of fact on that testimony. See § 120.57(1)(c), Fla. Stat. (providing that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.").

^{5/} Because the patch crew's work primarily occurred in the field, its members had to rely on public bathroom facilities.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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.