

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

vs.

Case No. 18-3337

DALTON B. BAKER,

Respondent.

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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 20, 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: Dalton B. Baker
Apartment L
496 South Fairfield Drive
Pensacola, Florida 32506

STATEMENT OF THE ISSUE

Whether Respondent violated provisions of Petitioner's Human Resources Manual and Employee Handbook ("the Manual") on May 18,

23, 24, and 31, 2018, as charged in the agency action letter dated June 25, 2018.

PRELIMINARY STATEMENT

Via a letter hand-delivered on June 13, 2018, the Emerald Coast Utilities Authority ("ECUA") notified Dalton B. Baker that it had initiated an investigation of ECUA's "patch crew" and "uncovered multiple issues of concern." With regard to Mr. Baker, the letter alleged that his conduct on May 24 and 31, 2018, violated several Manual provisions. The letter closed by notifying Mr. Baker that a "predetermination hearing" was scheduled for June 18, 2018, and that he would have an opportunity at the hearing to address the allegations to "provide any documents, explanations, or new information to refute the charges."

Mr. Baker's predetermination hearing^{1/} was held as scheduled on June 18, 2018. However, ECUA issued another letter on June 21, 2018, notifying Mr. Baker that newly discovered evidence indicated that he committed additional violations on May 18, 22, and 23, 2018. The letter also notified Mr. Baker that a supplemental predetermination hearing was scheduled for June 25, 2018.

Following the second predetermination hearing, ECUA notified Mr. Baker via a letter dated June 25, 2018, of its intention to terminate his employment:

In summary, the findings from the investigation confirmed you knowingly submitted an inaccurate timesheet for May 24, 2018, and May 31, 2018, claiming you worked until 3:30 p.m. each day, when you did not. The video from surveillance recordings captured your departure from the ECUA building prior to 3:30 p.m. on both occasions; specifically, at 12:59 p.m. on May 24, 2018, and at 3:09 p.m. on May 31, 2018. At the hearing on June 18, 2018, you explained Mr. Rigby or Mr. Boyd would typically clock you in and out with your knowledge in order to ensure the accuracy of your timecard. After examining a printed copy of your timecards for the dates in question, you admitted your timesheets were inaccurate. It is undisputed your timesheets for May 24, 2018, and May 31, 2018, are 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 18, 2018, you claimed a 30-minute lunch period, but took much longer. In that regard, you admitted you took a long lunch at Captain Joe Patti's Seafood restaurant which is located at 610 South C Street. The G.P.S. report showed your ECUA assigned vehicle (#1622) located at 610 South C Street from 11:43 a.m. until 1:17 p.m. - over 1 ½ hours, even though you are only allotted 30 minutes for lunch. It is undisputed your time sheet for May 18, 2018, which indicated you worked 8 hours that day and only took 30 minutes for lunch, is false, and you never notified your supervisor of the discrepancy. Again, this is in violation of Section B-3 [Attendance Records] in the Human Resources Manual.

The G.P.S report also confirmed the ECUA truck (#1622) you were assigned to on May 23,

2018 went to your home address located at 496 South Fairfield Drive. During your June 25, 2018 supplemental hearing, you admitted you may have stopped at your residence on this date, but could not be certain this was one of the days you stopped by your residence, suggesting such behavior is not unusual for you. The G.P.S report showed you effectively abandoned your workplace when you drove your assigned ECUA vehicle to your home address and remained there for 9 minutes on this date. There was no business purpose for the excursion to your home address on May 23, 2018; nevertheless, you claimed this time as time spent working and were thus paid as if you had been working, even though you were not.

Your conduct constitutes a violation of 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 work station without authorization]; Section B-12 A (18) [Loafing]; Section B-13 A (21) [Neglect of duty]; Section B-12 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] in ECUA's *Human Resources Manual*.

(italics in original).

Mr. Baker 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 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 7 and 9 through 16 were admitted 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. During the relevant time period, ECUA employed Mr. Baker as the utility service worker in the patch services division ("the patch crew").

5. Mr. Baker acknowledged on April 22, 2013, that a copy of the Manual was made available to him.

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.

7. Mr. Baker usually performed asphalt repairs or assisted other patch crew members with their tasks.

8. The patch crew's supervisor assigns work to the patch crew each day. If the crew completes all of its assigned tasks prior to 3:30 p.m., there is no policy or Manual provision allowing them to leave work early and count that as work time.

9. Mr. Baker would normally begin each workday by reporting to an ECUA building on Sturdevant Street where the patch crew's trucks are maintained.

10. Many ECUA vehicles carry global positioning devices ("GPS") that transmit the vehicle's precise location to ECUA at two-minute intervals. The GPS devices also inform ECUA whether a vehicle is moving, idle, or stopped.

11. ECUA vehicle #1622 had such a device and was normally driven by Mr. Baker or Tadarel Page.

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

13. In addition to monitoring the GPS reports from the vehicles, ECUA retained a private investigator, Terry Willette, to surveil the patch crew and videotape their work or lack thereof. 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.

Findings Regarding the Allegations from May 18, 2018

14. The May 18, 2018, GPS report for vehicle #1622 records that the truck was parked at a local seafood restaurant on 610 South C Street from 11:43 a.m. until 1:17 p.m.

15. Because the patch crew is only allotted a 30-minute lunch break, this extended stop at the local seafood restaurant would almost certainly amount to a violation of multiple Manual provisions unless weather conditions (such as heavy rain) made it infeasible to attempt asphalt repairs.

16. Mr. Baker testified without contradiction that it was raining when the patch crew was at the seafood restaurant, and there was no evidence as to whether ECUA had a policy governing what the patch crew was to do when it was raining.

17. With no evidence to contradict Mr. Baker's testimony about the weather conditions or what the patch crew is capable of doing when it is raining, ECUA did not prove by a preponderance of the evidence that Mr. Baker falsely claimed that he worked eight hours and took a 30-minute lunch on May 18, 2018.

Findings Regarding the Allegations from May 23, 2018

18. The May 23, 2018, GPS report for vehicle #1622 indicates that the truck was parked at Mr. Baker's home from 9:33 a.m. to 9:46 a.m.

19. Mr. Baker does not dispute that he stopped at his home at that time. However, he asserts that he took no actual lunch break on May 23, 2018. Therefore, he argues that the 13-minute stop at his home should be of no concern to ECUA.

20. Nothing in the Manual specifies that ECUA employees must take their lunch break at a certain time.

21. The May 23, 2018, GPS report indicates that vehicle #1622 stopped at 3116 Godwin Lane from 11:43 a.m. to 12:47 p.m. However, there is no record evidence indicating what is at that address. Therefore, it cannot be found that the stop at 3116 Godwin Lane amounted to a lunch break.

22. The ECUA failed to prove by a preponderance of the evidence that Mr. Baker effectively abandoned his work when he drove vehicle #1622 to his home and stayed for 13 minutes on May 23, 2018.

Findings Regarding the Allegations from May 24 and May 31, 2018

23. Mr. Baker's timesheet for May 24, 2018, indicates he reported to work at 6:59 a.m. and worked until 3:30 p.m.

24. On May 24, 2018, Mr. Willette observed Mr. Baker at 12:59 p.m. leaving the ECUA building where he begins and ends each workday. A GPS report records that vehicle #1622 was not driven after 12:56 p.m. on May 24, 2018.

25. Mr. Baker's timesheet for May 31, 2018, indicates he reported to work at 6:59 a.m. and worked until 3:30 p.m.

26. On May 31, 2018, Mr. Willette observed Mr. Baker at 3:09 p.m. leaving the ECUA building where he begins and ends each workday. A GPS report records that vehicle #1622 was not driven after 3:10 p.m. on May 31, 2018.

27. Mr. Baker does not dispute that he left work at 12:59 p.m. on May 24, 2018, and at 3:09 p.m. on May 31, 2018.

28. Mr. Baker testified that he had permission from Greg Rigby, the patch crew's supervisor, to leave early on those days.

29. As for why his timesheets indicated that he left at 3:30 p.m. on both days, Mr. Baker explained that the individual patch crew members did not fill out their timesheets. Instead, Mr. Rigby or his assistant supervisor, Robert Boyd, Sr., entered each patch crew member's time into the timekeeping system.

30. ECUA proved by a preponderance of the evidence that Mr. Baker's timesheets for May 24, 2018, and May 31, 2018, were inaccurate.

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.

32. As the party asserting the affirmative of factual issues, ECUA has the burden of demonstrating by a preponderance of the evidence that Mr. Baker committed the violations cited in the June 25, 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).

33. ECUA alleges that Mr. Baker violated several Manual provisions.

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. The preponderance of the evidence demonstrates that Mr. Baker violated Section B-3 of the Manual by failing to verify

that his timesheets for May 24, 2018, and May 31, 2018, were accurate. Even if Mr. Rigby filled out his subordinates' timesheets and authorized Mr. Baker to leave early on the days in question, the Manual clearly indicates that individual ECUA employees are responsible for verifying that the information in their timesheets is correct. There is no dispute that Mr. Baker neglected to verify the accuracy of his timesheets for May 24, 2018, and May 31, 2018.

36. 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."

37. The preponderance of the evidence fails to demonstrate that Mr. Baker's failure to verify the accuracy of his timesheets for May 24, 2018, and May 31, 2018, amounts to a violation of Section B-13 A (4). The unrebutted testimony was that Mr. Baker had authorization to leave early on those days and that his supervisor handled his subordinates' timesheets.

38. 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."

39. The preponderance of the evidence fails to demonstrate that Mr. Baker knowingly, willfully, or deliberately misrepresented the amount of time he spent at work on May 24, 2018, and May 31, 2018. The unrebutted testimony demonstrated that Mr. Baker relied on Mr. Rigby and/or Mr. Boyd to accurately enter his timesheet information. While Mr. Baker was responsible for ensuring that the information was accurate, there is no evidence indicating he should have known that Mr. Rigby and/or Mr. Boyd would input erroneous data.

40. Section B-13 A (17) prohibits an unauthorized absence from a work station or duty assignment "during the established work period or the leaving of a work station for a lunch break or break period without being properly relieved"

41. The unrebutted testimony indicated that Mr. Baker had authorization to leave work early on May 24, 2018, and May 31, 2018. Therefore, ECUA failed to prove this allegation by a preponderance of the evidence.

42. 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."

43. The preponderance of the evidence failed to demonstrate that Mr. Baker violated Section B-13 A (18).

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

45. The preponderance of the evidence does not demonstrate that Mr. Baker failed to perform an assigned duty.

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

47. The preponderance of the evidence does not demonstrate that the quality or quantity of Mr. Baker's work was substandard.

48. 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."

49. The preponderance of the evidence demonstrates that Mr. Baker violated Section B-13 A (33) through his violation of Section B-3 of the Manual.^{2/}

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 Dalton B. Baker violated Section B-3, attendance records; 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 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/} 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.