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August 5, 2019

Claudia Llado
Clerk of the Division
State of Florida
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

DIVISION OF
ADMINISTRATIVE HEARINGS

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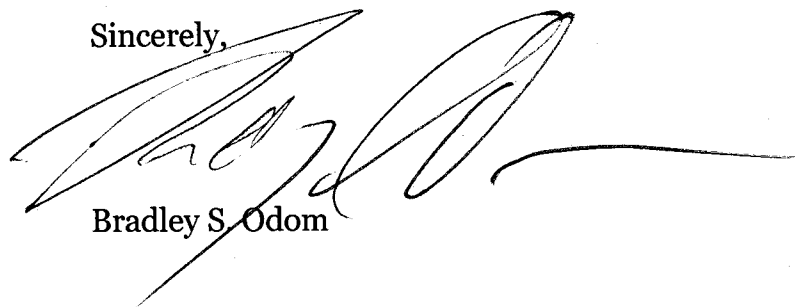
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Re: *Emerald Coast Utilities Authority v. Robert L. Packer*
DOAH Case Number: 19-1625

Dear Ms. Llado:

Administrative Law Judge W. David Watkins rendered a Recommended Order in the above-referenced matter on July 19, 2019. Subsequent thereto, the Emerald Coast Utilities Authority (ECUA) entered a Final Order on August 5, 2019. Pursuant to Section 120.57(1)(m) you are hereby being provided a copy of that Final Order. Should you have any questions please do not hesitate to contact me.

Sincerely,



Bradley S. Odom

BSO:cap

Enclosure

cc: Sharon Harrell (w/o encl.)
Kimberly Scruggs (w/o encl.)

EMERALD COAST UTILITIES AUTHORITY

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

v.

DOAH Case No.: 19-1625

ROBERT L. PACKER,

Respondent.

FINAL ORDER

Emerald Coast Utilities Authority (hereinafter "ECUA") suspended Robert L. Packer (hereinafter either "Packer" or "Respondent") for one (1) work day via a letter dated March 18, 2019. The alleged conduct giving rise to this suspension occurred on February 28, 2019. Packer timely requested a hearing regarding that suspension, and the case was forwarded to the Florida Division of Administrative Hearings (DOAH). A formal hearing was held on May 29, 2019 in Pensacola, Florida, before W. David Watkins, Administrative Law Judge with DOAH.

On July 19, 2019 Administrative Law Judge Watkins submitted a Recommended Order. 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.

1. In paragraph 16 of the Recommended Order, Administrative Law Judge Watkins made certain factual findings based upon Packer's testimony of what a non-witness named Roy Reyes told him regarding the purpose of the landscape timbers located on the Custom Specialties site. Mr. Reyes did not testify at the hearing. Moreover, because Packer spoke to him "[f]ollowing the mishap" the alleged statements

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by Reyes had no bearing on Packer's state of mind on February 28, 2019. Any assertion by Packer as to what Reyes told him about the purpose of the landscape timbers after the fact was thus hearsay and did not constitute competent and substantial evidence. After all, the First District has explained, "while hearsay is admissible in administrative hearings to supplement or explain other evidence, it is insufficient in itself to support a finding." Kaye v. State Dep't of Health & Rehabilitative Servs., Office of Pub. Assistance Appeal Hearings, 654 So.2d 298, 299 (Fla. 1st DCA 1995) (citing Juste v. Department of Health & Rehabilitative Servs., 520 So.2d 69 (Fla. 1st DCA 1988)); see also Harris v. Game & Fresh Water Fish Comm'n, 495 So.2d 806, 808 (Fla. 1st DCA 1986) (explaining that hearsay "will not qualify as competent and substantial evidence"); Fla. Stat. § 120.57 (1)(c).

2. In paragraph 17 of the Recommended Order, the Administrative Law Judge made a factual finding that in addition to his one-day suspension, Packer "was also denied his quarterly bonus, of approximately \$600.00, as a result of [the underlying incident which occurred] on February 28, 2019." This finding was made in the context of discussing the quarterly bonus available to ECUA Sanitation Equipment Operators who are deemed to be safe drivers for the entire quarter. In light of the fact that the Contract between ECUA and DOAH necessarily limited the Administrative Law Judge's review to the events of February 28, 2019, he had no opportunity to consider Packer's driving and other actions on any other date during the quarter, with the possible exception of the prior occasion he had gone to the site in question. ECUA was thus obliged to present no evidence at the hearing of other potentially disqualifying events in reference to the bonus. With the limited scope of the hearing in question, as

well as the fact that the parameters of the Safety Incentive Program are not part of the record, the factual finding regarding all other days in the quarter was unnecessary and the determination that this single event was the sole basis for the denial is without competent and substantial evidence. See generally Sonny's Italian Restaurant & Pizzeria, Inc. v. State Dep't of Business Regulation, 414 So.2d 1156, 1157 (Fla. 3d DCA 1982) (explaining that an agency may reject proposed findings that are unnecessary).

3. Ultimately, in his Recommended Order, the Administrative Law Judge determined that the underlying incident of February 28, 2019 "did not occur due to the negligence of Mr. Packer, or due to violation of safety practices or applicable rules or law." Instead, the Administrative Law Judge determined "a series of unfortunate events" led to the truck Packer was driving getting stuck in the mud and immobilized. (Recommended Order at ¶ 18).

4. In his Recommended Order, the Administrative Law Judge also found that the preponderance of the evidence did not demonstrate that Packer violated Section B-13(A)(4), Section B-13(A)(22), Section B-13(A)(32), or Section B-13(A)(33) of ECUA's Human Resources Manual and Employee Handbook. (Recommended Order at ¶ 23-26).

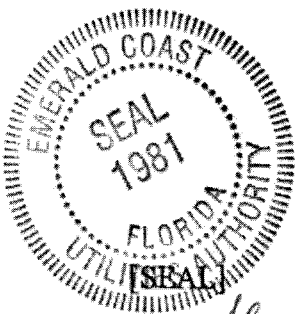
BASED ON THE FOREGOING, it is ORDERED:

- A. Paragraphs 16 and 17 of the Recommended Order are stricken.
- B. The Administrative Law Judge's ultimate summarized findings set forth in paragraphs 3 and 4, above, are supported by competent and substantial evidence, and are hereby adopted and made a part of and incorporated into this Order.

C. Accordingly, the one (1) work day suspension of Robert L. Packer is hereby Reversed, and it is hereby directed that he shall be paid for the one-day suspension which he previously served.

D. I have separately considered Robert L. Packer's driving and other relevant conduct (hereinafter collectively referred to as "conduct") throughout the first quarter of the 2019 calendar year (second quarter of the fiscal year). Having considered his conduct on each date in that quarter and having compared it to ECUA's Safety Incentive Program, as enunciated in Section D-6.B of ECUA's Human Resources Manual and Employee Handbook, I affirmatively find that Robert L. Packer would have been entitled to receive the safety bonus, but for the allegations regarding the events on February 28, 2019, which were not proven. Accordingly, it is hereby directed that Robert L. Packer shall be paid the \$600 bonus due to him under ECUA's Safety Incentive Program for the quarter from January 1 through March 31, 2019, at the time it becomes payable pursuant to Section D-6.B.

DONE AND ENTERED this 5th day of August, 2019.



She J. Stancil

Stephen E. Sorrell

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 RULES OF APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED:

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