

EMERALD COAST UTILITIES AUTHORITY

EMERALD COAST UTILITIES
AUTHORITY,

Petitioner,

v

DOAH Case No.: 20-0378

ROBERT PACKER,

Respondent.

FINAL ORDER

Emerald Coast Utilities Authority (hereinafter "ECUA") notified Robert Packer (hereinafter either "Packer" or "Respondent") that he would be suspended from his employment with ECUA for one eight-hour day on January 30, 2020 via a letter dated January 13, 2020. Packer timely requested a hearing regarding that suspension, and the case was forwarded to the Florida Division of Administrative Hearings. A formal hearing was held on July 27 and August 6, 2020 via Zoom teleconferencing, before James H. Peterson, III, Administrative Law Judge with the Florida Division of Administrative Hearings.

On August 19, 2020, Administrative Law Judge Peterson submitted a Recommended Order ("RO"). The parties were subsequently afforded the opportunity to present written argument prior to the rendering of this Final Order. An *Exceptions to Recommended Order and Argument Regarding Appropriate Penalty* ("Exceptions") was timely filed.

1. In his Recommended Order, the Administrative Law Judge expressly found that the preponderance of the evidence demonstrates that Mr. Packer violated Sections B-13 A (22) and (32) of ECUA's Human Resources Manual and Employee Handbook (hereinafter referred to as the "Manual") but did not violate Sections B-13 A (4) or (33). (Recommended Order at

¶ 33).

2. As to Sections B-13 A (4) or (33), the Order determined that both sections required an element of scienter or intent. While some of the examples provided in Section B-13 A (4) do suggest an element of intent, not every violation of this Section, which pertains to acts, activities or conduct, would require an intent to adversely impact the ECUA. As such, the undersigned does not accept the conclusion of law as to these Sections.

3. As to Section B-13 A (33), the Order found no violation. However, the testimony, to include the testimony of Mr. Packer, is clear that ECUA does have a stated policy regarding a situation where access to the dumpster is blocked or limited. According to the sanitation collections manager and the commercial services supervisor, there is a clear protocol that instructs drivers not to attempt collection in such situations and the instance should be called in to a supervisor. This was not done. Instead, Mr. Packer attempted a complicated maneuver with the collection vehicle and property was damaged as a result. As such, the undersigned does not accept the conclusion of law in the Order as to the violation of Section B-13 A (33).

BASED ON THE FOREGOING, it is ORDERED:

A. The words "within the guidelines of Escambia County Civil Service Rules" are stricken from paragraph 1 of the Administrative Law Judge's Findings of Fact section of the Recommended Order in light of Chapter 2004-422, Laws of Florida, which repealed Civil Service.

B. The Administrative Law Judge's summarized findings and conclusion of law as to a violation of Sections B-13 A (22) and (32) of ECUA's Manual is hereby confirmed, adopted and made a part of and incorporated into this Final Order.

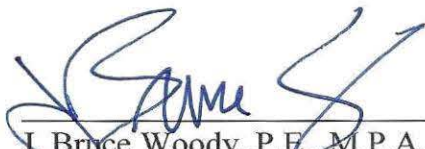
C. The Administrative Law Judge's summarized findings and conclusion of law as to a violation of Section B-13 A (33) are rejected as the Respondent was in violation of an ECUA

guideline or directive.

D. The Administrative Law Judge's summarized findings as to a violation of Sections B-13 A (4) are accepted but the conclusion of law as to the requirement of scienter or intent is rejected and not incorporated into this Final Order.

E. Based on the above findings and conclusions of law, the one eight-hour day suspension of Respondent is appropriate and warranted. Accordingly, the one eight-hour day suspension of Robert Packer is hereby upheld and Affirmed, and he shall go forth without day.

DONE AND ORDERED this 3rd day of September 2020.



J. Bruce Woody, P.E., M.P.A.
Executive Director
Emerald Coast Utilities Authority

[SEAL]



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:

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