

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CITY OF CLEARWATER,

Petitioner,

vs.

Case No. 21-1189

WILTON HILL,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference on June 3, 2021, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Owen Kohler, Esquire
City of Clearwater
600 Cleveland Street, Suite 600
Clearwater, Florida 33755

For Respondent: Richard Michael Pierro, Esquire
Calciano Pierro, PLLC
146 Second Street North, Suite 304
St. Petersburg, Florida 33701

STATEMENT OF THE ISSUES

Whether Respondent Wilton Hill committed the violations alleged in the Decision-Making Leave and Mandated EAP Referral notice; and, if so, the appropriate discipline that should be imposed.

PRELIMINARY STATEMENT

Wilton Hill (Respondent) is employed by the City of Clearwater, Florida (Petitioner/City). The City informed Respondent that his employment would be suspended without pay for two days due to alleged violations of the Clearwater Civil Service Board Rules and Regulations (CSR) and the Performance and Behavior Management Program (PBMP). Respondent filed a Notice of Appeal contesting the City's intended action. The City, pursuant to contract, referred the matter to the Division of Administrative Hearings (DOAH) for a disputed-fact hearing.

During the hearing, Petitioner offered the testimony of Jeremy Williams, Jennifer Poirrier, and Daniel Mayer. Respondent testified on his own behalf and called no other witnesses. Petitioner's Exhibits 1 through 12 were admitted into evidence. Respondent's Exhibits 1 through 21 were admitted into evidence, with Exhibits 1 through 12 admitted for "background" purposes only.

A two-volume Transcript of the disputed-fact hearing was filed with DOAH on June 24, 2021. The deadline for filing proposed orders was extended several times at the request of the parties. On August 2, 2021, each party filed a Proposed Recommended Order (PRO).

FINDINGS OF FACT

1. The City is a municipality governed by a city council. A city manager oversees the City's operations.
2. On September 8, 2015, Petitioner hired Respondent to work as a senior systems programmer, which is categorized by the City as a "Classified" service position.
3. The Clearwater Civil Service Board has adopted rules and regulations which govern the conduct of all City employees. Chapter 13 of the CSR provides the framework for suspending, demoting, and dismissing City employees.

4. By correspondence dated February 22, 2021, Petitioner provided Respondent with what is commonly referred to as a “predetermination notice” and advised Respondent therein that it was believed that he “committed an offense warranting formal discipline.”

5. The predetermination notice states, in material part, that Respondent violated “Integrity Standards, listed on page iv of the official PBMP manual, adopted by the City of Clearwater on February 15, 1998 and revised on July 1, 2014, to wit: [1] Violation of the provisions of Chapter 13, Section 3, of the City Civil Service Rules and Regulations[;] [and] [2] [d]ishonesty or untruthfulness or willful refusal to provide information or otherwise cooperate during an internal investigation or when directed to do so by competent authority.” The notice also specifically alleges that Respondent violated chapter 13, section 3(b), (f), and (l) of the CSR. The City seeks to discipline Respondent based on events that occurred on or about February 1, 2, 3, and 10, 2021, respectively.

6. On February 24, 2021, Respondent met with the director of his department and presented his version of the events in question. Following the meeting, the City, by correspondence dated March 5, 2021, notified Respondent that he would be placed on “a two-day Decision-Making Leave and mandated EAP for ... violating the Clearwater PBMP Citywide Personal Responsibility, Integrity, and Excellence standards.”

Performance and Behavior Management Program (PBMP)

7. The City developed the PBMP in order “to provide a method of working with employees whose performance or behavior does not meet the City’s standards.” The philosophy of the program “is based upon the belief that, in most cases, employees can change behavior and improve performance when standards and expectations are clear and when employees are given opportunities to change.” Whenever practicable, “the City will provide intervention, coaching, and corrective guidance or counseling ... for employees ... in order to bring their performance or behavior up to standard.”

The program recognizes, however, “that some behaviors that are serious and are direct violations of City Policy may warrant immediate disciplinary action up to and including termination.”

8. According to the PBMP manual, there are three categories of performance and behavior: (1) Personal Responsibility; (2) Integrity; and (3) Excellence. As to each, the manual notes that:

These categories are based on employees’ willingness or ability to meet standards of behavior or performance. Willingness refers to the employees’ decision to meet expectations, follow rules and policies, and perform work that meets efficiency and quality standards. Ability refers to the employees’ capability and skills in performing job tasks. The first two categories, Personal Responsibility and Integrity, are considered “will do” categories because they typically involve situations wherein the employee has a choice and makes a decision about whether or not to meet the standards. The third category, Excellence, is considered a “can do” category, because it most often refers to a situation where the employee is not able to perform up to standard because of a lack of resources, skill, or capability. City of Clearwater expectations for each of these three categories are stated below. Personal Responsibility (“Will Do” Issues) - City of Clearwater employees will be held personally accountable for the actions they take in meeting the customer service needs of the City and the community the organization serves. Employees are expected to take full responsibility for their conduct and job performance and exhibit commitment to fulfilling their responsibilities to the best of their ability. Integrity (“Value and Ethics” Issues) - As public employees representing the citizens of Clearwater, employees are expected to commit to the highest standards of personal and professional integrity. The City expects employees to communicate openly and continually demonstrate honesty, fairness, and respect for others. Employees should do what is ethically appropriate. Employees are expected to adhere to

City policies. Excellence (“Performance/Can Do” Issues) - City of Clearwater employees have an obligation to provide the highest quality of service and results to our customers. This commitment to excellence involves developing the job knowledge and skills needed to perform the tasks required and to continually improve the City’s ability to meet the needs of the community we serve.

9. The PBMP manual generally lists 75 Personal Responsibility Standards, 14 Integrity Standards, and 41 Excellence Standards. Regarding the Integrity Standards, the PBMP manual notes in bold print that “immediate formal discipline, up to and including termination, may be recommended” for a violation of these standards. The PBMP manual does not set forth any such illumination for the other standards. As previously noted, the City contends that Respondent violated several of the PBMP Integrity Standards and should therefore be subjected to formal discipline.

Background – Family Medical Leave Act (FMLA)

10. Respondent suffers from a serious medical condition that occasionally impacts his ability to perform his job. Under the City’s policy related to FMLA, an employee may intermittently take leave under FMLA “whenever medically necessary ... because the employee is seriously ill and unable to work.” The policy also instructs that “[e]mployees should make a reasonable effort to schedule intermittent leave as to not unduly disrupt office operations.”

11. Because of Respondent’s underlying medical condition, Petitioner, since at least November 2020, has allowed Respondent “4 [to] 5 episodes per month” during which Respondent can take FMLA leave without having to submit documentation related to the same. As a practical matter, this means that when Respondent experiences a medical episode that impairs his ability to work, he is to contact his supervisor, if possible, and let the supervisor

know that he is utilizing FMLA leave for his anticipated absence from work. Herein lies “the rub” in the instant dispute.

Respondent’s Understanding of Leave Protocol

12. According to the City’s governing manual for supervisory, administrative, managerial, and professional employees (SAMP), “Classified employees who have successfully completed an initial probationary period become certified to regular employment status and have certain rights of appeal through the Civil Service grievance process.” The SAMP manual also provides that “Classified SAMP employees will not be disciplined except for just cause.”

13. Section 2 of the SAMP manual provides that “Classified SAMP employees must obtain approval from a person of competent authority prior to working any hours outside of their established work schedule, either before their designated starting time or after their designated quitting time or during an unpaid meal period.

14. Chapter 22, section 1, of the CSR provides as follows:

Normal Work Hours -- The number of hours constituting a regular schedule work week for City Employees is specified by the City and excludes meal periods. In positions requiring shift work, the City reserves the right to include meal periods as actual time worked. Regularly scheduled work hours may be adjusted or “flexed” within a specific work week with proper notification and at the mutual convenience of the employee and the respective department. Such adjustments or flexing of work hours must be approved in advance by the respective department....

15. Chapter 4 of the CSR defines “flex time” as “the process whereby an employee’s regularly scheduled hours of work within a specific workweek are adjusted with proper notification and at the mutual convenience of the employee and the respective department. Such flexing of work hours must be approved in advance by the respective department....”

16. Respondent, at all times material hereto, understood that he was to first contact his supervisor before taking time off related to a medical episode. Evidence of Respondent's understanding is illustrated in emails that he sent to his supervisor on December 2 and 31, 2020.

February 1 and 2, 2021

17. Sometime around January 2021, the City implemented a number of workplace measures designed to mitigate the risk of contracting and spreading the COVID-19 virus. One such mitigation effort allowed employees "to work from home on their assigned remote day." During February 2021, Tuesdays were Respondent's assigned days to telecommute.

18. On Monday, February 1, 2021, the following emails were exchanged between Respondent and his supervisor:

- 1) From: Williams, Jeremy
Sent: Monday, February 1, 2021 (2:12 p.m.)
To: Hill, Lloyd
Subject: Feb 01, 2021

Hi Lloyd,
Where are you?

Thanks,
Jeremy

- 2) From: Hill, Lloyd
Sent: Monday, February 1, 2021 (2:15 p.m.)
To: Williams, Jeremy
Subject: Feb 01, 2021

At lunch

- 3) From: Hill, Lloyd
Sent: Monday, February 1, 2021 (2:21 p.m.)
To: Williams, Jeremy
Subject: Feb 01, 2021

Precisely; (Respondent provided the email address for the auto/electronics store where he was located)

4) From: Williams, Jeremy
Sent: Monday, February 1, 2021 (4:00 p.m.)
To: Hill, Lloyd
Subject: Feb 01, 2021

Can you confirm what time you arrived today?

5) From: Hill, Lloyd
Sent: Monday, February 1, 2021 (4:04 p.m.)
To: Williams, Jeremy
Subject: Feb 01, 2021

Is anyone else required to confirm their time today?

6) From: Williams, Jeremy
Sent: Monday, February 1, 2021 (4:08 p.m.)
To: Hill, Lloyd
Subject: Feb 01, 2021

I put the timesheets on your desk for time entry this AM and noticed that your laptop was not here and your desk looked to be unoccupied, at 2:30 your desk looked the same. We need to make sure to charge your time correctly, so if you had an appointment not reflected on my calendar I need to update it.

Please confirm your arrival time, and how long of a lunch you took for my records please.

Thank you,
Jeremy

19. On Tuesday, February 2, 2021, Respondent and his supervisor exchanged additional emails regarding Respondent's absence from work:

1) From: Williams, Jeremy
Sent: Tuesday, February 2, 2021 (10:21 a.m.)
To: Hill, Lloyd
Subject: Feb 01, 2021

Hi Lloyd,
Can you confirm your times for yesterday as I
requested please?

Thank you,
Jeremy

20. Soon after sending the email to Respondent at 10:21 a.m., on February 2, 2021, Mr. Williams met with Respondent via videoconference. During the videoconference, Mr. Williams again asked Respondent about his whereabouts and arrival time to the office on February 1, 2021. Mr. Williams credibly testified that Respondent, in response to his inquiry, became argumentative by wanting to know if other employees were being questioned about their whereabouts and arrival time to work. Respondent never answered the questions posed to him by Mr. Williams, but instead, advised Mr. Williams that his time away from the office on February 1, 2021, should be charged as one of his monthly FMLA episodes. Mr. Williams was confused by Respondent's request, in part, because Respondent was requesting FMLA leave that covered time when Respondent actually performed certain work-related tasks, albeit via unauthorized telecommuting.

21. Shortly after the videoconference ended, Respondent and Mr. Williams had additional discussions regarding the matter as reflected in the following emails:

- 1) From: Hill, Lloyd
Sent: Tuesday, February 2, 2021 (11:12 a.m.)
To: Williams, Jeremy
Subject: Re: Lloyd - ? 5.0hrs

I am using this as one episode of FMLA. My [redacted] was too high to drive. I am notifying you after the incapacity has passed as allowed by law.

2) From: Williams, Jeremy
Sent: Tuesday, February 2, 2021 (11:32 a.m.)
To: Hill, Lloyd
Subject: Re: Lloyd - ? 5.0hrs

Hi Lloyd,
We will need to refer to HR as to what is allowed. I will update this outage once we hear back from them.

Thank you,
Jeremy

3) From: Hill, Lloyd
Sent: Tuesday, February 2, 2021 (11:35 a.m.)
To: Williams, Jeremy
Subject: Re: Lloyd - ? 5.0hrs

To be clear, I have notified you that I was incapacitated due to an underlying condition covered by my FMLA on the morning of February 1st.

4) From: Williams, Jeremy
Sent: Tuesday, February 2, 2021 (11:37 a.m.)
To: Hill, Lloyd
Subject: Re: Lloyd - ? 5.0hrs

Hi Lloyd,
I only have record of your FMLA request for the AM of 2/1/2021 on a video call that occurred on 2/2/2021.

Can you send me the notification that you sent me on the 1st indicating this? It[']s possible that I missed it.

Thanks,
Jeremy

5) From: Hill, Lloyd
Sent: Tuesday, February 2, 2021 (12:14 p.m.)
To: Williams, Jeremy
Subject: Re: Lloyd - ? 5.0hrs

I think you missed it. I don't have a copy.

6) From: Williams, Jeremy
Sent: Tuesday, February 2, 2021 (12:46 p.m.)
To: Hill, Lloyd
Subject: Re: Lloyd - ? 5.0hrs

Hi Lloyd,

This doesn't make any sense. Either you requested the time or you didn't. If you don't have a record, you didn't request it. I certainly did not receive anything. I have re-reviewed my emails, teams and sms and see nothing from you indicating that you would be out of the office on Monday (2/1/21) morning and early afternoon.

We will confer with HR as to what we can use to charge your time.

Thank you,
Jeremy

22. As previously mentioned, the City, on or about February 22, 2021, informed Respondent that it intended to suspend him for two days. In response to the City's notice of disciplinary suspension, Respondent stated the following with respect to matters that transpired on February 2 and 3, 2021:

On February 1, 2021, I began working from home at about 7 AM. I typically log on the server in the morning before leaving for work to check on emails and overall functioning of all systems, as well as respond to the system users. Due to severe anxiety arising out of my continuing concern over the risk to my health posed by the pandemic as well [as] the ongoing dispute with the City over my ADA reasonable accommodation request to telecommute, I experienced [redacted] symptoms.

My first ... reading taken was [redacted] putting me in the range of an ... emergency. As such, I decided to remain at home and continue to work. I

did not feel safe to drive to the office and kept monitoring my [redacted] to determine whether I needed to go to the emergency room. When my readings returned to a safe level, I arrived at the office later that day around 3 PM. My manager acknowledged my presence because I walked past his office several times. I am more than willing to provide documentation of the ... readings I took that day.

On February 2, 2021, I had a video meeting with my manager and explained to him the stress that I was experiencing. At that time, I requested 5 hours of leave (against my available intermittent FMLA leave) because he would not consider time I spent at home earlier that day as hours worked, despite the fact that I performed my job duties during that period.

23. Respondent's suggestion of incapacity is not supported by the evidence. By his own admission, Respondent, on the morning of Monday, February 1, 2021, was able to log onto the City's server which allowed him to "check on emails and overall functioning of all systems, as well as respond to the system users." Respondent also admits that after his first elevated reading he decided to "remain at home and continue to work" because he did not "feel safe to drive."

24. The issue is not whether Respondent felt well enough to drive, but whether he felt well enough to send an email. If Respondent felt well enough to "respond to the system users, and continue to work," then he was certainly capable of sending an email to his supervisor. There is no credible evidence that Respondent suffered from any form or type of medical condition on the morning of February 1, 2021, which prevented him from notifying his employer that he was taking an "episode" of FMLA leave for the workhours in question.

25. It is undisputed that Monday, February 1, 2021, was not Respondent's designated day to telecommute. Chapter 12, section 1, of the CSR clearly

provides that the City determines normal work hours for its employees, and that employee-initiated changes to the normal work hours “must be approved in advance.” The uncontroverted evidence establishes that Respondent was not authorized to telecommute on Monday, February 1, 2021, and that he did so in violation of the CSR and SAMP manual. Respondent’s assertion that he did not violate City rules and regulations “because he performed [his] job duties” while at home on February 1, 2021, is irrelevant because, as noted above, he lacked authority to telecommute on the day in question.

February 3, 2021

26. Respondent reported to work on February 3, 2021, and worked until leaving the building at 1:30 p.m. Respondent did not return to work on this date and several hours later initiated the following email chain with his supervisor:

1) From: Hill, Lloyd
Sent: Wednesday, February 3, 2021 (4:27 p.m.)
To: Williams, Jeremy
Subject: One FMLA Episode From Now Till Tomorrow

[There was nothing written below the subject line].

2) From: Williams, Jeremy
Sent: Wednesday, February 3, 2021 (5:13 p.m.)
To: Hill, Lloyd
Subject: RE: One FMLA Episode From Now Till Tomorrow

I have you down for Tomorrow in the AM, you’ll confirm with me the specific amount of time when you get in.
See you tomorrow,

Jeremy

3) From: Williams, Jeremy
Sent: Wednesday, February 3, 2021 (5:21 p.m.)
To: Hill, Lloyd
Subject: RE: One FMLA Episode From Now Till Tomorrow

Hi Lloyd, Did you mean to say that you took off work at 4:30 p.m. today (using FMLA)? I stopped by your desk to clarify what you meant by this email, you weren't there (5:20 p.m.). Office 365 saw you last at 4:48 p.m. I'm pretty confused if you can clarify, I'd appreciate it.

Thank you,
Jeremy

4) From: Hill, Lloyd
Sent: Wednesday, February 3, 2021 (5:47 p.m.)
To: Williams, Jeremy
Subject: One FMLA Episode From Now Till Tomorrow

Correct

27. Before Respondent prematurely ended his workday on February 3, 2021, he had been assigned that morning to provide IT support services for the City's recreation centers. Mr. Milou Louis, who worked as senior systems programmer at the City's recreation centers, was retiring from employment with the City, and Respondent, because of his availability and skill set, was tasked with replacing Mr. Louis.

28. In explaining his actions related to his early departure from work on February 3, 2021, Respondent stated the following:

On February 3, 2021, I was informed that I was required to be on-site at the City's Parks & Rec centers where COVID-19 infection rates were among some of the highest for City employees. Notably, this documented infection rate does not consider infected members of the public who may use the centers. I immediately informed my manager, who rendered his lay opinion that I was

at no higher risk than anyone else. Notably, I had not previously been assigned to be on-site, let alone during a pandemic. Thereafter, I suffered a severe anxiety attack because I legitimately feared for my health. At that point I left the building. Management told me I left at 1:30 PM. I contacted my supervisor at around 4 PM informing him I would take available FMLA leave for the rest of the day.

29. As an initial matter, there is no credible evidence of record that Respondent's particular work environment at the recreation centers would have been any more at risk for COVID-19 exposure than his regular work environment, or say, the electronics store where Respondent stopped during his lunch break on February 1, 2021.

30. During Respondent's email exchange with his supervisor on February 3, 2021, Mr. Williams clearly communicated to Respondent that he was confused about Respondent's FMLA leave request. Respondent, despite having the opportunity to do so, never sought to clarify his leave request, and, for whatever reason, chose not to correct Mr. Williams' erroneous belief that Respondent left work at 4:30 p.m., when all the while Respondent knew that he actually left work several hours earlier at 1:30 p.m.

31. With respect to the events of February 3, 2021, the evidence establishes that Respondent violated City rules and regulations by failing to inform his supervisor of his early departure from work under circumstances where he clearly had the opportunity to do so. Also, as noted above, the email that Respondent sent at 4:30 p.m., on February 3, 2021, advised that Respondent was taking "One FMLA Episode From Now Till Tomorrow." Because Respondent's email was misleading as to when he actually left work, Respondent actually had a three-hour unauthorized absence from work (*i.e.*, from 1:30 p.m. to 4:40 p.m.) and misled his supervisor as to the amount of FMLA leave that was being requested.

February 10, 2021

32. On February 10, 2021, Respondent reported to work at his scheduled time and then left the office from 2:00 p.m. to 4:40 p.m. When asked by his department supervisor to account for the missing time, Respondent could not do so and instead elected to quibble with his supervisor about whether his authorized lunch break was 30 minutes or one hour in duration. Respondent's unauthorized leave was charged against his accrued vacation hours.

CONCLUSIONS OF LAW

33. Jurisdiction of the subject matter and the parties lies in section 2.285 of the Clearwater Code of Ordinances, which authorizes the City to contract with DOAH to review "employee appeals resulting from alleged adverse employer action," including suspension.

34. Chapter 2, section 3(b) of the CSR provides that hearings conducted pursuant to section 2.285 of the Clearwater Code of Ordinances "shall utilize a procedure as outlined in Section 120.57(1), Florida Statutes." The procedure utilized herein, unless otherwise limited, comports with such requirements.

35. The Clearwater Code of Ordinances does not establish a standard of proof in an appeal by an employee facing disciplinary action. Ordinarily, an employer seeking to discipline an employee bears the burden of proving by a preponderance of the evidence that discipline is appropriate. *See Allen v. Sch. Bd. of Dade Cnty.*, 571 So. 2d 568, 569 (Fla. 3d DCA 1990). "A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000).

36. Chapter 13 of the CSR provides in part as follows:

Sec. 1. Purpose -- The City reserves the right to suspend, dismiss, or demote any employees who are unwilling or unable to meet City-wide, Department, and/or position standards. Position standards shall also include all departmental rules, general or

special orders, and, if applicable, specified rules or articles contained with respective collective bargaining agreements.

Sec. 2. Performance Management and Review -- Each City Department oversees the management of employees through performance and behavior management programs established by the Human Resources Department. The City reserves the right to change or modify these programs. When practical, the City through its management and supervisory employees will provide intervention, coaching, and corrective guidance that encourages employees to recognize inappropriate behavior and/or deficient job performance. Employees will be provided with reasonable opportunities in order to bring performance or behavior up to City or Department standards. It is recognized, however, that some employees may be unable or elect not to meet such standards or expectations. In such instances, the City may dismiss, suspend, or demote the employee.

Sec. 3. Reasons for Suspension, Demotion, and Dismissal -- Whenever practical, employees will be given reasonable opportunity to bring their performance and/or behavior up to acceptable standards pursuant to the procedures and rules of the City's performance and behavior management programs. However, employees may be subject to disciplinary action up to and including immediate dismissal for the following acts, including but not limited to specifically cited examples:

* * *

(b) Failure to perform satisfactorily within established guidelines.

* * *

(f) Habitual tardiness for duty or excessive unauthorized absence from duty.

* * *

(l) [W]hen the City believes that an employee is willful in refusing to adhere to established rules, regulations, or guidelines.

37. The guidance manual for the PBMP instructs that:

The following standards represent Integrity issues of such a serious nature that immediate formal discipline, up to and including termination, may be recommended[:]

* * *

Violation of the provisions of Chapter 13, Section 3, of the City Civil Service Rules and Regulations.

* * *

Dishonesty or untruthfulness or willful refusal to provide information or otherwise cooperate during an internal investigation or when directed to do so by competent authority.

38. The evidence establishes that Respondent violated chapter 13, section 3(b) and (f) of the CSR because he had several hours of unauthorized absences from work on February 1, 3, and 10, 2021.

39. As for the issue of “willfulness,” neither the Civil Service Rules nor the PBMP manual provide a definition of the term “willful.” A willful act is therefore best defined by Florida case law, which identifies such an act “as one that is voluntarily and intentionally performed with specific intent and bad purpose to violate or disregard the requirements of the law.” *Fugate v. Fla. Elec. Comm’n*, 924 So. 2d 74, 75 (Fla. 1st DCA 2006).

40. As noted in the Findings of Fact, Respondent, on two occasions in December 2020, followed proper protocol by notifying the City in advance that he was utilizing his “FMLA episode leave.” Respondent’s knowledge of the leave protocol, his voluntary refusal to follow the protocol multiple times

in February 2021, his snarky, misleading, and evasive responses to reasonable requests for information from his supervisor, and his confessed frustration with how the City was handling his ADA accommodation request, all lead to the conclusion that Respondent acted willfully in his refusal to adhere to the City's established rules, regulations, and guidelines. Accordingly, the evidence establishes that Respondent violated chapter 13, section 3(l) of the CSR.

41. Respondent, by willfully refusing to follow the City's established rules, regulations, and guidelines, violated the PBMP Integrity Standard as charged.

42. Respondent, by suggesting on February 3, 2021, that he left work around 4:30 p.m., when in actuality he left at around 1:30 p.m., and then intentionally not correcting his supervisor's error as to this issue, despite having the opportunity to do so, violated the PBMP Integrity Standard as charged.

43. Respondent, by repeatedly refusing to answer Mr. Williams' queries regarding his arrival time to work on February 1, 2021, and then misleading his supervisor about having sent an email requesting leave on February 1, 2021, when in actuality no such email was sent, violated the PBMP Integrity Standard as charged.

44. Respondent's act of simply stating "correct" in response to Mr. Williams' request for clarifying information was a willful refusal to provide information, and this conduct violated the PBMP Integrity Standard as charged.


45. Even in instances where an employee violates PBMP Integrity Standards or chapter 13, section 3 of the CSR, the City still has discretion, pursuant to chapter 13, section 2 of the CSR, to follow the multi-step process outlined in the PBMP manual. If, however, the City believes that an employee is either "unable or elect[s] not to meet [City] standards or expectations, [then] [i]n such instances, the City may dismiss, suspend, or

demote the employee. *Id.* After giving due consideration to the totality of the circumstances present herein, it was not an abuse of discretion for the City to impose against Respondent a two-day, unpaid suspension of his employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that that the Civil Service Board of the City of Clearwater enter a final determination suspending without pay Respondent's employment for a period of two days.

DONE AND ENTERED this 31st day of August, 2021, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of August, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHTS

Civil Service Board regulations do not authorize the filing of exceptions to this Recommended Order. The Recommended Order will be considered by the Civil Service Board at a meeting to be noticed at a later time and place. At that meeting the Civil Service Board will make a determination on the disposition of this matter and thereafter send its order and penalty, if any, to the City Manager. *See* § 2.285(4), Code of Ordinances.