

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Edgar W. Lewis, Sr.
30360 Bunting Rd.
Dagsboro, DE 19939

RE: *Edgar W. Lewis v. TSSI and Unemployment Ins. Appeal Bd.*
C.A. No. S10A-6-002 RFS

*Upon Appeal of a Decision of the Unemployment Insurance
Appeal Board. Affirmed.*

Submitted: March 10, 2011
Decided: April 26, 2011

Dear Mr. Lewis:

I have reviewed your letter appealing a decision of the Unemployment Insurance Appeal Board (“UIAB”), as well as the record below. The Board ruled that you had been discharged for just cause in connection with your work. You challenge the Board’s factual findings that led to this conclusion.

The Court’s role is to determine whether the Board’s decision is supported by substantial evidence and is free from legal error. Title 19 *Del. C.* § 3323(a); *Kondzielawa v. Ferry*, 2003 WL 21350538 (Del. Super. Ct.). The Court does not revisit the Board’s credibility decisions. *Johnson v. Chrysler Corp.*, 213 A.2d 64 (Del. 1965).

The record shows that during your employment as a flagger for Traffic & Safety Signs, Inc. (“TSSI”), you asked passing motorists for cigarettes on two occasions: May 23, 2009 and September 27, 2009. Despite a warning following the first incident, you repeated this behavior four months later. You acknowledged having done so at the hearing before the Appeals Referee. The Board listened to the tape of that hearing and discounted your denials made before the Board, as well as the supporting testimony of witnesses appearing on your behalf.

In a discharge case, the employer has the burden of proving that the employee was terminated for just cause in connection with his work. *Longobardi v. Unemployment Ins. Appeal Bd.*, 287 A.2d 690 (Del. Super. Ct. 1971), *aff'd* 293 A.2d 295 (Del. 1972). The Board concluded that TSSI met this burden. This Court finds that the Board decision is supported by substantial evidence and is free from error of law.

The decision of the Board is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary
Unemployment Ins. Appeal Bd.
TSSI