

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RICHARD SANDERS,)
)
 Appellant,)
) C.A. No. N15A-10-010-CEB
 v.)
)
 BETTS TEXACO and)
 UNEMPLOYMENT INSURANCE)
 APPEAL BOARD,)
)
 Appellee.)

Date Submitted: August 8, 2016
Date Decided: November 30, 2016

*Upon Consideration of Appeal from
The Unemployment Insurance Appeal Board.*

AFFIRMED.

This 30th day of November, 2016, upon consideration of Richard Sander’s *pro se* appeal from the decision of the Unemployment Insurance Appeal Board (“the Appeal Board”), finding that Richard Sanders is disqualified from receiving unemployment insurance benefits pursuant to Section 3314(2), Title 19 of the Delaware Code, it appears that:

1. Richard Sanders was employed full-time as a truck driver by Betts Texaco (“Employer”) from October 30, 2013 through June 29, 2015. While driving one of the company trucks transporting machinery, the load on Mr. Sanders’ struck a bridge. After the accident was cleaned up and Mr. Sanders was permitted to leave

the scene driving the company truck, Mr. Sanders was informed that he needed to report to take a drug test immediately as required by Employer's post accident policy. Mr. Sanders refused to take the drug test claiming to be "on his own time" and upon refusal of the drug test he was directed to immediately stop driving the company vehicle, and his employment was subsequently terminated.

2. Mr. Sanders filed for unemployment benefits and on July 23, 2015, a claims deputy disqualified him from receipt of unemployment benefits, finding that his termination was for just cause.

3. Mr. Sanders appealed the claims deputy decision and the Unemployment Insurance Appeals Hearing for this matter was held before an Appeals Referee on August 13, 2015. At the hearing, Mr. Sanders testified that after the bridge collision, he informed Employer of the accident and remained at the scene for four to six hours during the cleanup. Mr. Sanders testified that once he left the scene of the accident, he was informed that he needed to take a drug test, however claims that when he was contacted, he was "on his own time" and maintains he was not required to take a drug test on his own time and the Employer should have requested the drug test on the scene. Employer testified that it is both Employer policy as well as Department of Transportation protocol for anyone with a commercial driver license to take a mandatory drug test following involvement in an accident. On August 14, 2015, the Appeals Referee issued a written decision

finding that Mr. Sander's was discharged from his employment for "just cause"¹ in connection with the work and is disqualified from the receipt of unemployment benefits. The Appeals Referee held that refusal to take a drug test as mandated by both Employer and Department of Transportation, which is a policy designed to ensure public safety, constitutes gross misconduct that diminishes the necessary trust placed in an employee and need not be tolerated by Employer.

4. On August 20, 2015, Mr. Sanders filed a timely appeal with the Appeal Board. At the Appeal Board hearing on September 30, 2015, Mr. Sanders again offered testimony that he was not required to take a drug test because they did not ask him to do so at the scene of the accident and contends that once he left the accident he was on his own time, and Employer could not demand a drug test when he was on his own time. The Appeal Board affirmed the decision of the Referee on September 30th, 2015, finding that Mr. Sanders was discharged by Employer with just cause in connection with his work by refusing a mandated drug test. Mr. Sanders then timely filed this appeal with the Court.

5. This Court's review of Mr. Sander's appeal is limited to a review of legal error and a determination of whether "substantial evidence exists to support the

¹ 19 Del.C. § 3314. Disqualification for benefits.

An individual shall be disqualified for benefits:

(2) For the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work and for each week thereafter until the individual has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned wages in covered employment equal to not less than 4 times the weekly benefit amount.

Board's findings of fact and conclusions of law."² "Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion."³ The Board's decision is reviewed *de novo* for errors of law.⁴ In the absence of legal error, the Board's decision is reviewed for abuse of discretion.⁵ The Court will find an abuse of discretion when the Board's decision "exceeds the bounds of reason in view of the circumstances and has ignored recognized rules of law or practice so as to produce injustice."⁶ On appeal, the Court will not "weigh the evidence, determine questions of credibility, or make its own factual findings."⁷

6. The record indicates that Mr. Sanders' employment was terminated due to his refusal to take a drug test as mandated by both Employer and Department of Transportation protocol following an accident while driving Employer's vehicle. Mr. Sanders was informed of this policy on the date of the accident. The Court finds substantial evidence in the record sufficient to support the Appeal Board's finding that this conduct rises to the level of just cause in connection with the work and the findings are free from legal error.

² *Arrants v. Home Depot*, 65 A.3d 601, 604 (Del. 2013).

³ *Wyatt v. Rescare Home Care*, 81 A.3d 1253, 1258-59 (Del. 2013) (internal citations omitted).

⁴ *Arrants*, 65 A.3d at 604.


⁵ *Id.*

⁶ *McIntyre v. Unemployment Ins. Appeal Bd.*, 2008 WL 1886342, at *1 (Del. Super. Apr. 29, 2008) *aff'd*, 962 A.2d 917 (Del. 2008).

⁷ *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

7. Accordingly, the Appeal Board did not abuse its discretion in affirming the Appeals Referee's decision. The decision of the Appeal Board is **AFFIRMED.**

IT IS SO ORDERED.



Charles E. Butler, Judge