

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

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

Ashley Beardsley
25959 Loop Drive
Millsboro, DE 19966

Richard E. Berl, Jr., Esquire
Smith Feinberg McCartney & Berl, LLP
P.O. Box 588
Georgetown, DE 19947

Re: ***Beardsley v. Am Vets Post #2***
C.A. No. S11A-05-005 RFS

*Upon an Appeal of the Unemployment Insurance Appeal Board.
Affirmed.*

Submitted: January 12, 2012
Decided: January 20, 2012

Dear Ms. Beardsley and Mr. Berl:

Claimant Ashley Beardsley's ("Claimant") appeal of a decision of the Unemployment Insurance Appeal Board ("Board") is denied. The Board's decision finding her ineligible to receive unemployment benefits is affirmed.

The Board determined that Employer Sussex Am-Vets Post 2 ("Employer") carried its burden of showing that Claimant was discharged for just cause because she tested positive for cocaine on a random drug test. The evidence showed that a test performed in October 2010 by Medical Aid of Long Neck, Delaware showed the presence of cocaine in Claimant's urine sample. Claimant was terminated within two days of the test.

Claimant challenged the test result on grounds that she does not use illegal drugs but had been drinking Delisse coca tea, which she said caused the positive result. She took samples of the tea for testing by a chemist, who determined that the tea showed an exact match for cocaine.

Two things are required for an employer to show just cause for termination: whether a specific policy existed and whether the claimant was aware of the policy.¹ Employer's exhibit shows that the Kitchen and Employee Rules and Regulations, Rule 14 provides "Employees without prior notification will be required to take a drug test. If [the] test is positive termination will be immediate. (Random testing at our request)." Claimant, who worked as a cook, signed a document acknowledging this rule, and indicated her awareness of it at hearings before both the appeals referee and the Board.

The scope of review on appeal of a Board decision is limited to errors of law and whether the decision is supported by substantial evidence.² The Court does not weigh evidence, determine the credibility, or make its own factual findings.³

Claimant admits the presence of cocaine in her system by asserting that she drinks coca tea. She confirmed the fact that coca tea contains cocaine by having the tea chemically analyzed.

Based on the law and the facts of record as presented above, the Court finds that the Board's decision is free from legal error and is supported by substantial evidence.

Claimant's appeal is **DENIED**, and the Board decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary
Katisha D. Fortune, Esquire

¹*Martin v. Goodwill Industries of Delaware*, 2011 WL 6000830, *2 (Del. Super.)(citing *McCoy v. Occidental Chem. Corp.*, 1996 WL 111126, at *3 (Del. Super.)).

²*Id.*

³*Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

