SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

Joshua J. Clifton
138 West Blake Drive
Milton, DE 19968

Eugene M. Lawson, Jr., Esquire
The Lawson Firm, LLC
402 Rehoboth Avenue
Rehoboth Beach, DE 19971

James T. Wakley, Esquire
Thomas H. Ellis, Esquire
Department of Justice
820 N. French Street
Wilmington, DE 19801

RE: ***Clifton v. Atlantis Industries Corporation and Unemployment Ins. App. Bd.***
C.A. No.: S13A-07-005 RFS

On Appeal from the Unemployment Insurance Appeal Board - AFFIRMED

Date Submitted: December 11, 2013
Date Decided: March 25, 2014

Dear Mr. Clifton and Counsel:

This appeal arises from Mr. Clifton's ("Clifton") termination from his employment with Atlantis Industries Corporation ("Atlantis"). He was dismissed for missing work in violation of his conditions of employment. The Unemployment Insurance Appeal Board ("Board") found that Clifton was warned about absences and violated the rules by failing to work on July 25, 2012. The Board confirmed the findings of the Claims Deputy and Referee that Atlantis had just cause to terminate

Clifton.

On June 18, 2013, the Court reversed the Board's decision.[1] The background and law governing appellate review of the issues here are incorporated by reference. In the reversal, the Board was directed to solely address the question whether Atlantis followed its attendance policies in the dealings with Clifton. Following an additional hearing on the point, the Board decided that Atlantis exercised appropriate discretion in accord with its policies and had just cause to dismiss Clifton. Consequently, he was disqualified from receiving benefits.

The record shows Clifton had been previously employed by Atlantis and then was later rehired. In the second period of employment, Clifton had three (3) absences within thirty (30) days.[2] As a result on May 17, 2012, Atlantis warned Clifton in writing that future absences in the next ninety (90) days would result in immediate dismissal (emphasis added). Clifton understood the warning but declined to sign the form.

Atlantis retained discretion to act outside of certain policy procedures when necessary in its business interests as reflected in its handbook and testimony.

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[1] *Clifton v Atlantis Indus. Corp. & Unemployment Ins. Appeal Bd.,* 2013 WL 3338646 (Del.Super. June 18, 2013).

[2] Clifton complains that a May 4 absence was approved by Atlantis. However, this was not one of the three absences and was not used against him.

Corrective actions could be taken in stages before a final warning was issued. Although the final warning was the first warning, Clifton has no grounds of complaint as he was clearly warned that any future absences would instantly result in discharge. Clifton realized he was on a short leash. Recognizing the potential consequences, he did not miss work after May 17, 2012 until July.

In this background, he called Atlantis on July 25, 2012 seeking permission to spend time with his dying grandmother. However, he did not speak with anyone in authority. He missed work, and he was terminated in accord with the May 17, 2012 warning.[3]

Under the circumstances, Clifton had the burden to obtain permission. He acted at his peril without appropriate approval for an absence. The employer had the flexibility to issue the May 17, 2012 warning and Clifton played Russian Roulette.

After review, the Board's decision is supported by substantial evidence and is free of legal error. Questions of credibility are reserved for the Board. The Board sized up the witnesses and gave appropriate attention to the issue at hand. Therefore, the decision is affirmed. Further, the Board acted well within its discretion to deny Clifton's request for a new hearing as detailed in its August 15, 2013 Order.

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[3]Bereavement leave did not include grandparents.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary