

The claimant did not have the requisite state of mind warranting disqualification, where the findings indicate that the claimant made a good faith error in approving an invoice to be paid.

**Board of Review
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Issue ID: 0019 5211 40

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Stephen Dougal, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was discharged from her position with the employer on August 16, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 8, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on October 21, 2016. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and, thus, was disqualified, under G.L. c. 151A, § 25(e)(2). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant had the requisite state of mind to engage in deliberate misconduct in wilful disregard of the employing unit's interest, under G.L. c. 151A, § 25(e)(2), by erroneously approving an invoice to be paid by the employer, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked full-time for the employer, [a] real estate property management company, as a site manager, from January 4, 2016 until August 16, 2016. The claimant was paid \$25.75 per hour.

2. The employer's Operating Procedures concerning receiving, entering and paying for invoices. (Exhibit 8)
3. The claimant was not issued the employer's Operating Procedures.
 - a. On April 14, 2016 a managers' meeting was held. The agenda included addressing the invoice procedure:

K. Invoices

1. Work on Daily
 2. Date Stamp Correctly – Actual Day Bill Arrived on Site
 3. Use Site Stamp – Accounting Needs the Space
 4. Scan & email to main office
 5. Save your scans by date or vendor in folder marked invoices
 6. Mail originals to main office 2x/week
 7. Set up Tickler to check websites for: Staples, Gas Cards, Home Depot and Waste management (Exhibit 9)
4. On June 15, 2016 the claimant was issued a MEMORANDUM which stated, in part:

[Claimant] this is to notify you that your continued employment with [Employer] is in jeopardy and you are being placed on probation for 90 days.

As a summary, I am outlining the following areas which need your improvement:

Careless errors, which are varied in nature from simple clerical errors, to basic addition, processing of deposits, processing of invoices, grammar and spelling errors on documents and reports, to not proofing or double checking your work. Fundamental essentials of a business office are important in that you, as Site manager, are the one responsible to check other staff's work and reports, not to mention that all of our detailed process and procedures must pass the scrutiny of the various Agencies that govern these developments. (Exhibit 10)

5. The claimant signed the June 15, 2016 memorandum.
6. The employer requires site managers to properly process invoices to prevent financial loss due to payment of invalid invoices.
7. The claimant was aware she was expected not to be careless when processing invoices.
8. The claimant was aware she was expected to date stamp invoices, review the content of invoices and charges, review work and materials purchased, look

- up the vendor number to approve an invoice and sign off an authorizing payment.
9. On August 12, 2016 the claimant approved and submitted an invoice for payment from a vendor named [Company A] Countertops/Kitchens/Flooring in the amount of \$4,069.85. The claimant cited the vendor # K56866. (Exhibit 14, Page 3)
 10. The claimant assumed the invoice was correct because she saw it was for kitchen cabinets and the kitchen cabinet work had been done.
 11. [Company A] Countertops/Kitchens/Flooring had provided a quote for work at the claimant's site but was not chosen.
 12. The claimant did not request the quote from [Company A] Countertops/Kitchens/Flooring.
 13. [Company A] Countertops/Kitchens/Flooring did not provide the materials or work.
 14. The work and materials was provided by another vendor, [Company B].
 15. The claimant was aware [Company B] performed the kitchen work at the claimant's property site. [Company B]'s vendor # is K56866.
 16. The main office notified the claimant she had approved an invalid invoice. The claimant corrected the matter.
 17. On August 16, 2016 the claimant was terminated for approving and authorizing an invoice for services and products never received.
 18. The claimant would not have been terminated on August 16, 2016 had she not approved and authorized payment of the [Company A] Countertops/Kitchens/Flooring invoice.
 19. The claimant did not think someone who didn't do the work would submit an invoice.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant's conduct was deliberate, pursuant to G.L. c. 151A, § 25(e)(2).

Because the claimant was terminated from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the period of unemployment next ensuing . . . after the individual has left work . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest

Under this section of law, the claimant is disqualified for benefits if she was discharged for intentionally engaging in conduct which she knew to be contrary to the employer's expectations. The employer bears the burden of proof. Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted). The question is not whether the employer was justified in firing the claimant, but whether the Legislature intended that unemployment benefits should be denied under the circumstances. Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 95 (1979).

The claimant was discharged for approving an invoice to be paid by the employer, despite the fact that the biller did not actually provide any goods or services to the employer. The claimant did not deny being aware of the employer's proper invoicing procedures, and did not deny that she approved the invoice in error. Rather, the only question is whether the claimant's behavior constituted 'deliberate' misconduct. The proper factual inquiry is to ascertain the claimant's state of mind at the time of the behavior. Grise v. Dir. of Division of Employment Security, 393 Mass. 271, 275 (1984).

The record indicates that, prior to the incident in question, the employer had recently completed kitchen renovations at one of the buildings that the claimant managed¹. While multiple bids were solicited, only one contractor was selected to perform the work. It is undisputed that the claimant was not involved in the process of selecting a contractor or overseeing the renovations. One of the companies that had not been selected sent the employer an invoice indicating that the work had been performed. Both parties testified that, when an invoice was received, the claimant was expected to date-stamp it, review it, confirm that the service or product was actually delivered as ordered, and prepare a "voucher ticket" approving the invoice to be paid. It is undisputed that the claimant followed this procedure. However, the claimant erroneously approved the invoice to be paid when it was in fact a different company that performed the work listed on the invoice.

The review examiner credited the claimant's testimony as to her state of mind. The claimant believed that the invoice was correct, and did not believe a company would submit a bill if they had not actually performed the work. *See* Finding of Fact # 10 and Finding of Fact # 19. Despite this, the review examiner disqualified the claimant, explaining that the claimant "should have had a heightened awareness that she carefully process the invoice." However, this is not

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

the correct legal standard, under G.L. c. 151A, § 25(e)(2). Even if the claimant “should have” been more careful, the applicable question is simply whether the claimant deliberately committed the error. As the Supreme Judicial Court has stated, “[w]hen a worker is ill equipped for his job or has a good faith lapse in judgment or attention, any resulting conduct contrary to the employer’s interest is unintentional; a related discharge is not the worker’s intentional fault, and there is no basis under § 25(e)(2) for denying benefits.” Garfield, 377 Mass. at 97. The employer did not suggest that the claimant intentionally approved the invoice knowing that it was improper, and the record suggests no reason that the claimant would intentionally do this. Instead, the claimant made a mistake.

We, therefore, conclude as a matter of law that the claimant’s discharge was not attributable to deliberate misconduct in wilful disregard of the employing unit’s interest, within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending August 20, 2016, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – January 23, 2017



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

JRK/rh