

A claimant who intentionally entered an incorrect date into a computer system, in an effort to obtain an EMT certification after hers had expired several days prior, is subject to disqualification under G.L. c. 151A, § 25(e)(2), where the employer discharged her for falsification of documentation and the review examiner found her testimony not credible regarding why she entered the incorrect information.

**Board of Review
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Issue ID: 0021 5887 00

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by 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 affirm.

The claimant was discharged from her position with the employer on April 14, 2017. She filed a claim for unemployment benefits with the DUA. On May 3, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing.¹ In a decision rendered on June 16, 2018, the review examiner affirmed the agency determination.

Benefits were denied after the review examiner determined that the claimant knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant is subject to disqualification, pursuant to G.L. c. 151A, § 25(e)(2), is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant entered incorrect information into a state computer website during her EMT recertification process.

Findings of Fact

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

¹ The hearing in this matter was a *de novo* hearing, ordered by the district court.

1. The claimant worked as an emergency medical technician (EMT) for the employer, an ambulance service. The claimant began work for the employer in August 2013.
2. The employer maintains a Standards of Conduct policy that includes a list of unacceptable behavior. The list includes: "Not maintaining EMT certification and/or professional cards, such as CPR card, State Certification card, ACLS card, etc."
3. The list also [includes]: "Dishonesty, willful falsification or misrepresentation on you [sic] application, personal information sheet, medical records, certifications, or physical exam."
4. The purpose of the policies are to provide competent patient care, comply with government regulations and maintain an honest workplace.
5. When the claimant began work for the employer, she signed a receipt stating she was responsible for reading the policies. The claimant did not read the policies completely.
6. The claimant was aware she was expected to maintain her EMT certification and to be honest.
7. The employer will always discharge an EMT who does not maintain their certification.
8. The employer will always discharge an employee for falsifying a course date.
9. The Massachusetts Department of Health, Office of Emergency Medical Services (OEMS) requires that EMTs get recertified every two years. EMTs are required to take 40 hours of training to apply for recertification. The deadline for recertification is March 31st.
10. The claimant's deadline was March 31, 2017.
11. This was the claimant's second recertification. The claimant had recertified in 2015.
12. On March 31, 2017, the claimant checked the training web site to see how many hours of training she had completed. She saw she was three hours short of the requirement.
13. The claimant contacted the employer's training department administrative assistant. The administrative assistant told the claimant there was "ALS/BLS Interface" (advanced life support/basic life support) class at the employer's [City A], MA location available on April 4, 2017. The claimant asked her to sign her up for the course.

14. The employer was informed the claimant did not complete her 40 hours of training by March 31, 2017, and removed her [from] the schedule.
15. The claimant completed the ALS/BLS Interface course on April 4, 2017.
16. The recertification process includes entering course information on the OEMS web site.
17. After the claimant completed the course, she accessed the OEMS training web site to enter the course information. When she entered the course date of April 4, 2017, it turned red and would not accept the date.
18. The claimant called another EMT for advice. The EMT suggested she enter the date March 31, 2017 as the course date.
19. The claimant entered the date of March 31, 2017. It turned green and accepted the date.
20. On April 5, 2017, director of internal education spoke with the claimant. He asked her if she entered the date of March 31, 2017, for the life support course. The claimant stated she did. The director told her she could not do that. She asked him why she could not. He told her she could not use courses taken after the recertification date. He told the claimant he would meet with her and the director of quality assurance. He told her he would get back to her.
21. On April 8, 2017, the claimant sent a text message to the training department administrative assistant asking if there was other training she had already completed that could be used to meet the 40-hour requirement. They texted about the possibility of using a CPR course. The administrative assistant stated that was not possible.
22. The claimant then sent the following text message: "one more thingy...i would never not do a class and ask for credits but can you just back date my als/bls interface so i can square this away." The administrative assistant responded that she could not because she had already submitted the attendance record. (Exhibit 13)
23. The administrative assistant reported the claimant's request and text message to the employer.
24. On April 11, 2018 the April 12, 2018 [sic] the director of internal information and the clinical director met with the claimant. They discussed the claimant attempting to document the incorrect date for her ALS/BLS class. They discussed the claimant's request to the administrative assistant that she back date the attendance record for the class. The claimant was placed on administrative leave pending further investigation.

25. On April 14, 2017, the employer discharged the claimant for falsifying documentation.

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 are supported by substantial and credible evidence; and (2) whether the review examiner's original 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, except for the year noted in Finding of Fact # 24. All the relevant events in this case occurred in 2017, not 2018. As discussed more fully below, we conclude that the review examiner's decision that the claimant is subject to disqualification under G.L. c. 151A, § 25(e)(2), is free from any error of law affecting substantive rights. However, our reasoning differs from that used by the review examiner.

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, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

The employer has the burden to show that the claimant is not eligible to receive benefits. The legislative intent behind G.L. c. 151A, § 25(e)(2), is "to deny benefits to a claimant who has brought about his own unemployment through intentional disregard of standards of behavior which his employer has a right to expect." Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979).

Here, the review examiner concluded that the claimant was subject to disqualification, because the claimant's conduct prior to her separation constituted a knowing violation of a reasonable and uniformly enforced policy of the employer. The review examiner made findings of fact regarding the employer's policies relating to the maintenance of EMT certification and dishonesty. Findings of Fact ## 2 and 3. However, he found that the claimant "did not read the policies completely." Finding of Fact #5. Although the review examiner is correct to point out that the claimant testified that she was generally aware that she needed to be honest and maintain her EMT certification, her general awareness of these expectations does not necessarily mean that she was aware of the specific content of the policies. This is especially true where it is unclear from Finding of Fact # 5 what portions of the policy she read. We cannot conclude that the claimant "knowingly" violated policies which the review examiner found she did not read completely. Therefore, the evidence before us does not support a conclusion that the claimant knowingly violated a reasonable and uniformly enforced rule or policy of the employer.

However, this does not end our analysis. The claimant will be subject to disqualification, pursuant to G.L. c. 151A, § 25(e)(2), if she engaged in deliberate misconduct in wilful disregard of the employer's interest. The review examiner found that the claimant was discharged for "falsifying documentation." Finding of Fact # 25. This finding is directly related to the claimant's awareness that she needed to be honest and maintain her EMT certification. Finding of Fact # 6. Falsifying documentation is, in our view, the same as submitting false information to the employer or to the Office of Emergency Medical Services (OEMS) website. The claimant's awareness that she needed to be honest necessarily extends to the idea that she needed to submit truthful information to OEMS in order to recertify.

In this case, we conclude that the claimant engaged in an act of misconduct when she submitted false information to the OEMS website. The website requested that she input the date she took a course, in order for the website to log the number of training hours she had accumulated since she last recertified. After submitting the correct date, April 4, 2017, which was rejected by the website, the claimant then input March 31, 2017. There is no question from the record before us that the claimant knew that this was not the date that she had taken the course. She electronically documented false information in order to obtain her recertification.

Although the claimant engaged in misconduct, she cannot be denied benefits unless she had a deliberate and wilful state of mind at the time of the misconduct. In order to evaluate the claimant's state of mind, we must "take into account the worker's knowledge of the employer's expectation, the reasonableness of that expectation and the presence of any mitigating factors." Garfield, 377 Mass. at 97. As noted above, the claimant was aware that she needed to act honestly. This awareness means that she was aware that she was not to submit false information to the employer or the OEMS website. The employer's expectation in this regard was certainly reasonable. The employer needs to ensure that its employees behave honestly and that it maintains truthful records, particularly where the employer's business provides medical care directly to many people in a regulated industry. Finally, the review examiner's findings of fact do not indicate that there were any circumstances that mitigated the willfulness of the claimant's dishonest behavior.

During the hearing, the claimant offered specific testimony regarding her state of mind. She testified that she did not think she did anything wrong. She testified that she thought it was permissible to enter March 31, 2017, because she had been scheduled for the April 4, 2017, class, and the employer knew that her EMT certification expired on March 31, 2017. She testified that she had no awareness that entering the date would be wrong, because another employee suggested that she do it. The review examiner rejected this testimony. He did not have to find it credible. A review examiner is not required to believe self-serving testimony, even if it is uncontroverted by other evidence. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). In this case, the review examiner specifically noted the claimant's testimony in Part III of his decision. He concluded that the claimant's testimony employed "tortured and self-serving logic." We see nothing unreasonable about this credibility assessment, given the evidence before review examiner. Therefore, we decline to disturb it. See School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996).

Finally, we reject the claimant's arguments on appeal. In the appeal, the claimant asserts that she "did not falsify any documents, change any course date, or ask anyone else to falsify documents" (emphasis in original). As noted above, however, the claimant electronically documented a false date on the OEMS website, information needed to complete the claimant's recertification. The claimant further argued that the employer produced no evidence to show that "the claimant was aware that when she entered the 3/31/17 date on the OEMS website . . . that she was violating the employer's policy against falsification." Again, she knowingly submitted false information on an OEMS website form, a document the claimant needed to submit in order to recertify. There was sufficient evidence to show that she was deliberately violating the employer's expectations. As to the claimant's arguments regarding her state of mind, the review examiner did not believe that she thought that what she was doing was permissible.

We also disagree that the review examiner shifted the burden to the claimant "to prove she had done nothing wrong." The review examiner questioned the employer extensively during the hearing, obtaining information about the employer's policies, the claimant's conduct, and what led up to the separation from employment. He properly placed the burden of proving disqualification under G.L. c. 151A, § 25(e)(2), on the employer. The burden was not shifted to the claimant, simply because the review examiner considered the claimant's testimony and did not find her explanations credible.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits, pursuant to G.L. c. 151A, § 25(e)(2), is supported by substantial and credible evidence and free from error of law, because the credible evidence in the record supports a legal conclusion that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning April 14, 2017, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 24, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SF/rh