

**Board of Review  
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**Issue ID: 0021 8176 30**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The employer appeals a decision by Richard Conway, a review examiner of the Department of Unemployment Assistance (DUA), to award the claimant benefits following her separation from employment on May 12, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On June 3, 2017, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on September 16, 2017, the review examiner affirmed the agency determination, concluding that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepts the employer's application for review.

### Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record, except for portions of Finding of Fact # 1, the second sentence of Finding of Fact # 6, and Finding of Fact # 9. There were two typographical errors in Finding of Fact # 1. The claimant's job was not a "technical style agent." The testimony and documentary evidence indicate that she was a "textile agent." In addition, the date of the suspension should also be May 10, 2017, not June 10, 2017. As to the second sentence of Finding of Fact # 6 and Finding of Fact # 9, those findings were not supported by the testimony or the documentary evidence submitted. Therefore, we reject those findings.

However, rejecting those findings does not change the ultimate conclusion of the case. The review examiner made supported findings that the claimant did not read the employer's policies regarding purchasing products from the employer's store and that the claimant's supervisor verbally told her that she could not purchase items during work hours when she was "on the clock." Thus, the claimant was not aware or did not understand that the employer's policies prohibited shopping at the employer's store on a day when the employee has worked and also prohibited another person from making a purchase for an employee. *See Exhibit # 7, page 8.* Without her specific knowledge of the employer's expectations and policies, it cannot be

concluded that she had the state of mind necessary for disqualification under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning May 7, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 25, 2017**



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Chairman



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Member

**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](http://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