

**Claimant machinist, who failed to record required data points for a client job and threatened to do the same in the future under similar circumstances, was discharged for deliberate misconduct.**

**Board of Review  
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**Issue ID: 0022 1359 01**

## **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 his position with the employer on June 13, 2017. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on July 7, 2017. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on September 20, 2017. 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). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to take testimony and evidence from the claimant. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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's failure to record required data on a job for a client and his threat to do the same on future jobs under similar circumstances constituted deliberate misconduct in wilful disregard of the employer's interest is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. The claimant worked for the employer, a manufacturer of surgical implants, surgical instruments, and airplane components, as a full time 5-axis machinist from April, 2015, until June 13, 2017.
2. No policy relevant to the claimant's discharge was presented.
3. The employer's clients required documentation of data points during the production process. At any time, the employer's customers may have requested to review the data for quality assurance.
4. The employer had an expectation that, at all stages of the manufacturing process, employees measure, record, and save specific data points. There were no circumstances under which it was allowable to skip the measurement and recording of data points. The employer's reasonable expectation regarding data point recording ensured that products were manufactured in accordance with customer blueprints. Further, the slightest irregularity in the manufacturing process may result in a faulty implant, surgical error, or malfunction in an airplane component.
5. The claimant was aware that he was expected to record the specified data points because doing so was required by the employer's clients, and because it was critical to ensure products were manufactured accurately.
6. On an unknown date, the business owner instructed the claimant to ship a job for which he had not recorded data points. The parts in question were to be displayed at trade show only and the customer agreed to purchase the job without any associated data. The claimant and employer did not discuss why data was not available.
7. Several days before June 13, 2017, the shift supervisor attempted to locate the data for a specific job after it was requested by the customer.
8. When he was unsuccessful, the supervisor asked the claimant regarding the location of the data. The claimant replied that he did not have enough time to record the data in the expected format, but that he had documented the required data points on the blueprint for the job.
9. The data was not recorded on the blueprint or any other documents associated with the job in question.
10. The claimant did not document the required data while completing the job in question.
11. The claimant had previously performed his duties, including recording data points, to the employer's satisfaction.

12. The claimant never expressed that he lacked sufficient time to complete his job thoroughly or requested assistance, did not request any modification to the pace of production, or express that he felt unable to perform his job duties.
13. If the claimant did not feel he had sufficient time to perform his essential job duties, including recording of data points, the employer would have slowed down production or provided him with additional staff.
14. On June 13, 2017, the supervisor reiterated to the claimant that it was not acceptable to skip recording data points under any circumstances. He informed the claimant to approach engineering for clarification if he felt additional information was needed to complete his tasks, as the claimant had done in the past.
15. The claimant responded that, if he were placed in “the same circumstances” in the future, he would again skip recording data points. The claimant informed the supervisor that he could fire him if he did not like the way he performed his job.
16. The claimant did not believe he would be terminated because he had a family and would require time to find a new job. He believed that he would receive a warning based on his failure to record the necessary data and the nature of his June 13, 2017, response to the employer.
17. The employer felt that the claimant’s refusal to agree to consistently record the data required posed a significant safety risk to both the employer and their customers.
18. On June 13, 2017, the claimant was discharged for refusing to comply with reasonable safety measures after ordered to do so by his supervisor.

NOTE [Credibility Assessment]: The claimant expressed minimal disagreement with the Findings of Fact contained in the September 20, 2017 Hearing Appeal Results.

In his initial statement to the Agency (Exhibit # 2), the claimant indicated that, toward the end of his employment, he began receiving assignments that did not contain orders to record data points. On December 22, 2017, the claimant acknowledged that he was expected to record the data on all jobs because the employer’s clients required doing so and because it was critical to ensure products were manufactured accurately. He testified that he recorded data points for all jobs regardless of whether specifically requested and that he expected to be subject to disciplinary action for, in part, failing to do so on the job in question. The claimant’s testimony suggests that he understood the employer’s expectation that this task be completed on all jobs at the time he expressed his refusal to perform the task consistently. He did not dispute that he gave the employer no indication that he felt unable to complete his job duties for any reason. The

claimant's alleged belief that he would not be fired because he had a family and needed time to look for a new job does not exempt him from adhering to the employer's reasonable expectations.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

The review examiner denied benefits after analyzing the claimant's separation under 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 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 . . . .

Under G.L. c. 151A, § 25(e)(2), it is the employer's burden to establish that the claimant was discharged either for a knowing violation of a reasonable and uniformly enforced rule or policy of the employer or deliberate misconduct in wilful disregard of the employer's interest. Solely on the basis of the employer's testimony at the initial hearing, the review examiner concluded the employer had met its burden. We remanded the case to take the claimant's testimony. After remand, we also conclude that the employer has met its burden.

After remand, the review examiner found that the employer had an expectation that employees would record data points during the production process, and that there were no circumstances where it was permitted to skip measuring and recording these data. The expectation was reasonable, since it ensured that the employer's products were manufactured in accordance with its customers' blueprints, and irregularities could lead to a faulty implant, surgical error, or malfunction of an airplane component. The claimant was aware of this expectation.

The review examiner found that several days before June 13, 2017, the employer's supervisor tried to locate the data for a particular project when the customer asked for it. When he was unable to find the data, the supervisor asked the claimant for the data. The claimant replied he had not had enough time to record the data, but that he had documented the required data points on the blueprint for the job.

The review examiner found that the claimant had not recorded the data on the blueprint, on any other documents associated with the job, and had not documented the required data while completing the job in question.

On June 13, 2017, the supervisor reiterated to the claimant that it was not acceptable to skip recording data points under any circumstances, and told the claimant to approach the engineering department for clarification if he needed additional information to complete his work. The claimant replied that if he faced the same circumstances in the future, he would again skip recording data points — adding that the supervisor could fire him if he did not like the way he performed his job. The supervisor believed the claimant's refusal to adhere to the requirement of recording data consistently posed a significant safety risk to the employer and its customers and discharged the claimant for refusing to comply with safety measures, after being ordered to do so.

The review examiner provided a credibility assessment explaining why she accepted the employer's version of events over the claimant's, noting that the claimant acknowledged he would be subject to disciplinary action for his actions. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). As noted above we believe the review examiner's credibility assessment is reasonable, and we decline to disturb said assessment.

The review examiner found that the claimant knew the employer expected him to record data points while manufacturing parts. While the claimant did not believe he could be fired for his refusal to perform this part of his job, he admitted that he would receive some form of discipline for his actions. Where the review examiner has credited the employer's testimony that the claimant threatened not to record data points under similar circumstances in the future, we believe it follows that the employer reasonably believed this threat jeopardized its clients' safety as well as its business. The claimant's conscious refusal to perform this task evinces the requisite state of mind to support disqualification from benefits. We, therefore, conclude as a matter of law that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending June 17, 2017, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 24, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
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.

JPC/rh