

By clocking in for subordinates who were not working, the claimant falsified the employer's time records, which violated employer's policies. Claimant's denials and explanations were not credible.

**Board of Review
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Issue ID: 0023 4116 70

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

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

The claimant was discharged from his position with the employer on October 18, 2017. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 30, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on May 2, 2018. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest, or knowingly violate a reasonable and uniformly enforced rule or policy of the employer and, thus, was not 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 employer's appeal, we remanded the case to the review examiner to give the employer an opportunity to testify and present other evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant neither engaged in deliberate misconduct in wilful disregard of the employer's interest, nor knowingly violated a reasonable and uniformly enforced rule or policy of the employer, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant recorded hours in the timekeeping system for employees who were not on the work premises.

Findings of Fact

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

1. The claimant worked as a Manager for Environmental Services for the employer, a Children's Hospital, from January 6, 2014 until October 18, 2017, when his employment was terminated.
2. The claimant worked a full-time schedule of hours for the employer.
3. As a manager, the claimant is a salaried employee.
4. As a manager, the claimant oversaw approximately twenty-one hourly employees.
5. The employer has a written policy that prohibits any employee from falsifying information on a time sheet. Any employee who falsifies information on the time sheet will be subject to immediately [sic] discharge.
6. The employer maintains this policy in order to ensure proper pay to all employees.
7. The claimant received a copy of the policy at hire and throughout his tenure with the employer.
8. As a manager, the claimant was required to help train his subordinates on proper use of the time keeping system with the employer and deal with all potential violations.
9. Hourly employees are required to swipe into work with a badge and use of a fingerprint. The employees are required to do the same at the end of the shift.
10. If an hourly employee forgets to swipe in or out, the employee must contact the supervisor (the claimant) and have the supervisor manually input the time that the employee did in fact work.
11. When the claimant makes any manual edits to the timekeeping system, only the claimant's name is reflected as the person who made the edits. If any other member of management made any manual edits, that person's name would be reflected as the person who made the manual edits.
12. The claimant's job only included job duties that took place on campus at the hospital.
13. All employees that reported to the claimant are one of three different levels of housekeeper, which required all job duties to take place on campus at the hospital.
14. When a member of housekeeping clocks in and works a shift at work, the person shows up on numerous surveillance cameras at the hospital. It is not

possible for an employee to be at the hospital, punch in and out, and work a shift, without being on multiple cameras.

15. During the time period beginning May 17, 2015, and [sic] October 11, 2017, the claimant made 471 manual edits to the timekeeping for employee X. When the employer ran a report on the claimant's manual changes to employee X's time, it was shown that the claimant made manual changes to more than 90% of the days that employee X was paid.
16. Video footage shows that employee X was not present at the hospital on the dates that the claimant manually clocked him in and out of work.
17. During the time period beginning May 17, 2015, and [sic] October 11, 2017, the claimant made 200 manual edits to the timekeeping for employee Y.
18. During the time period beginning May 17, 2015, and [sic] October 11, 2017, the claimant made 115 manual edits to the timekeeping for employee Z.
19. On October 10, 2017, an anonymous whistleblower letter was given to the employer. The letter alleged that the claimant had an arrangement with employee X, employee Y, and employee Z, to manually add hours to their timekeeping records in exchange for a part of the extra money. The letter indicated that most of the time the arrangement was only between the claimant and employee X. Furthermore, the letter indicated that employee X quit working for the employer after the claimant and employee X got into an argument over the division of the money.
20. The employer immediately began an investigation into the allegations made in the letter.
21. On October 11, 2017, a payroll timekeeper edit report was generated to show all manual timekeeper edits made by the claimant during the time period beginning May 17, 2015 through October 11, 2017.
22. During the time period beginning May 17, 2015, and [sic] October 11, 2017, the claimant made 471 manual edits to the timekeeping for employee X. When the employer ran a report on the claimant's manual changes to employee X's time, it was show [sic] that the claimant made manual changes to more than 90% of the days that employee X was paid. The report further revealed that during the time period beginning May 17, 2015, and [sic] October 11, 2017, the claimant made 200 manual edits to the timekeeping for employee Y and 115 manual edits to the timekeeping for employee Z.
23. As part of the investigation, the employer looked at surveillance video and found that when manual punches were made for any of the three employee listed above, there was no evidence that any of them had been on the employer property at all.

24. On October 18, 2017, his supervisor and the compliance manager interviewed the claimant. The claimant was presented with the allegations made against him. The claimant offered no evidence or information to rebut the allegations against him. The claimant was given the opportunity to present any information, but did not do so.
25. On October 18, 2018, at the end of the meeting, the employer informed the claimant that he was being terminated for deliberately falsifying timekeeping records for employee X, employee Y, and employee Z.
26. The claimant filed for unemployment benefits and received an effective date of October 22, 2017.

Credibility Assessment:

The claimant testified throughout the original hearing and the remand hearings that he did nothing wrong and that he never falsified timekeeping records in order to improperly pay hourly employees for hours that the employees never worked. However, the employer offered documentation to show that, on hundreds of occasions, the claimant manually entered time into the employer's computerized timekeeping systems for three employees. The claimant argued that for one of the employees it was necessary for him to manually enter the employee's time since the employee was working from home, helping the claimant develop departmental policies. This testimony was not credible since employee X was a housekeeper rather than an administrator or manager. Creating policies was not part of employee X's job. Furthermore, the claimant had not given employee X a schedule of when he should work on such policies and just assumed the [sic] employee X was working on the policies during the time entered; and the claimant was unable to produce any policy created by employee X. The claimant's testimony that employee X was working from home under his direction is not credible. The facts show the claimant manually entered time for an employee who did not work on the dates and times entered. The claimant falsified employee X's time records.

The claimant alleged he was set-up by a fellow employee, who stole the claimant's password and created the manual edits to frame the claimant. The allegation is not credible as the claimant admitted to personally entering manual edits for employee X on days when employee X never entered the building and never performed any cleaning. The claimant also argued that his co-workers set him up due to racism and favoritism. Since the allegations against the claimant were verified through the employer's investigation, the claimant's assertion of being wrongly accused are not credible.

The claimant's testimony was inconsistent and illogical. Given the record as a whole, the employer's testimony is found to be more credible and the claimant's testimony is dismissed as not credible.

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 original 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. However, as discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant knowingly violated a reasonable and uniformly enforced policy of the employer.

Because the claimant was terminated from his employment, his 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

After hearing the employer's testimony and reviewing and weighing the totality of the evidence presented during the original hearing and the remand hearings, the review examiner found that the employer discharged the claimant for falsifying timekeeping records for several employees. She further found that the claimant was aware of the employer's policy prohibiting the falsification of time records, yet he recorded work hours for several employees in the employer's timekeeping system during times when the employees were not actually working. The review examiner premised these findings largely on an adverse credibility determination against the claimant. As we cannot say that this determination was unreasonable in relation to the evidence presented, we will not disturb it. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

In order to establish whether the claimant's conduct amounted to a knowing violation at the time of the act, we must determine whether he was "consciously aware that the consequence of the act being committed was a violation of [the] employer's reasonable rule or policy." *Still v. Commissioner of Department of Employment and Training*, 423 Mass. 805, 813 (1996). In light of the review examiner's findings and credibility determination that the claimant intentionally falsified the employer's time records, despite his knowledge that such conduct was prohibited, we can reasonably infer that the claimant was aware his actions were in violation of the employer's policy at the time he engaged in them. The claimant did not put forth any credible evidence to establish that his intentions were other than to steal time from the employer.

We, therefore, conclude as a matter of law that the claimant engaged in a knowing violation of a reasonable and uniformly enforced policy of the employer under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending October 28, 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 – January 29, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
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.

SVL/rh