

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: 0024 2124 29**

## **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 the claimant benefits following her separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On March 2, 2018, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties participated in the hearing. In a decision rendered on April 20, 2018, 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 original decision to award benefits is based on substantial evidence and is free from any error of law affecting substantive rights. The review examiner, who is responsible for fact-finding and assessing credibility, concluded that the claimant offered credible testimony that the claimant was ill on the day of the final incident. Because the claimant's absence was due to illness, rather than to intentional disregard of the employer's policies or expectations, the employer has not shown that she should be subject to disqualification under G.L. c. 151A, § 25(e)(2).

We do note that certain portions of the findings, not affecting the outcome of the case, are not supported by a reasonable view of the record. The testimony and documentary evidence indicate that the final incident occurred on December 11, 2017, and the claimant was discharged on December 12, 2017. We accept Findings of Fact ## 1 and 10 with this minor alteration in mind. We also conclude that Finding of Fact # 6, which refers to the number of days the claimant was in a rehabilitation/detox program, is not supported by the record. Therefore, we reject it. Again, however, the number of days the claimant was in the program does not change the ultimate findings and conclusions as to what happened on December 11, 2017.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning December 3, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – May 29, 2018**



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](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