

Because review examiner concluded that the claimant's misconduct was negligence and not intentional in failing to perform an additional safety inspection, he is not disqualified under G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 0024 3280 67

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 his separation from employment on January 10, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On March 1, 2018, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on July 25, 2018, the review examiner reversed 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, he was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepted 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 decision is based on substantial evidence and is free from any error of law affecting substantive rights. In doing so, we note that, had the portion of the Massachusetts Commercial Driver's License Manual presented for the first time on appeal been part of the original record, it would not change our decision. Because the review examiner concluded that the claimant's failure to perform the under-carriage inspection was attributable to negligence rather than intentional misconduct, the claimant's behavior did not amount to "intentional disregard of standards of behavior which his employer had a right to expect" within the meaning of the Supreme Judicial Court's decision in Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979) (citation omitted); *see also* Board of Review Decision BR-106310 (July 16, 2010) (awarded benefits because claimant's failure to follow hospital procedure for removal of IV catheter prior to patient's discharge was negligence and not intentional).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning January 13, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – November 20, 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

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.

AB/rh