

Claimant bank teller who claimed she was told she should adjust her time sheet without management's oversight was less credible than the manager who produced a warning that she report her time accurately, then observed her arrive late to work on two consecutive days and falsify her time sheets later as to the time of her arrival. Employer established that the claimant was discharged for deliberate misconduct.

**Board of Review
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Issue ID: 0025 6557 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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was discharged from her position with the employer on May 24, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 17, 2018. 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 November 15, 2018. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined 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 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 allow the employer to present testimony and evidence. Only the employer 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 original decision, which concluded that the employer failed to show that it discharged the claimant for deliberate misconduct in wilful disregard of the employer's interest, or for a knowing violation of a reasonable and uniformly enforced policy of the employer's, 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 full time as a financial services representative for the employer, a bank, from April 24, 2017 until May 24, 2018.
2. The Store Manager II was the claimant's immediate supervisor.
3. The employer maintains a policy prohibiting forgery, falsification of accounts, documents, and records. Violators of this policy are punished at the employer's discretion based upon the circumstances of the violation.
4. The employer maintained an expectation that employees not falsify documentation. The employer maintained this expectation to ensure the accuracy of documentation and to protect its customers. The claimant was informed of the expectation when the employer provided her the handbook containing the expectation at the time she was hired.
5. Over the course of the claimant's employment, the Store Manager II and the assistant store manager discussed with the claimant the importance of correctly recording her time.
6. Throughout the claimant's employment, she asked the Store Manager II, verbally or in writing, to adjust her time clock entries if it was not correct.
7. In January 2018, the claimant was placed on a 60-day performance improvement plan (the PIP) for attendance issues and punches.
8. The Store Manager II released the claimant from the PIP with the understanding that she be more diligent about attendance moving forward.
9. On May 7, 2018, the assistant store manager (the ASM) sent the claimant an email stating, "I adjusted you (sic) time for 5/3 and 5/4. You came in at 10:00 am on 5/3 but you punched in at 9:45am and on 5/4 you came in at 10:20am but punched in at 10:10am. Make sure you punch in the correct time you come in the store. Let me know if you have any questions."
10. After the ASM sent the claimant the May 7, 2018 email, the ASM and the Store Manager II monitored the claimant's arrival times and her time clock entries.
11. The Store Manager II was able to see when the claimant arrived to work because the claimant's desk was in front of his desk.
12. On Tuesday, May 15, 2018, the Store Manager II saw the claimant arrive to work at 9:54 a.m.

13. The claimant entered into the time clock system that she arrived at 9:45 a.m.
14. On Wednesday, May 16, 2018, the Store Manager saw the claimant arrive to work at 10:04 a.m.
15. The claimant punched into the time clock that she arrived at 10:04 a.m. Later in the evening, she changed her time clock punch to indicate she arrived at 9:48 a.m.
16. On Thursday, May 17, 2018, the ASM sent the Store Manager II an email with the claimant's name in the subject line stating, "Time switched on Wednesday. Punched in at 10:04 but switched it back".
17. On May 17, 2018, the Store Manager II emailed a human resources representative.
18. The Store Manager II interviewed the claimant's coworkers that worked on May 15, 2018 and May 16, 2018. During the interviews, the coworkers stated that there was nothing that prevented the claimant from correctly logging the time she arrived.
19. On May 24, 2018, the claimant sent the ASM an email requesting she add time to her timecard for a training she attended during the week of May 6, 2018.
20. On May 24, 2018, Store Manager II and the ASM met with the claimant. During the meeting, the Store Manager II told the claimant she was terminated because she had adjusted her time sheet.

Credibility Assessment:

As a result of her failure to attend the remand hearing session, the claimant failed to offer any additional testimony or evidence regarding the reason the Store Manager II discharged her on May 24, 2018.

The Store Manager II testified that he discharged the claimant because she manipulated her time card to indicate she arrived to work [earlier] than she had. He further testified that he had been monitoring her arrival times and her time card over concern she had falsified them. The Store Manager II directly testified he personally witnessed the claimant arrive to work at 9:54 a.m. on May 15, 2018 and 10:04 a.m. on May 16, 2018 and upon review of her timecard, found she had adjusted her time to reflect she arrived earlier than she had. The Store Manager II further provided documentary evidence at the hearing in the form of an email dated May 7, 2018 from the ASM to the claimant addressing her incorrect punched from May 3, 2018 and May 4, 2018, in which she informed the claimant to punch in correctly. The employer offered documentary evidence consistent

with the testimony. Based on the direct testimony of the Store Manager II, it is concluded the claimant falsified her timecard.

As the employer provided detailed, consistent testimony and documentary evidence consistent with the testimony, the totality of the employer's testimony outweighs the claimant's testimony given in the initial hearing. Therefore, the employer is deemed more 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. However, we reach our own conclusions of law, as are discussed below.

The review examiner awarded benefits after examining 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 for a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, or for deliberate misconduct in wilful disregard of the employer's interest. On the basis of the claimant's undisputed testimony at the initial hearing, the review examiner concluded that the employer had not met its burden. We remanded the case to take the employer's testimony. After remand, we conclude that the employer has met its burden.

Following remand, the review examiner found that the employer has a policy prohibiting falsification of documents and records. *See* Remand Exhibit # 10. Although the employer applies discretion when determining how to impose discipline for violations of this policy, a corresponding expectation that employees will not falsify documents arises from the policy. The claimant was aware of this policy, having signed that she reviewed it on March 23, 2018. *See* Remand Exhibit # 11.

The review examiner found that the claimant was also aware of the expectation that she record her time accurately, because the manager and assistant manager had discussed the matter with her over the course of her employment. She asked the manager verbally or in writing to adjust her time entries if they were not correct, she was put on a 60-day performance improvement plan

in January, 2018, because of attendance and time clock issues, and she was cautioned again on May 7, 2018, by an email from the assistant manager, who noted that the claimant had arrived at times later than those which were reflected in her time clock punches. *See* Remand Exhibit # 6.

The review examiner found that after sending the May 7 email to the claimant, the manager and assistant manager began monitoring the claimant's arrival times and time clock entries. The manager was able to see when the claimant arrived to work because her desk was in front of his.

On Tuesday, May 15, 2018, the manager saw the claimant arrive at work at 9:54 a.m., but she entered her arrival time as 9:45 a.m. On Wednesday, May 16, 2018, the manager saw the claimant arrive at work at 10:04 a.m. Although the claimant originally punched in at 10:04 a.m., she later changed her arrival time to 9:48 a.m. *See* Remand Exhibit # 8.

On May 17, 2018, the assistant manager emailed the manager noting the claimant had changed her arrival time the day before. The manager forwarded this email to the employer's human resources department, asking for assistance and noting that "it shows a clear pattern of manipulation." *See* Remand Exhibit # 7. The manager also interviewed other bank staff, who confirmed there were no problems that would have prevented the claimant from correctly logging the time she arrived.

On May 24, 2018, the claimant emailed the assistant manager, asking to be credited for an hour and 45 minutes for time spent doing a training at home during the week of May 6. *See* Remand Exhibit # 9. Later on May 24, 2018, the employer discharged the claimant for adjusting her time sheet to receive pay for time she had not worked.

The review examiner made a credibility assessment accepting the manager's detailed version of events over the claimant's vague claims, noting that the employer provided documentary evidence to corroborate the manager's testimony about what he observed and how the employer addressed the claimant's conduct. 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). We believe that the review examiner's assessment is reasonable in relation to the evidence presented.

In view of the review examiner's findings and credibility assessment, the employer established it had an expectation that its employees would accurately report their time worked. The claimant was aware of the expectation, both because she had received the underlying policy behind the expectation, and because she had run afoul of the policy and expectation several times before, including being put on a 60-day performance improvement plan because of attendance and time record issues in January, 2018, and receiving an email from the assistant manager reminding her she needed to report her time accurately in May 2018.

After the May, 2018, warning, the manager observed the claimant's actual arrival times on May 15 and 16, 2018, saw that she had subsequently altered her punch-in times to reflect earlier arrivals on those days, and concluded that the claimant had once again improperly recorded her time, effectively stealing time from the employer.

The claimant's knowledge of the expectation and her subsequent alteration of her time records shows the requisite intent to support disqualification under G.L. c. 151A, § 25(e)(2). We, therefore, conclude as a matter of law that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest, without mitigating circumstances.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending May 26, 2018, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 19, 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.

JPC/rh