

Claimant engaged in deliberate misconduct in wilful disregard of the employer's interest by failing to regularly check in with her supervisor, submitting travel reimbursement vouchers that were untimely and inaccurate, using employer-issued equipment and resources for personal business, and dishonesty during an investigative interview.

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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by an administrative magistrate in the Division of Administrative Law Appeals (DALA) to deny unemployment benefits to the claimant. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm.

The claimant resigned from her position with the employer on December 12, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 19, 2019. The claimant appealed the determination to the DUA hearings department, which assigned the appeal hearing to DALA.¹ Following a hearing on the merits attended by both parties, the magistrate affirmed the agency's initial determination to deny benefits in a decision rendered on June 28, 2019. We accepted the claimant's application for review.

Benefits were denied after the magistrate determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, she was disqualified under G.L. c. 151A, § 25(e)(2). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the magistrate's decision, post hearing statements submitted to the magistrate, and the claimant's appeal to the Board.

The issues before the Board are whether the magistrate's decision, which disqualified the claimant under G.L. c. 151A, § 25(e)(2), on the grounds that (1) the claimant failed to check in with her supervisor, submitted her travel vouchers inaccurately and in an untimely fashion, and engaged in dishonesty during a code-of-conduct interview constituted deliberate misconduct in wilful disregard of the employer's interest; and that (2) the claimant's personal use of state equipment and resources, unauthorized access of confidential data, and compromise of data

¹ As a procedural policy, any first-level appeals involving unemployment benefit eligibility for former [Employer Name] employees are referred to the DALA for a fair hearing before an impartial hearing officer, as permitted under G.L. c. 151A, § 39(b). Pursuant to G.L. c. 151A, § 40, any appeal of such hearing decisions, the second-level appeal, must be filed with the Board of Review.

security constituted knowing violations of a reasonable and uniformly enforced policy, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The magistrate's findings of fact, credibility assessment, and all footnotes attached to those findings² are set forth below in their entirety:

I. NATURE OF EMPLOYMENT

1. [Claimant] began working for [Employer Name] as a field auditor in July 2010. R. Ex. III, at 74; Audiotape: Hearing by Kenneth Forton with [Claimant] & [Employer Name], at Division of Administrative Law Appeals in Malden, Mass. 02:55 (Apr. 18, 2019) (on file with Division of Administrative Law Appeals) [hereinafter DALA Hearing II] (testimony of [Claimant]).
2. [Claimant] originally audited businesses to ensure compliance with the Fair Share Contribution requirement,³ but was transferred to the [Department A] when the Fair Share Contribution Department was eliminated. DALA Hearing II at 03:51 (testimony of [Claimant]).
3. [Claimant]'s title at the time of her discharge was "Compliance Officer III – [Department A]." DALA Hearing I at 21:28 (testimony of [Supervisor A]); *see also* R. Ex. VIII, at 509.
4. [Supervisor A] was [Claimant]'s direct supervisor from October 16, 2017 until the time of the latter's discharge. DALA Hearing I at 19:57 (testimony of [Supervisor A]).
5. [Claimant]'s principle job function was to audit businesses to ensure proper reporting of employee payroll information, full payment of [type A] taxes, and compliance with certain other aspects of state and federal [type A] law. R. Ex. VIII, at 509-10.
6. As a field auditor, [Claimant] performed nearly all of her work remotely, spending much of her time in the field interviewing business owners and employees, as well as reviewing payroll records and tax filings. *Id.*; DALA Hearing I at 21:47 (testimony of [Supervisor A]).
7. [Claimant] was also tasked with submitting written findings of her audits to [Employer Name] via an online submission system. DALA Hearing I at 23:30, 25:15 (testimony of [Supervisor A]).

² Footnotes from the magistrate's decision are indicated with brackets.

[³] This statutory provision required employers with a certain number of employees to make contributions toward their employees' health insurance costs. G.L. c. 149, § 188, *repealed by* 2013 Mass. Acts ch. 38, § 108.

II. COMPETENCE

8. [Claimant] holds a bachelor's degree in accounting from the University of Massachusetts, Dartmouth and previously worked as a mortgage loan officer for [Employer B] and [Employer C]. R. Ex. III, at 413–14 (résumé of [Claimant]).
9. [Claimant]'s annual employee performance review for the period of July 1, 2010 to June 30, 2011 reported that she met expectations in four of the five applicable assessment categories. P. Ex. J, at 28–31. Her performance in regard to compliance with administration and department policies was below expectations; the written comments suggested that she had not been conforming to the policy concerning leave time. *Id.* at 31. The reviewer described [Claimant] as a “solid performer.” *Id.* at 28.
10. [Claimant]'s mid-year employee performance review for the period of July 1, 2012 to June 30, 2013 reported that she met expectations in five of the six applicable assessment categories. *See id.* at 32–36 (signed by reviewer on February 19, 2013). She exceeded expectations in her preparation for, and attendance at, administrative hearings that stemmed from her audit determinations. *Id.* at 35. The written comments observed that her documentation was well-constructed and easy to understand, and that only 17% of her challenged determinations were overturned. *Id.*
11. [Claimant]'s annual employee performance review for the period from July 1, 2017 to June 30, 2018 reported that she met expectations in at least two assessment categories. *See id.* at 26–27. Specifically, the style and substance of [Claimant]'s submitted audits met expectations, and the written comments described her audits as thorough and well-organized. *Id.* at 27. [Claimant] also met her quota for completed audits. *Id.* The written comments noted that many of [Claimant]'s audits that year had been expanded to cover business and tax records further back in time, meaning that those audits took longer to complete than is typical. *Id.*; DALA Hearing I at 1:16:46 (testimony of [Supervisor A]). [Claimant]'s performance ratings for the other assessment categories were not offered as evidence. *See generally* P. Ex. J.
12. In 2017, the Commonwealth awarded to [Claimant] and each of her fellow field auditors a “Citation for Outstanding Performance” in service of the [Department A]. P. Ex. B, at 13; DALA Hearing II at 1:10:30 (testimony of [Claimant]).

III. EMPLOYER'S EXPECTATIONS & POLICIES

A. Telecommuting

13. Created pursuant to the [State Higher Authority] Telecommuting Program and effective as of March 22, 2016, the [Employer Name] Telecommuting Program for [Union A] Field Auditors ([Employer Name] Telecommuting Program) is a departmental policy that allows field auditors to occasionally work from home, provided that they sign and abide by the terms of the [Department A] Telecommuter Agreement (Telecommuter Agreement). R. Ex. I, at 10-23; DALA Hearing I at 27:28 (testimony of [Supervisor A]). Although the [Employer Name] Telecommuting Program and the Telecommuter Agreement are distinct, they are nonetheless two parts of a single paginated document, not two separate documents. *See* R. Ex. I, at 17–18.
14. The “Specific Terms” of the [Employer Name] Telecommuting Program state that field auditors may work from home for up to 12 hours per week, although they may seek authorization from the Department Director for additional time. *Id.* at 17; *see also* DALA Hearing I at 33:20 (testimony of [Supervisor A]). In contrast, the Telecommuter Agreement simply states that “management” must authorize additional telecommuting time. R. Ex. I, at 18, ¶ I(a).
15. The Telecommuter Agreement requires employees to enter their telecommuting hours into the online Self-Service Time and Attendance (SSTA) system. *Id.* at 15, 18.
16. [Claimant] signed the Telecommuter Agreement on January 25, 2017, thereby (1) acknowledging that she had read and understood the agreement, and (2) agreeing to abide by its terms and conditions. *Id.* at 21; DALA Hearing I at 27:40 (testimony of [Supervisor A]).
17. The document explaining the DUA Telecommuting Program and laying out the terms of the Telecommuter Agreement does not provide any rationale or basis for the precise limit of 12 hours per week. *See* R. Ex. I, at 10-23.

B. Regular Check-Ins

18. [Employer Name] requires its field auditors to learn the terms of its Operations Policy and Procedures Advisory 001 (OPPA-001). *Id.* at 5–8; DALA Hearing I at 28:15, 28:40 (testimony of [Supervisor A]).
19. OPPA-001 has been in effect since July 2011. R. Ex. I, at 5.
20. [Claimant] signed a copy of OPPA-001 on August 27, 2014, thereby acknowledging that she had read and understood OPPA-001. *Id.* at 8; DALA Hearing I at 28:35 (testimony of [Supervisor A]).

21. OPPA-001 requires field auditors to contact their immediate supervisor by telephone both prior to and at the end of an audit meeting at a business. R. Ex. I, at 5, ¶ 2(a). That same paragraph also suggests that field auditors are to inform their immediate supervisor of their start time for each business day. *See id.* [Claimant] also allowed field auditors to check in by email. DALA Hearing I at 29:40 (testimony of [Supervisor A]).
22. When [Supervisor A] herself worked for [Employer Name] as a field auditor some two years prior to assuming the role of acting manager, the common practice was for field auditors to check in with their supervisor twice per day. *Id.* at 34:48 (testimony of [Supervisor A]). This practice had not changed by the time she became the acting manager. *Id.* at 34:55 (testimony of [Supervisor A]).
23. As the division manager, [Supervisor A] expected [Claimant] to generally keep her apprised of the latter's schedule and to check-in at least twice per day. *Id.* at 22:03 (testimony of [Supervisor A]); R. Ex. III, at 190 (email exchange between [Claimant] and [Supervisor A], dated November 8, 2017, in which the latter reminds the former that field auditors need to check in at least twice per day).
24. The check-in policy is largely a safety measure for field auditors. DALA Hearing I at 30:02, 4:18:27 (testimony of [Supervisor A] and [Human Resources Rep.]). Additionally, given the remote nature of their work, having field auditors regularly check in was a way for their immediate supervisor to keep track of them and make sure that they were indeed working. *Id.* at 29:46 (testimony of [Supervisor A]).

C. Travel Vouchers

25. Field auditors use their own vehicles when traveling for work and receive reimbursements from [State higher authority] in the amount of 45¢ per mile. *Id.* at 38:50 (testimony of [Supervisor A]). In order to obtain these reimbursements, field auditors must submit a monthly line-item travel voucher accounting for the locations to which they traveled and the corresponding mileages. *Id.* at 39:12 (testimony of [Supervisor A]); *e.g.*, R. Ex. III, at 87–89.
26. For each instance of travel, the employee must report in line-item format: (1) the date, (2) the destination title or name, (3) the starting mileage, (4) the ending mileage, (5) the miles traveled, and (6) the reimbursement amount owed. *E.g., id.* at 96. The employee then tallies the total reimbursement amount owed for the month. *E.g., id.* On the final page of the voucher, the employee must provide the sequence of travel for each instance, for example, “[Employee’s home address] to [address of business] to [employee’s home address].” *E.g., id.* at 98.

27. The [State higher authority] travel voucher includes a signature box with the following caption: “I hereby certify under penalty of perjury that the above amounts as itemized are true and correct, were incurred by me during necessary travel in the service of the Commonwealth, and conform fully with the Department’s Travel Rules and Regulations.” *E.g., id.* at 88; *accord* DALA Hearing II at 1:24:00 (testimony of [Claimant]).
28. Field auditors usually submit their travel vouchers to a supervisor on a monthly basis. DALA Hearing I at 39:51 (testimony of [Supervisor A]). [Supervisor A] had specifically requested that field auditors not submit any more than three months of travel vouchers at one time so as not to make the department seem disorganized. *Id.* at 40:55 (testimony of [Supervisor A]).
29. [Supervisor A] was not certain whether this was actually a formal written rule in August 2018. *Id.* at 40:35 (testimony of [Supervisor A]). It was not until August 15, 2018 that she sent an email to the field auditors stating that the Finance Department needed travel vouchers submitted on a monthly basis. *Id.* at 45:18 (testimony of [Supervisor A]); R. Ex. III, at 193.
30. The collective bargaining agreement between the Commonwealth and [Claimant]’s union—the [Union A]—states that untimely submission of requests for reimbursements can negatively impact the agency budget, and that “the parties agree to encourage employees to submit the reimbursements within 60 days.”⁴ R. Ex. VII, at 489, § 11.4.

D. Agency Equipment & Resources

31. [State higher authority] instructs all new hires to read its applicable written policies governing employee conduct and gives them time during the work day to do so. DALA Hearing I at 4:30:57 (testimony of [Human Resources Rep.]).
32. [State higher authority] also requires its employees to review certain policies and complete online trainings related to some of those policies on an annual basis. *Id.* at 4:31:28 (testimony of [Human Resources Rep.]); R. Ex. III, at 446.
33. These policies include conflict of interest laws, the [State higher authority] Information Technology Resources Policy (IT Policy), and the [State higher authority] Confidentiality Policy (Confidentiality Policy). R. Exs. III, at 446–47, XI–XIII.

[⁴] This language technically comes from a copy of the agreement between the Commonwealth and [Union B], but the parties stipulated that the language is identical for the [Union A] agreement.

34. Standards of conduct pertaining to conflicts of interest forbid state employees from using employer time, equipment, or resources to conduct personal business unrelated to their official duties. *See* R. Ex. XI.
35. The IT Policy states that it is impermissible for employees to acquire access to confidential data unless doing so is necessary in order to perform their job duties. R. Ex. XII, ¶ 4. It also states that remote access to agency email is authorized only for business purposes. *Id.* at ¶ 9.
36. Attachment “B” to the IT Policy, which is the Remote Access User Certification Agreement (Remote Access Agreement), indicates that users of agency-issued equipment are responsible for ensuring that they do not “inappropriately expose the data in the remote environment or compromise security of the systems or applications.” *Id.* at ¶ 3 (Attachment “B”). The IT Policy and its attachments were most recently revised in April 2015. *See generally id.*
37. The Confidentiality Policy prohibits the unauthorized access of personal data pursuant to the Fair Information Practices Act. R. Ex. XIII, ¶ 3 (citing G.L. c. 66A).
38. On June 21, 2017, [Claimant] signed a form acknowledging that she had read and understood the policies and completed the online trainings as required by the annual [State higher authority] employee policy review. R. Ex. III, at 446-47; DALA Hearing I at 4:32:12 (testimony of [Human Resources Rep.]).

E. Code of Conduct Interviews

39. When ICS investigates potential employee misconduct, it is standard procedure to conduct a “code of conduct interview” with the employee in order to give that employee an opportunity to explain or refute any suspected misconduct. DALA Hearing I at 2:46:15, 4:23:23 (testimony of [Investigator A] and [Human Resources Rep.]); *e.g.*, R. Ex. III, at 115–22.
40. *Weingarten* rights apply to code of conduct interviews, meaning that the employee is entitled to union representation during the interview. DALA Hearing I at 4:22:17 (testimony of [Human Resources Rep.]); *see also NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).
41. Code of conduct interviews begin with informing the employee that (1) statements made during the interview may themselves be grounds for termination, and (2) the employee’s truthfulness during the interview can impact the disciplinary outcome. DALA Hearing I at 2:47:30, 4:22:44 (testimony of [Investigator A] and [Human Resources Rep.]).

IV. EMPLOYER’S INVESTIGATION

42. Toward the end of September, 2018, [Supervisor A] reached out to one of her superiors within the agency, [Manager A], in order to express her concerns regarding [Claimant]'s lack of compliance with certain policies and other potential misconduct. *Id.* at 49:30 (testimony of [Supervisor A]); *see also* R. Ex. III, at 82.
43. On September 25, 2018, [Manager A] emailed [Human Resources Rep.] to discuss the need for an internal investigation into [Claimant]. R. Ex. III, at 82. [Human Resources Rep.] subsequently assigned [Investigator A] and [Investigator B] to the case. *Id.* at 74; DALA Hearing I at 2:10:55, 4:20:10 (testimony of [Investigator A] and [Human Resources Rep.]).
44. On September 26, 2018, [Supervisor A] sent an email to [Manager A] formally requesting a review of [Claimant] and listing specific areas of concern. R. Ex. V, at 481. These included [Claimant]'s failure to perform regular check-ins, [Claimant]'s failure to submit travel vouchers in a timely manner, questions about the veracity of [Claimant]'s reported travel expenses, and concerns regarding [Claimant]'s use of agency time and equipment. *Id.*
45. Per [Manager A]'s direction, [Supervisor A] next drafted a formal written warning to [Claimant] regarding [Claimant]'s continued failure to check in with her location and to report the status of her audit meetings. DALA Hearing I at 50:25 (testimony of [Supervisor A]); R. Ex. III, at 84.
46. On September 27, 2018, [Manager A] sent a copy of the draft to [Human Resources Rep.] so Labor Relations could review the draft's contents. DALA Hearing I at 51:55 (testimony of [Supervisor A]); R. Ex. III, at 83–84. [Human Resources Rep.] ultimately approved the formal warning and directed [Supervisor A] to issue it to [Claimant]. DALA Hearing I at 4:19:45 (testimony of [Human Resources Rep.]).
47. On October 4, 2018, [Supervisor A] issued the formal written warning to [Claimant] following a staff meeting. *Id.* at 51:00 (testimony of [Supervisor A]); R. Ex. VI, at 483-84.
48. At some point during either the last week of September 2018 or the first week of October 2018, [Supervisor A] had an informal meeting with [Investigator A] and [Investigator B] regarding [Supervisor A]'s concerns about the veracity of the mileage and audit meeting times that [Claimant] had reported on her work calendar and on her recently submitted travel vouchers. *See* DALA Hearing I at 53:05 (testimony of [Supervisor A]).
49. Following her conversation with [Investigator A] and [Investigator B], [Supervisor A] began communicating with several of the employers with

whom [Claimant] had reported meeting. *Id.* at 53:40 (testimony of [Supervisor A]).

50. During the course of the ICS investigation, [Investigator A] gained access to [Claimant]'s state email account and to her exclusive home drive on the agency's computer network. *Id.* at 2:11:40 (testimony of [Investigator A]).
51. [Investigator A] also collected [Claimant's] agency laptop, which was due to be replaced with an upgrade. *Id.* at 2:12:55 (testimony of [Investigator A]). [Investigator A] formed the impression that [Claimant] was a little startled when he approached her to retrieve her laptop following a staff meeting at the [Employer Name] office. *Id.* at 2:13:05 (testimony of [Investigator A]). [Claimant] claimed that she was upset at the time because she knew that the new [Employer Name] laptops did not have number-pads, which would be an inconvenience, as she would have to start carrying a separate number-pad to plug into her laptop. DALA Hearing II at 34:45 (testimony of [Claimant]).
52. [Investigator A] observed [Claimant] beginning to delete files from the laptop as he was looking over her shoulder, at which point he instructed her to step away from the laptop. DALA Hearing I at 2:13:17 (testimony of [Investigator A]). [Claimant] maintains that she had simply been deleting duplicate files from the laptop after she had copied them over to a separate device. DALA Hearing II at 36:08 (testimony of [Claimant]).
53. [Investigator B]'s inquiry into the travel vouchers focused on those dates when [Claimant]'s home IP address was used to log onto the [Employer Name] online audit system. DALA Hearing I at 3:38:00 (testimony of [Investigator B]). [Employer Name] did not offer documentation of the IP address records or the log-in records.
54. [Investigator A] examined [Claimant]'s state email account to determine whether there were any messages verifying or contradicting the information from her travel vouchers. *Id.* at 3:38:18 (testimony of [Investigator B]).
55. On November 26, 2018, [Investigator A] and [Investigator B] conducted a code of conduct interview with [Claimant]. *Id.* at 2:46:15 (testimony of [Investigator A]); R. Ex. III, at 115.
56. A union steward represented [claimant] at the code of conduct interview. DALA Hearing I at 2:49:02 (testimony of [Investigator A]); R. Ex. III, at 115.
57. Throughout the interview, [Claimant] maintained that any erroneously reported travel mileage was an unintentional result of poor recordkeeping,

and that any other policy violations that she had committed were due to technological mishaps or her own ignorance about the given policy. *See* R. Ex. III, at 116-22; DALA Hearing I at 2:48:43 (testimony of [Investigator A]).

58. Following her interview with [Investigator A] and [Investigator B], [claimant] met with [Supervisor A] in the latter's office. DALA Hearing I at 56:00 (testimony of [Supervisor A]); R. Ex. III, at 476. [Supervisor A] thought that [Claimant] looked upset at the time. *Id.* at 56:20 (testimony of [Supervisor A]).
59. On December 7, 2018, [Supervisor A] sent an email to [Investigator A] and [Investigator B] detailing the substance of her conversation with [Claimant] in her office. R. Ex. III, at 476. In that email, [Supervisor A] recounted that [Claimant] had admitted to violating official policies that she had signed. *Id.* However, according to that email, [Claimant] also claimed that those violations had been unintentional. *Id.* Also according to the email, [Claimant] claimed that she used a single flash drive for both personal and work-related files, and that on an occasion when she plugged her flash drive into a desktop at the [Employer Name] office, she mistakenly transferred the full contents of the flash drive to the home drive instead of only transferring the work-related files. *Id.*
60. On December 11, 2018, [Investigator A] and [Investigator B] completed a report of the findings of their investigation into [Claimant]. *Id.* at 74.
61. After receiving the report of the investigation, [Human Resources Rep.] presented it to her superior, the Director of Human Resources. DALA Hearing I at 4:24:23 (testimony of [Human Resources Rep.]).
62. On December 11, 2018, Human Resources sent [Claimant] a notice that it had scheduled a predetermination hearing for December 13, 2018 pursuant to her union's collective bargaining agreement in order to determine what employment action, if any, would be taken on the misconduct and policy violation charges against her. R. Ex. II, at 72-73.
63. In the past, the agency had terminated employees who had "done less than [[Claimant]]." DALA Hearing I at 3:06:25 (testimony of [Investigator A]). Furthermore, the multiplicity and scale of [Claimant]'s acts of misconduct and policy violations were unprecedented. *See id.* at 4:42:31 (testimony of [Human Resources Rep.]).
64. In order to avoid termination, [Claimant] tendered her resignation to [Human Resources Rep.] by email dated December 12, 2018. R. Ex. I, at 8 (stating that the resignation was effective immediately).

V. GROUNDS FOR DISCHARGE

A. Unauthorized Telecommuting Hours

65. SSTA records show that for the week of April 16, 2018, [Claimant] reported working from home for a total of 22.5 hours. *See* R. Ex. III, at 123. According to the report of the ICS investigation, [Claimant] had not obtained authorization to exceed the maximum 12 hours per week. *Id.* at 76.
66. [Claimant] acknowledged that she would on occasion exceed the maximum 12 hours of telecommuting time without obtaining formal authorization to do so. DALA Hearing II at 27:53 (testimony of [Claimant]). She explained that because field auditors work 7.5 hours per day, including travel time, and generally do not receive overtime, it made more sense to return home to work when she was nearby her house and only had a couple of hours remaining in her work day. *Id.*; *see also* R. Ex. I, at 18, ¶ I(e) (According to the Telecommuter Agreement, “overtime or compensatory time for any hours worked beyond 37.5 in one week must be authorized in writing in advance by management.”).

B. Failure to Regularly Check in with Supervisor

67. [Supervisor A] had trouble getting [Claimant] to check in with her regularly, and this had been an issue from the start of [Supervisor A]’s tenure as [Claimant]’s supervisor. DALA Hearing I at 33:40 (testimony of [Supervisor A]).
68. None of [Claimant]’s fellow field auditors had a problem with checking in twice per day. *Id.* at 35:40 (testimony of [Supervisor A]).
69. [Supervisor A] would at times call [Claimant] or send her emails inquiring as to whether she had made it to her audit meetings. *Id.* at 33:40 (testimony of [Supervisor A]). [Supervisor A] sent [Claimant] emails to that effect on November 6, 2017, January 12, 2018, July 25, 2018, and October 1, 2018. R. Ex. III, at 188, 191–92, 194. [Claimant] told [Supervisor A] that the reason that she was “not good at remembering to check in” was that her previous supervisor had long abandoned the practice of requiring field auditors to do so and that she never had to do it while working in the private sector. *Id.* at 190.
70. While [Claimant] would in some instances begin checking in more frequently after being reminded, often around the time of performance reviews, [Claimant] would eventually lapse back into her prior behavior. DALA Hearing I at 36:40 (testimony of [Supervisor A]).
71. [Claimant] acknowledged that she had received emails from [Supervisor A] reminding her to check in, and [Claimant] also admitted that the check-

ins were a requirement of the policy she had signed. DALA Hearing II at 1:46:12 (testimony of [Claimant]).

C. Untimely Submission of Travel Vouchers

72. At an August 2018 staff meeting, [Claimant] turned in her travel vouchers for the months of October, 2017 through June, 2018, inclusive. DALA Hearing I at 39:33 (testimony of [Supervisor A]); R. Ex. III, at 87–113.
73. [Claimant] had signed each of the travel vouchers, thereby certifying that her reported travel was necessary and authorized. DALA Hearing II at 1:23:53 (testimony of [Claimant]); *e.g.*, R. Ex. III, at 88.
74. [Claimant] also dated her signature on each travel voucher. *E.g.*, R. III, at 88. The dates were all either only partially discernable or entirely illegible despite the fact that [Claimant] has demonstrated the ability to write legibly even when rapidly signing and dating documents. *Compare id.* at 88, 91, 94, 97, 100, 103, 108, 109, 112, *with* R. Ex. I, at 24–25.
75. For [Supervisor A], who was one of two administrators with the ability to sign off on travel vouchers, receiving so many travel vouchers from a single field auditor created additional stress at a time when she was already dealing with a large volume of paperwork. DALA Hearing I at 40:10, 43:00 (testimony of [Supervisor A]).
76. [Supervisor A] signed off on all nine of the travel vouchers on August 2, 2018. *E.g.*, R. Ex. III, at 88, 112.
77. [Claimant]’s bulk submission “ended up being a budget disaster for [Employer Name]” given the amount of money involved and the fact that the expenses had been incurred throughout different calendar years and different fiscal years. DALA Hearing I at 41:30, 44:30 (testimony of [Supervisor A]).

D. Inaccurate Travel Vouchers

78. On October 5, 2018, [Claimant] submitted travel vouchers for July 2018 through September 2018. R. Ex. XIV.
79. Throughout October 2018 and into the following month of November, [Supervisor A] contacted employers to verify the information in [Claimant]’s travel vouchers; [Supervisor A] kept [Investigator A] and [Investigator B] apprised of her findings. DALA Hearing I at 53:40 (testimony of [Supervisor A]).
80. [Supervisor A] testified that some of the employers confirmed that [Claimant] had met with them on the reported dates and at the reported

times, that some could not remember exactly when they met with [Claimant], and that some stated with certainty that they had not met with [Claimant] as she had reported. *Id.* at 54:10 (testimony of [Supervisor A]).

81. [Employer Name] offered as evidence emails from [Supervisor A] to [Investigator A] and [Investigator B] identifying two employers who had purportedly offered evidence refuting two instances of travel that [Claimant] had allegedly reported in her travel vouchers. R. Ex. III, at 405-06.
82. [Employer Name] offered as evidence [Claimant]'s Outlook calendar for January 2018 through October 2018. *Id.* at 132-40.
83. Based on information from employers and [Claimant]'s emails, [Investigator B] claimed to have identified fourteen instances in which [Claimant] reported travel mileage when she purportedly had not actually traveled to the specified locations on those dates. DALA Hearing I at 3:37:34, 4:06:25 (testimony of [Investigator B]); R. Ex. III, at 75, 128-30.
84. [Claimant] received \$531.00 in travel reimbursement for the dates that [Investigator B] identified. R. Ex. III, at 75.
85. [Claimant] conceded that she may have reported the incorrect dates in some instances and that, in hindsight, using the information from her Outlook calendar was probably not the best way to fill out her travel vouchers given that she did not always update her Outlook calendar to reflect changes in her schedule. *Id.* at 46:31 (testimony of [Claimant]).

i. February 2, 2018

86. [Claimant] reported traveling 100 miles on February 2, 2018 to visit a business known as [Business A], for which she received a reimbursement in the amount of \$45.00. R. Ex. III, at 99, 128.
87. The travel voucher was consistent with the entry for February 2, 2018 in [Claimant]'s Outlook calendar. *Id.* at 132. However, the entry for February 2, 2018 in her personal Gmail calendar read, "admin." *Id.* at 116, 131.
88. According to [Investigator B]'s notes, the employer at [Business A] was adamant that [Claimant] had not been at the business on February 2, 2018. *Id.* at 128.
89. According to the ICS report on [Claimant]'s code of conduct interview, [Claimant] logged onto the [Employer Name] online system from her home IP address at 1:41 P.M. on February 2, 2018. *Id.* at 116.

ii. February 21, 2018

90. [Claimant] reported traveling 90 miles on February 21, 2018 to [Business B], for which she received a reimbursement in the amount of \$40.50. *Id.* at 99, 128.
91. The travel voucher was consistent with the entry for February 21, 2018 in [Claimant]'s Outlook calendar. *See id.* at 133.
92. On February 20, 2018, [Claimant] emailed a representative of [Business B] to tell him that she was scheduled to finish the business's audit the following day. *Id.* at 141. On February 21, 2018, [Claimant] again emailed the representative of [Business B] to say that she wanted to complete the audit that day, but she still needed additional tax records. *Id.* at 143.
93. According to [Investigator B]'s notes, the representative of [Business B] told [Supervisor A] that [Claimant] did not visit the business on February 21, 2018. *Id.* at 128.
94. According to the ICS report of [Claimant]'s code of conduct interview, [Claimant] logged onto the DUA online system from her home IP address at 10:59 A.M., 11:59 A.M., and 2:37 P.M. on February 21, 2018. *Id.* at 117.

iii. February 28, 2018

95. [Claimant] reported traveling 80 miles to [Business C] on February 28, 2018, for which she received a reimbursement in the amount of \$36.00. *Id.* at 99.
96. The travel voucher was consistent with the entry for February 28, 2018 in [Claimant]'s Outlook calendar. *See id.* at 133.
97. On February 28, 2018, [Claimant] sent an email to an accountant for [Business C] stating that she was currently working on the business's audit. *Id.* at 146.
98. According to the ICS report on [Claimant]'s code of conduct interview, [Claimant] logged onto the DUA online system from her home IP address at 11:11 A.M. and 1:56 P.M. on February 28, 2018. *Id.* at 117.
99. [Claimant] testified that she had in fact traveled to [Business C] on February 28, 2018, but she had forgotten her laptop and had to return home to complete the audit. DALA Hearing II at 52:00 (testimony of [Claimant]).

100. [Claimant] offered as evidence an email from the accountant for [Business C] in which he apparently verified that [Claimant] did actually visit the business on February 28, 2018 at 9:30 A.M., that he had met with her to discuss the audit, and that she had returned home to complete the audit because she had forgotten her laptop. *See* P. Ex. M, at 42.

iv. April 18, 2018

101. [Claimant] reported traveling 84 miles to [Business D] on April 18, 2018, for which she received a reimbursement in the amount of \$37.80. R. Ex. III, at 75, 105, 128.
102. The travel voucher was consistent with the entry for April 18, 2018 in [Claimant]’s Outlook calendar. *See id.* at 135.
103. In contrast, [Claimant]’s SSTA records indicate that she claimed a full day of sick leave on April 18, 2018. *Id.* at 123.

v. May 4, 2018

104. [Claimant] reported traveling 82 miles to [Business E] on May 4, 2018, for which she received a reimbursement in the amount of \$41.40. *Id.* at 75, 108, 129.
105. The travel voucher was consistent with the entry for May 4, 2018 in [Claimant]’s Outlook calendar. *See id.* at 135.
106. However, according to the ICS report of [Claimant]’s code of conduct interview, the corresponding entry on her personal Gmail calendar read, “canceled-hurt back [Business E] [sic].” *Id.* at 117.
107. An email thread between [Claimant] and a representative for [Business E] spanning from May 1, 2018 to May 2, 2018 indicated that they ultimately rescheduled the audit meeting for May 25, 2018 because the representative for [Business E] had become temporarily immobilized due to a back injury. *Id.* at 148-49.
108. According to [Investigator B]’s notes, the representative for [Business E] told [Supervisor A] that the audit meeting planned for May 4, 2018 had been canceled. *Id.* at 117, 129.

vi. May 29, 2018

109. [Claimant] reported traveling 80 miles to [Business F] on May 29, 2018, for which she received a reimbursement in the amount of \$36.00. *Id.* at 75, 108, 129.

- 110. The travel voucher was consistent with the entry for May 29, 2018 in [Claimant]’s Outlook calendar. *See id.* at 136.
- 111. At 9:15 A.M. and 12:42 P.M. on May 29, 2018, [Claimant] sent emails to a representative for [Business F] informing the representative that she would be completing the audit from “her office” and requesting the password to a payroll document. *Id.* at 152.
- 112. According to the ICS report of [Claimant]’s code of conduct interview, she logged onto the DUA online system from her home IP address at 12:38 P.M. and 1:57 P.M. on May 29, 2018. *Id.* at 117.

vii. June 1, 2018

- 113. [Claimant] reported traveling 98 miles to [Business G] on June 1, 2018, for which she received a reimbursement in the amount of \$44.10. *Id.* at 75, 111, 129.
- 114. The travel voucher was consistent with the entry for June 1, 2018 in [Claimant]’s Outlook calendar. *See id.* at 136.
- 115. On the evening of May 31, 2018, and again on the morning of June 1, 2018, the accountant for [Business G] emailed [Claimant] to inform her that he was ill and needed to reschedule their audit meeting. *Id.* at 157–58. On June 1, 2018, at 12:18 P.M., [Claimant] replied that the meeting would have to be rescheduled for some time in July 2018. *Id.* at 157.
- 116. According to [Investigator B]’s notes, the accountant for [Business G] told [Supervisor A] that the June 1, 2018 meeting had indeed been canceled and that [Claimant] did not visit [Business G] that day. *Id.* at 129.

viii. June 29, 2018

- 117. [Claimant] reported traveling 28 miles to [Business H] on June 29, 2018, for which she received a reimbursement in the amount of \$12.60. *Id.* at 75, 111, 130.
- 118. [Claimant]’s Outlook calendar indicates that she visited a business known as [Business L] on June 29, 2018. *Id.* at 137.
- 119. According to [Investigator B]’s notes, an employer at [Business H] informed [Supervisor A] that [Claimant] did not visit the business on June 29, 2018. *Id.* at 130.

ix. July 2, 2018

120. [Claimant] reported traveling 134 miles to [Business G] on July 2, 2018, for which she received a reimbursement in the amount of \$60.30. R. Exs. III, at 75, 129, XIV.
121. The travel voucher was consistent with the entries for July 2, 2018 in [Claimant]'s Outlook calendar and in her Gmail calendar. *See* R. Ex. III, at 137, 166.
122. On June 5, 2018, [Claimant] emailed the accountant for [Business G] to inform him that she had scheduled July 2, 2018 as the day on which she would review documents that he had recently provided to her. *Id.* at 163. [Claimant] also stated in that email that she would be visiting [Business G] on July 26, 2018. *Id.*
123. On July 2, 2018, [Claimant] emailed the accountant for [Business G] again, this time to inform him that she had reviewed the documents, that the audit was being expanded, and that she would be meeting with him on July 26, 2018. *Id.* at 162.
124. According to [Investigator B]'s notes, the accountant for [Business G] told [Supervisor A] that [Claimant] did not visit the business on July 2, 2018. *Id.* at 129.

x. July 26, 2018

125. [Claimant] reported traveling 134 miles to [Business G] on July 26, 2018, for which she received a reimbursement in the amount of \$60.30. R. Exs. III, at 75, 129, XIV.
126. [Claimant]'s Outlook calendar indicated that she visited a business known as "[Business I]" on July 26, 2018. R. Ex. III, at 137.
127. According to [Investigator B]'s notes, the accountant for [Business G] told [Supervisor A] that [Claimant] canceled the July 26, 2018 audit meeting and did not visit the business that day. *Id.* at 129.

xi. August 27, 2018

128. [Claimant] reported traveling 28 miles to [Business H] on August 27, 2018, for which she received a reimbursement in the amount of \$12.60. R. Exs. III, at 75, 130, XIV.
129. The travel voucher was consistent with the entry for August 27, 2018 in [Claimant]'s Outlook calendar. *See* R. Ex. III, at 138.

130. According to [Investigator B]’s notes, an employer at [Business H] informed [Supervisor A] that [Claimant] did not visit the business on August 27, 2018. *Id.* at 130.
131. According to the ICS report of [Claimant]’s code of conduct interview, [Claimant] logged onto the DUA online audit system from her home IP address at 11:54 A.M., 2:07 P.M., and 4:07 P.M.. *Id.* at 119.

xii. September 7, 2018

132. [Claimant] reported traveling 70 miles to [Business F] on September 7, 2018, for which she received a reimbursement in the amount of \$31.50. R. Exs. III, at 75, 118, 129, XIV.
133. [Claimant] had nothing scheduled in her Outlook calendar for September 7, 2018. R. Ex. III, at 139.
134. At 12:40 P.M. on September 7, 2018, [Claimant] sent an email to [Supervisor A] in which [Claimant] stated that she had begun her work day at 8:00 A.M. and hoped to make a doctor’s appointment before returning home to complete her 7.5 hours by 5:00 P.M.. *Id.* at 156.
135. According to the report of the ICS code of conduct interview, [Claimant] logged onto the DUA online audit system from her home IP address at 11:55 A.M. and 4:13 P.M. on September 7, 2018. *Id.* at 118.
136. According to the Yahoo! Maps directions that [Claimant] submitted along with her September 2018 travel voucher, it would have taken her 56 minutes to drive from her home to [Business F]. R. Ex. XIV.

xiii. September 14, 2018

137. [Claimant] reported traveling 114 miles to [Business J] on September 14, 2018, for which she received a reimbursement in the amount of \$51.30. R. Exs. III, at 75, 119, 130, XIV.
138. The travel voucher was consistent with the entry for September 14, 2018 in [Claimant]’s Outlook calendar. *See* R. Ex. III, at 139.
139. The ICS report of [Claimant]’s code of conduct interview states that she logged onto the DUA online audit system from her home IP address at 12:57 P.M., presumably either 1:27 P.M. or 1:28 P.M.,⁵ 1:55 P.M., and 2:45 P.M. that day. *Id.*

[⁵] The report reads, “1:278p.m.,” which is clearly a typographical error. *Id.* at 119.

140. According to [Supervisor A], [Name A], an accountant for [Business J], informed her that he did not have [Claimant] on his calendar for September 14, 2018, although he apparently said nothing regarding whether he knew for a fact that [Claimant] did not visit the business that day. *Id.* at 406; *see also* DALA Hearing I at 54:10 (testimony of [Supervisor A]).
141. [Claimant] offered as evidence an email exchange purportedly between herself and [Name B], an accountant from the same firm as [Name A], in which [Name B] apparently confirmed that he was [Claimant]’s point of contact for the audit of [Business J]. P. Ex. K, at 37–38; DALA Hearing II at 51:47 (testimony of [Claimant]). However, [Name B] did not actually state that [Claimant] had visited the business on September 14, 2019. *See* P. Ex. K, at 37.

xiv. September 17, 2018

142. [Claimant] reported traveling 48 miles to [Business K] on September 17, 2018, for which she received a reimbursement in the amount of \$21.60. R. Exs. III, at 75, 119, 130, XIV.
143. [Claimant] had nothing scheduled in her Outlook calendar for September 17, 2018. R. Ex. III, at 139.
144. According to [Supervisor A], the employer at [Business K] informed her that [Claimant] had been scheduled to visit the business on September 17, 2018, but [Claimant] ultimately decided to follow up by phone or email instead of traveling to the business in person. *Id.* at 405; *see also* DALA Hearing I at 54:10 (testimony of [Supervisor A]).
145. The employer at [Business K] also claimed that [Claimant] had been difficult and combative, “flew off the handle,” and made everyone at the business, including clients, uncomfortable. R. Ex. III, at 405; *see also* DALA Hearing I at 54:10 (testimony of [Supervisor A]).

E. Personal Use of State Equipment & Resources

i. State Email

146. [Investigator A] found emails related to the [Foundation A] on [Claimant]’s state email account. DALA Hearing I at 2:35:25 (testimony of [Investigator A]).

ii. Agency Computer Server

147. [Investigator A] inspected [Claimant]’s home drive and found various files that had been copied over from a flash drive. *Id.* at 2:13:40 (testimony of

[Investigator A]). Furthermore, her home drive contained a “substantial number” of personal files in addition to work-related files. *Id.* at 2:14:45 (testimony of [Investigator A]).

148. [Claimant]’s home drive contained several files pertaining to the [Foundation A], a nonprofit that [Claimant]’s family started; she is the treasurer. *Id.* at 2:15:00, 2:17:15 (testimony of [Investigator A]); R. Exs. III, at 78, 416-22, IX.
149. [Claimant]’s home drive contained files related to her own personal finances. DALA Hearing I at 2:15:45 (testimony of [Investigator A]); R. Exs. III, at 78, IX.

iii. Agency Mobile Phone

150. Call records for [Claimant]’s agency mobile phone showed that she used the phone to speak to an individual named “[Individual A]” twice on June 6, 2018, with both calls lasting for approximately three minutes each. R. Ex. III, at 78, 395, 473.
151. [Claimant]’s agency mobile phone was subject to an unlimited mobile-to-mobile plan, so the calls from [Individual A] did not incur additional charges for the agency. *See id.* at 473.

iv. Agency Laptop

152. The activity log from [Claimant]’s agency laptop identified occasions in 2015, 2016, 2017, and 2018 on which she used the laptop to access personal files or visit websites that were not germane to her professional duties. *See* DALA Hearing I at 2:43:07 (testimony of [Investigator A]); *see also* R. Ex. III, at 423-40.
153. [Claimant] admitted that she had used her agency laptop to work on personal documents. DALA Hearing II at 48:48 (testimony of [Claimant]).

F. Unauthorized Access of Confidential Data

154. [Claimant]’s home drive contained a mortgage application, dated May 7, 2012, that listed the Social Security Numbers and birth dates of two persons. R. Ex. III, at 407-10; *see also* DALA Hearing I at 2:16:03 (testimony of [Investigator A]).
155. [Claimant]’s home drive contained many files related to [Individual A], including (1) [Individual A]’s mobile phone records and billing history, (2) a detailed spreadsheet analyzing who [Individual A] had been calling and texting, as well as discussing those calls and texts in the context of

[Claimant]’s interactions with [Individual A], (3) [Individual A]’s contacts, and (4) a photograph of [Individual A]’s driver’s license. DALA Hearing I at 2:16:13, 2:21:20, 2:23:10 (testimony of [Investigator A]); R. Exs. III, at 76, 395–404, IX-X.

156. [Claimant]’s home drive also contained a large document consisting of diary entries that appear to detail the course of [Claimant]’s romantic relationship with [Individual A] between February 2018 and September 2018. *See* DALA Hearing I at 2:16:24, 2:31:50, 3:43:41 (testimony of [Investigator A] and [Investigator B]); R. Ex. III, at 76, 195–394. The document is a mix of stream of consciousness, *e.g.*, R. Ex. III, at 198–200, and excruciatingly detailed narrative. *E.g.*, *id.* at 210–12. In some places, [Claimant] inserted images and text from online tarot card readings. *E.g.*, *id.* at 358–60. The narrator refers to herself as “[Individual B],” and the document contains other details from her own life. *Compare id.* at 367–68 (implying that “[Individual B]” was in [Town A] on July 25, 2018), *with* P. Ex. L, at 40 (email from [Claimant] to [Supervisor A], sent July 25, 2018, in which [Claimant] reported that she was presently in [Town A]). [Individual A] is portrayed as dishonest, manipulative, and emotionally abusive. *See* R. Ex. III, at 195–394.
157. [Investigator A] also found copies of [Individual A]’s mobile phone records on [Claimant]’s agency laptop. DALA Hearing I at 2:21:40, 2:29:00 (testimony of [Investigator A]).

G. Compromising Data Security

158. [Investigator A]’s analysis of [Claimant]’s agency laptop revealed that she had accessed the Internet by connecting the laptop to private wireless networks on multiple occasions between 2015 and 2018. *Id.* at 3:01:10 (testimony of [Investigator A]); R. Ex. III, at 78, 445.
159. Field auditors are not allowed to connect their agency laptops to unauthorized wireless networks, which is why the agency provides them with personal hotspot devices to access the Internet from their agency laptops. DALA Hearing I at 3:01:19 (testimony of [Investigator A]). The personal hotspot devices connect to the Internet via a cellular network, meaning that field auditors have Internet access wherever they have cellular service. *Id.* at 3:01:37 (testimony of [Investigator A]).
160. If a field auditor encounters a dead zone and loses cellular service while working on an audit, the field auditor should perform as much work as possible offline and then relocate to an area with cellular service in order to complete the audit. *Id.* at 3:01:43 (testimony of [Investigator A]).
161. [Claimant] admitted that she had accessed the Internet using the secured wireless networks of businesses she had been auditing on occasions when

her personal hotspot device did not have cellular service. DALA Hearing II at 17: 41 (testimony of [Claimant]).

H. Dishonesty during Code of Conduct Interview

162. During the code of conduct interview, [Claimant] claimed that the reason she was untimely in submitting her travel vouchers was that the flash drive containing many of her work records had broken, meaning that she had to re-create those records. DALA Hearing I at 2:58:18 (testimony of [Investigator A]); R. Ex. III, at 116.
163. However, [Investigator A] had previously discovered that a couple of hours after [Claimant] sent an email to [Supervisor A] on July 2, 2018, explaining that her flash drive had broken, a folder containing records of her weekly projections for her auditing travel schedule was created on her agency laptop. DALA Hearing I at 2:53:00, 2:55:45 (testimony of [Investigator A]); R. Ex. III, at 116, 125–27. Specifically, a screenshot that [Investigator A] took of an opened folder on [Claimant]’s agency laptop contained her weekly projections from the week ending March 23, 2018 through the week ending June 29, 2018. R. Ex. III, at 127.
164. Additionally, in that same July 2, 2018, email to [Supervisor A], [Claimant] stated that she last backed up the contents of her flash drive on March 1, 2018. *Id.* at 125.
165. [Investigator A] presented [Claimant] with the computer forensics and asserted that she in fact had possessed all of the information necessary in order to complete her travel vouchers timely, and thus, that her broken flash drive actually had no impact upon her ability to submit them in a timely manner. DALA Hearing I at 2:53:39 (testimony of [Investigator A]); *see also* R. Ex. III, at 116.
166. [Investigator A] formed the opinion that [Claimant] had been dishonest when she first told investigators that her broken flash drive had been the issue. DALA Hearing I at 2:53:58 (testimony of [Investigator A]).
167. [Claimant] also claimed that the large document about [Individual A] was not a diary, but rather, was a novel that she was writing based on her own life and modeled after works such as *Bridget Jones’s Diary*. DALA Hearing I at 4:05:05 (testimony of [Investigator B]); DALA Hearing II at 1:21:14 (testimony of [Claimant]); R. Ex. III, at 119–20; *see also* Helen Fielding, *Bridget Jones’s Diary* (1996).

VI. ADMINISTRATIVE HISTORY

168. On December 14, 2018, DUA sent [Claimant] a request for information needed in order to determine her eligibility for unemployment benefits. R.

Ex. I, at 39. [Claimant] completed the provided paperwork as requested. *Id.* at 43.

169. On December 21, 2018, DUA sent the [State higher authority] human resources office a request for information regarding the circumstances of [Claimant]'s resignation. *Id.* at 45. A human relations analyst named [Name C] completed the provided paperwork as requested. *Id.* at 50.
170. On January 19, 2019, DUA sent [Claimant] a Notice of Disqualification informing her of the agency's determination that she was disqualified from receiving unemployment benefits due to her discharge for deliberate misconduct in wilful disregard of her employer's interest. *Id.* at 51.
171. By letter to the DUA Hearings Department, postmarked January 23, 2019 and received on January 25, 2019, [Claimant] filed an appeal and requested a hearing on her case. *Id.* at 68-70.
172. On January 31, 2019, DUA sent [Claimant] a notice requesting that she answer additional, more specific questions regarding her resignation. *See id.* at 35-38. [Claimant] provided written responses to these questions. *Id.* at 38.
173. Also on January 31, 2019, DUA sent [Claimant] documents that listed the information that [Claimant] had provided for her initial application for unemployment benefits. *Id.* at 63-67.
174. On February 7, 2019, the DUA Hearings Department referred [Claimant]'s case to DALA, per the request of the DUA Hearings Deputy Director. *Id.* at 1.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the magistrate's decision to determine whether the findings are supported by substantial and credible evidence, and whether the magistrate's conclusion is free from error of law. Upon such review, the Board adopts the magistrate's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree that the claimant is ineligible for benefits, but only due to deliberate misconduct in wilful disregard of the employer's interest.

The claimant submitted a letter of resignation the day before her disciplinary hearing because she believed that she would be discharged. *See Findings of Fact ## 62 and 64.* Ordinarily, qualification for benefits following a resignation is decided under G.L. c. 151A, § 25(e)(1), 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 (1) voluntarily unless the employee establishes by

substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent

However, it is well-settled that an employee who resigns under a reasonable belief that she is facing imminent discharge will not be disqualified from receiving unemployment benefits merely because the separation was technically a resignation and not a firing. *See Malone-Campagna v. Dir. of Division of Employment Security*, 391 Mass. 399 (1984). In such a case, the separation is treated as involuntary and the inquiry focuses on whether, if the impending discharge had occurred, it would have been for a disqualifying reason under G.L. c. 151A, § 25(e)(2).

Thus, the hearing below properly focused on whether the conduct which gave rise to the disciplinary hearing was shown “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” G.L. c. 151A, § 25(e)(2). “[T]he grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee’s right to benefits, and the burdens of production and persuasion rest with the employer.” *Still v. Comm’r of Department of Employment and Training*, 423 Mass. 805, 809 (1996) (citations omitted).

The magistrate’s decision enumerates the employer’s several grounds for discharge: (1) performing more than 12 hours of telecommuting work per week without authorization; (2) failure to regularly check in with the supervisor; (3) untimely submission of travel vouchers; (4) submission of inaccurate travel vouchers; (5) personal use of state equipment and resources; (6) unauthorized access of confidential data; (7) compromising data security; and (8) dishonesty during a Code of Conduct interview.

(1) Performing more than 12 hours of telecommuting work

Although the evidence showed that the claimant had, at times, performed more than 12 hours of telecommuting work per week without seeking manager approval, and this technically violated the employer’s Telecommuting Program policy and the Telecommuter Agreement, we believe that the magistrate properly declined to disqualify her for such misconduct. This is because the employer failed to provide a reason for its 12-hour restriction. The knowing violation prong of G.L. c. 151A, § 25(e)(2), expressly provides that the policy must be *reasonable*. We have also interpreted the deliberate misconduct prong to require that an employer show that its expectation is a reasonable one. *See, e.g., Board of Review Decision 0023 4482 89* (Sept. 27, 2018).

(2) Failure to regularly check in with the supervisor

The findings show that the claimant was aware that she was expected to check in with her supervisor at least twice a day. She knew this because it was spelled out in a written policy and through reminders sent in a number of her supervisor’s emails to her during the last year of her employment. *See Findings of Fact ## 20–21, 23, and 71*. It is a reasonable expectation to ensure that field auditors are safe, and that they are working. *Finding of Fact # 24*. Nonetheless, the claimant would not check in on any consistent basis. *See Findings of Fact ## 67, 69, and 70*.

In order to determine whether an employee's actions constitute deliberate misconduct, the proper factual inquiry is to ascertain the employee's state of mind at the time of the behavior. Grise v. Dir. of Division of Employment Security, 393 Mass. 271, 275 (1984). In order to evaluate the claimant's state of mind, we must "[T]ake into account the worker's knowledge of the employer's expectation, the reasonableness of that expectation and the presence of any mitigating factors." Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979) (citation omitted).

We agree with the magistrate's conclusion that the record reveals that nothing prevented the claimant from checking in except her refusal to depart from old practices. Therefore, her failure to check in was deliberate misconduct in wilful disregard of the employer's interest.

(3) *Untimely submission of travel vouchers*

The parties' collective bargaining agreement encourages employees to submit travel reimbursement requests within 60 days in order to avoid negatively impacting the agency's budget. See Finding of Fact # 30. The magistrate credited testimony by the claimant's supervisor that she had informed the field auditors to submit them no more than 90 days at a time. See Finding of Fact # 28. Thus, the findings show that the claimant knew that these reimbursement requests were to be submitted within 60–90 days. As the magistrate stated, the expectation was reasonable so as not to overwhelm an administrator with paperwork and to avoid budgetary problems created when the requests overlap different fiscal years, as in this case. Nonetheless, in August, 2018, the claimant submitted nine months of travel vouchers covering the period October, 2017, through June, 2018. Finding of Fact # 72. We agree with the magistrate's assessment that, inasmuch as the claimant was an experienced field auditor, she was fully capable of submitting timely vouchers.

The claimant seemed to blame a broken flash drive and the time-consuming task of recreating her records contained in it as the reason for submitting nine months of travel vouchers at once. See Exhibit R3, p. AR 124.⁶ We consider whether this broken flash drive constituted mitigating circumstances for the untimely vouchers. Mitigating circumstances include factors that cause the misconduct and over which a claimant may have little or no control. See Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987).

To be sure, a broken flash drive was beyond the claimant's control. However, it broke at some point in mid-June, 2018, which, according to the claimant, caused her to lose data entered since the last backup on March 1, 2018. See Exhibit R3, p. AR 124.⁷ If she only lost data after March 1st, the broken flash drive would not have prevented the claimant from submitting timely travel reimbursement requests for October, November, and December, 2017, or January and February, 2018. As the magistrate noted, it also did not prevent her from simply recording her mileage on

⁶ Exhibit R3, p. AR 124 is an email from the claimant to, *inter alia*, the [Employer Name] Director, dated October 31, 2018. While not explicitly incorporated into the review examiner's findings, the email is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

⁷ Exhibit R3, p. AR 125 is a claimant email to her supervisor, dated July 2, 2018, reporting the broken flash drive. This is also part of the unchallenged evidence in the record.

the paper travel voucher form after each audit for each month and submitting them all on a timely basis. The claimant has not shown mitigating circumstances for waiting so long to submit these reimbursement requests. Thus, the employer has satisfied its burden to show that the untimely submission of travel reimbursement requests was done deliberately and in wilful disregard of its interest.

(4) *Inaccurate travel vouchers*

The employer alleged 14 instances where the claimant had requested mileage reimbursement for travel that she did not incur. *See Findings of Fact ## 78–144.* The magistrate decided that the employer had not produced substantial evidence for 10 of them, because the employer’s allegation rested primarily upon an investigator’s testimony that the claimant had logged into the DUA’s server from her home IP address at least a couple of times on those dates, and upon businesses reporting that the claimant had not been to their company on those days.

By themselves, the IP address log-ins do not eliminate the possibility that the claimant had traveled to and from those business locations before, after, or in-between the log-in times. We also think that the magistrate rightfully rejected the reports from these business representatives as not credible. The emails and any phone communications between these businesses and the claimant’s supervisor were hearsay. Although hearsay evidence is admissible and may constitute substantial evidence in an informal administrative hearing, it must contain some “indicia of reliability.” Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), *quoting Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission*, 401 Mass. 526, 530 (1988). In some cases, where the content of those business’ communications were offered through the investigator’s testimony, the evidence was totem-pole hearsay, which is notoriously unreliable. Moreover, as the magistrate noted, the truthfulness of the statements was also suspect, inasmuch as they came from business entities who may well have resented the intrusive nature of the claimant’s job to audit for unlawful tax avoidance. They had an incentive to lie.

However, the magistrate concluded that the employer had produced substantial and credible evidence to show that the claimant had not travelled to destinations contained in her travel voucher requests for May 4, 2018, May 29, 2018, June 1, 2018, and July 2, 2018. Specifically, contemporaneous email communications between the claimant and the business representative rescheduling the planned May 4, 2018, audit meeting because the representative had injured his back constitutes reliable evidence. We agree, as the email includes the claimant’s own statement. It is also corroborated by the entry “canceled – hurt back” in the claimant’s Gmail calendar next to the business name. *See Findings of Fact ## 106 and 107.* Similarly, we can reasonably infer from the claimant’s two May 29, 2018, emails, notifying the business that she would be completing the audit from “her office,” that she did not intend to visit the business on that day. *See Finding of Fact # 111.* As for the June 1, 2018, voucher, the employer also presented the claimant’s contemporaneous email response to the business representative confirming that the June 1st audit would be rescheduled. *See Finding of Fact # 115.* As proof that the July 2, 2018, travel reimbursement request was inaccurate, the employer presented two claimant emails, one written on June 5, 2018, and the other on July 2, 2018, confirming that she

would be visiting the business on July 26, 2018. *See* Findings of Fact ## 122 and 123. These indicate that she did not visit them on July 2nd.⁸

We think that it is self-evident that the claimant knew that she was expected to submit truthful information in these travel reimbursement requests. Even if it were not obvious, there is a printed caption above the signature on each voucher which states, “I hereby certify under penalty of perjury that the above amounts as itemized are true and correct, [and] were incurred by me during necessary travel in the service of the [Employer]. . . .” *See* Finding of Fact # 27.

Although the claimant testified that any errors were inadvertent, and she did the best she could, the magistrate’s findings reflect that he did not believe her. 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). “The test is whether the finding is supported by ‘substantial evidence.’” *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted.) “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted.) The claimant conceded during the hearing that she had relied upon her Outlook calendar to fill in the vouchers, and that she knew that the calendar was not always updated to reflect schedule changes. *See* Finding of Fact # 85. Implicit in this finding is that the claimant knew that she was not providing entirely true accounts of her travels. The inference is reasonable in relation to the evidence presented.

In her defense, the claimant insisted that she was not the only one who made errors in her travel requests, yet she was the only one fired. However, the claimant did not present any specific information about who or when others had made such errors, evidence to show that the employer was aware of it, or that the employer had knowingly condoned false submissions by others. *See Smith v. Dir. of Division of Employment Security*, 384 Mass. 758, 760–761 (1981). In fact, the employer’s Director of Labor Relations testified that, after discovering the claimant’s false vouchers, it had opened an audit of all travel in the agency.⁹

The magistrate also considered whether the claimant’s broken flash drive created mitigating circumstances for the inaccurate entries in her travel vouchers. We agree that it did not. As discussed above, a broken flash drive in July did not prevent the claimant from carefully and accurately recording her mileage at the time she traveled, nor from keeping her Outlook Calendar updated, if she had intended to rely upon it to reconstruct her travel. Thus, we agree that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest when she submitted inaccurate travel reimbursement requests in August, 2018.

⁸ In addition to these dates, the findings contain substantial evidence that the claimant did not travel to the business named in the April 18, 2018, reimbursement request, as the employer presented the claimant’s timesheet showing that she took a full day of paid sick leave on that date. *See* Finding of Fact # 103. The magistrate stated that the claimant may simply have made a mistake on this timecard entry. Given the pattern of other false entries, we think this conclusion is unreasonable.

⁹ This is part the employer’s unchallenged hearing testimony.

(5) *Personal use of state equipment and resources*

In his findings, the magistrate refers to a written employer standards of conduct policy, which states that employees may not use employer equipment or resources to conduct personal business unrelated to their official duties. *See* Finding of Fact # 34.¹⁰ The claimant was aware of this rule. *See* Findings of Fact ## 31–34. We also note that the employer’s Field Audit Telecommuting Program policy states that the department equipment shall not be used for personal use, and the Telecommuter Agreement states, “state owned equipment and services are to be used for state business only.” *See* Findings of Fact ## 13 and 16, and Exhibit R1, pp. AR 15 and 20. The claimant had signed this Agreement on January 23, 2017, and admitted during the hearing that she was aware of this expectation. *See* Finding of Fact # 16. As the magistrate stated, these expectations are a reasonable way for this government employer to ensure that taxpayer resources are used only for legitimate government functions.

The employer’s investigation revealed that the claimant had used the employer’s computer server to access and store a multitude of personal documents, including emails and documents stored in her home-drive or employer-issued laptop relating to a family charitable foundation for which the claimant was a treasurer, documents relating to her own personal finances, mortgage applications for other individuals, as well as a driver’s license and a trove of phone records and spreadsheets pertaining to an individual whom the claimant had dated. *See* Findings of Fact ## 146–149, and 154–155. Investigators also found a large, detailed narrative of the claimant’s romantic relationship over the period February through September, 2018. *See* Finding of Fact # 156. This is strong evidence that the claimant had availed herself of the employer’s equipment and resources for both personal business and personal use.

In her defense, the claimant asserted that she inadvertently placed her personal documents on the employer’s computer server when she backed up the flash drive that contained audit records. Given the sheer volume of personal files present, the magistrate found the claimant’s assertion to be incredible. We think this assessment is reasonable.

The claimant admitted using her laptop for personal business, but maintained that it was only done on breaks, after work hours, or on weekends. *See* Finding of Fact # 153. Under cross-examination, the employer’s Director of Labor Relations conceded that minor personal use of the employer’s computers to check emails during work breaks is tolerated. However, in this case, the evidence shows that the claimant’s use of her laptop and home drive were not minor by any measure and that the claimant accessed the documents at all hours of her workday over an extended period of time.¹¹

The magistrate concluded that the claimant’s personal use of the employer equipment and resources was a knowing violation of a reasonable and uniformly enforced policy within the meaning of G.L. c. 151A, § 25(e)(2). Notwithstanding the employer’s tolerance of minor personal use, he decided that the employer satisfied its burden to show uniform enforcement. The magistrate concluded that since no one else had violated these policies as extensively as the

¹⁰ *See also* Exhibit PA, the Laptop Security & Use Policy, at 5.0.

¹¹ *See* Exhibit R3, pp. AR 423–441, an activity list showing the dates and times that an external flash drive was used on the claimant’s laptop to access these personal documents, and pp. AR 195–394 indicating the dates and times of the detailed narrative entries.

claimant, there was no evidence of disparate treatment of similarly situated employees. Although we have previously held that an employer must show uniform discipline for similar violations,¹² we have not considered how an employer meets its burden in the case of an individual who is the first to violate a policy on a scale wholly unlike other employees.¹³ Because we conclude that the claimant is ineligible for benefits under the deliberate misconduct prong, we need not decide this question today.

The findings show that in storing and accessing personal documents on the employer's computer server and laptop, the claimant not only violated the employer's policies, but that she did so knowingly, deliberately, and in wilful disregard of the employer's interest. Thus, this conduct was disqualifying under G.L. c. 151A, § 25(e)(2).

(6) *Unauthorized access of confidential data*

Findings of Fact ## 35 and 38 provide that the employer's IT policy prohibits employees from "acquir[ing] access to confidential data" unless necessary to perform their job duties, and that the claimant acknowledged reading and understanding this policy. To be sure, the mortgage applications and private telephone account records found in the employer's server and laptop contained personal, confidential data about identifiable individuals. In storing and using the employer's IT equipment to open these records, arguably the claimant accessed this confidential information through employer IT resources. However, a fair reading of the employer's policy could also be that it prohibits using the employer's IT resources to *obtain* this confidential data. The magistrate did not address this ambiguity in his decision. Since there is no evidence showing that the claimant obtained personal data about identifying individuals from the employer's databases, we do not agree that the employer has met its burden under G.L. c. 151A, § 25(e)(2), as to this ground for discharge.

(7) *Compromising data security*

The employer's Remote Access User Certification Agreement provides that users of employer-issued equipment must ensure that they do not expose the data in the remote environment or compromise security of the employer's computer systems or applications. *See* Finding of Fact # 36. Again, the evidence shows that the claimant had read and understood this policy. *See* Finding of Fact # 38. In this age of computer technology and vulnerability, the need for cyber security to protect against theft of confidential personal identifying information is reasonable.

¹² *See, e.g.*, Board of Review Decisions 0027 6753 33 (June 28, 2019) and 0021 5302 86 (Oct. 27, 2017). Board of Review Decision 0021 5302 86 is an unpublished decision, available upon request.

¹³ *See McClain v. Review Board of Indiana Dept. of Workforce Development*, 693 N.E.2d 1314, 1319 (Ind. 1998) (must first define the class of persons against whom uniformity is measured, and then ask whether "all persons under the same conditions and in the same circumstances are treated alike."); *Bartholomew County v. Review Board of Indiana Dept. of Workforce Development*, 14 N.E.3d 806, 811 (Ind. Ct. App. 2014) (employer presented no evidence of how it disciplined others in the class of officers engaged in firearm horseplay); *General Motors Corp. v. Review Board of Indiana Dept. of Workforce Development*, 671 N.E.2d 493, 498–499 (Ind. Ct. App. 1996) (employer uniformly enforced drug policy against persons who, for the first time, violated the policy by selling drugs, even if it treated drug possession violators more leniently, as they were a separate class of offenders); *see also Resso v. Admin., Unemployment Compensation Act*, 83 A.3d 723 n. 4 (Conn. App. Ct. 2014) (would be illogical to preclude disqualification where employer could not possibly show that similarly situated employees were treated in a similar manner following a discharge for the first employee to violate a policy).

Yet, while working on audits at business locations, the claimant sometimes used a company's private wifi network when there was inadequate cellular service and her employer-issued hotspot device did not work. Findings of Fact ## 158–161. She had also risked compromising the security of the employer's systems when she asked an IT person at one of these businesses to help her fix a laptop problem.¹⁴

We do not believe the employer satisfied its burden in this instance to disqualify the claimant under the deliberate misconduct prong of G.L. c. 151A, § 25(e)(2). Deliberate misconduct alone is not enough. Such misconduct must also be in 'wilful disregard' of the employer's interest. Deliberate misconduct in wilful disregard of the employer's interest suggests intentional conduct or inaction which the employee knew was contrary to the employer's interest." Goodridge v. Dir. of Division of Employment Security, 375 Mass. 434, 436 (1978) (citations omitted.) In the Garfield case, *supra*, the Supreme Judicial Court held that a claimant store manager, who improperly rearranged the work schedule without notifying a district manager as directed, did not act in wilful disregard of the employer's interest. The Court explained that the actions he took were alternate measures to ensure that he left his store prepared for his absence. 377 Mass. at 97, 98–99 ("When a worker . . . has a good faith lapse in judgment or attention, any resulting conduct contrary to the employer's interest is unintentional; a related discharge is not the worker's intentional fault, and there is no basis under § 25(e)(2) for denying benefits."). In the present case, we think the claimant exercised poor judgment in using private companies' wifi service and allowing a business's tech support person to access her laptop. But, because she was acting in furtherance of another employer interest, to perform her auditing duties, we cannot say that she was motivated by a wilful disregard of the employer's interest.

As for whether the employer showed that this misconduct was a knowing violation of a uniformly enforced policy, the magistrate concluded that the employer had made the showing based upon the fact that it had never had an employee similarly situated to the claimant. Again, we need not reach this question, because the employer has presented ample evidence to disqualify the claimant for other misconduct under the deliberate misconduct prong.

(8) *Dishonesty during a Code of Conduct interview*

We agree that, for this allegation, the employer has shown deliberate misconduct in wilful disregard of the employer's interest. The findings show that at the outset of the claimant's Code of Conduct interview on November 26, 2018, the claimant had been told that the truthfulness of her responses could impact any disciplinary outcome and her statements could themselves be grounds for discharge. *See* Findings of Fact ## 41 and 55.

The magistrate concluded that, when the claimant told the investigators that her broken flash drive was to blame for the untimely submission of nine months of travel vouchers, it was a dishonest excuse. Computer forensics had shown that she had recovered weekly projections for the weeks ending March 23 – June 29, 2018, and, even if she had not recovered this data, she had, at most, lost data from only three of the nine months. He also flatly rejected her statement that the detailed narrative of a romantic relationship, which she kept on her employer issued equipment, was a novel and not a diary. His assessment is based upon the use of her own name

¹⁴ *See* Exhibit R3, p. AR 444, a claimant email, dated July 24, 2018.

and details of her own life throughout the document, her spreadsheet and notes of every incoming and outgoing call and text message from this person over several months, and because the narrative reads like a diary of a person consumed by a romantic relationship. He recognized that the claimant's lack of candor may have been motivated by personal or professional embarrassment but concluded that this did not justify making dishonest statements in wilful disregard of the employer's interest in uncovering the truth. We think his assessment of the evidence and conclusions are reasonable.

We, therefore, conclude as a matter of law that the employer has satisfied its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2), by failing to regularly check in with her supervisor, submitting travel reimbursement vouchers that were untimely and inaccurate, using state equipment and resources for personal use or business, and dishonesty during a Code of Conduct interview.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning December 9, 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 - October 29, 2019



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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