

Claimant was disqualified under G.L. c. 151A, § 25(e)(2) for deliberately failing to follow strict quality control protocols in wilful disregard of the employer's interest in maintaining the integrity of its operation.

**Board of Review
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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

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

The claimant was discharged from her position with the employer on May 16, 2019. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on June 13, 2019. The employer appealed the determination to the DUA hearings department. Following hearing on the merits attended by the employer and the claimant, and a continued hearing attended by the employer only, the review examiner reversed the agency's initial determination and denied benefits in a decision rendered on August 3, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and, thus, was 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 claimant's appeal, we remanded the case to the review examiner to provide the claimant with an opportunity to present other evidence regarding her separation from employment. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant deliberately falsified data entries of quality controls in wilful disregard of the employer's interest, 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 Quality Control/Quality Assurance (QC/QA) Technician for the employer, a manufacturing company, from 9/7/11 to 5/16/19.
2. The claimant's job duties included, but were not limited to: independently performing in-process component and finished product quality control testing of diagnostic tests; evaluating results using automated Microsoft Excel spreadsheets; providing summaries of QC evaluations and feedback to Manufacturing and QC/QA Management; reviewing, revising, and updating standard operating procedures, as needed; and performing QA monitoring of clean room manufacturing and inspection operations as well as other duties, as assigned.
3. The employer has a written Code of Conduct which lists prohibited behavior, including, but not limited to: falsifying employment or other employer records.
4. The employer has a written Research Integrity policy which states that employees must report research misconduct by any employee, and reports must be made to any President, Vice President, to the Human Resources Department, or any member of management.
5. The policies are in place to ensure that the information upon which the employer and customers rely is accurate and truthful.
6. The claimant acknowledged receipt of the above policies on 2/8/18.
7. Employees who violate [sic] employer policy are disciplined at the employer's discretion, based on the circumstances of each violation.
8. The employer has written Documentation Practices, which provide guidelines for documenting data. The above guidelines state that white-out and erasures are not allowed, and all corrections must be crossed out with a single line, then initialed and dated. Corrections must allow for reading of the original data, and if the reason for the correction is unclear, an explanation must be written in the margin.
9. The employer trained the [claimant] on the above Documentation Practices.
10. The claimant tested one of the employer's products, a hand-held swab device used by food processing, pharmaceutical, and healthcare industries, to test the cleanliness of surfaces.
11. The swab detects Adenosine Triphosphate, (ATP), which is a chemical present in living organisms. Once the swabs are tested, they are inserted into a testing device, which reads the amount of light the swabs give off. Swabs with more ATP give off more light.

12. The claimant, and other QC/QA Technicians were aware that 'out of specification' high counts were a concern regarding this product, and that the product was being backordered because other employees saw more 'out of specification' high counts than the claimant's reported results, as the employer sent an e-mail to employees regarding this issue, on 4/25/19.
13. In late April/early May 2019, a customer that runs a food processing company reported to the employer that the company had multiple false positive test results, using the above product.
14. The QC Manager reviewed QC/QA data, to investigate why these false positive results would occur.
15. The QC Manager found, with regard to the QC/QA data the claimant collected when testing the above product, data in the Excel spreadsheet was deleted, altered, or fabricated, on 4/12/19, 4/17/19, 4/29/19, 5/8/19, and 5/9/19. For example, the claimant edited test data by deleting the first number of the test value on two tests on 4/12/19, four tests on 4/17/19, and one test on 4/29/19.
16. The QC Manager found no similar issues with data collected from other QC/QA Technicians who tested the above product.
17. On 5/14/19, the QC Manager and QC/QA Coordinator met with the claimant to discuss the above inconsistencies. The QC/QA Coordinator told the claimant that numerous 'out of specification' high counts were found in the data from the above dates, but not reported in the claimant's results.
18. The claimant told the QC Manager and QC/QA Coordinator she does not report high counts when she suspects the cause is having touched her hand with the swab tip when removing the cap. The QC/QA Coordinator told the claimant if she suspected she touched the swab tip with her hand, she should dispose of the test, and should never count the test then omit the data point, without documenting the reason.
19. The QC Manager asked the claimant to show them how she could accidentally touch her hand when removing the cap. The claimant tried to demonstrate this, but was unable to do so. The claimant then said sometimes it happens when she does it really fast.
20. The QC/QA Coordinator asked the claimant to explain why, in some cases, there was an omitted initial count, with only re-counts reported. The claimant said she was not sure why this happened.

21. The QC Manager told the claimant that results must be documented clearly enough so that each result can be clearly explained and understood, even months later.
22. The claimant told the QC Manager and QC/QA Coordinator she felt rushed to complete testing, and engaged in multi-tasking. The QC Manager told the claimant that the expectation is always to complete fewer tasks accurately, more than more tasks inaccurately.
23. The claimant then stood up, and said to the QC Manager and QC/QA Coordinator, "Okay, is that it?" The QC/QA Coordinator told the claimant there would be documented follow-up, and the claimant said, "Okay, whatever, it is what it is, I messed up."
24. On 5/16/19, the claimant met with the Vice President of the QC/QA Department, QC Manager, Human Resources Manager, and Associate Corporate Counsel, and was informed that she was discharged from employment for fabricating data.
25. The claimant told the above individuals that the product sent incorrect information to Excel. This was the first time the claimant reported to the employer that she believed there was a technical problem that caused the above results. She did not report this as she tested the product and viewed the results in Excel in mid-to-late April and early May.

Credibility Assessment:

Both parties provided conflicting evidence regarding the events leading to the claimant's separation from employment. The evidence presented by the employer was more credible than the evidence presented by the claimant because it was more consistent, detailed, and logical as compared to the evidence presented by the claimant. The claimant completed a DUA Discharge Fact Finding Questionnaire and stated that she was accused of falsifying data on quality control testing for a product. She stated that she believed there were flaws with a new piece of testing equipment which caused data to transfer incorrectly to Excel spreadsheets. She was asked whether she agreed with what the employer said she did, and she checked off "No". She then stated that she was accused of inputting incorrect data, and there were flaws in the testing equipment and she was terminated over a clerical error. She also stated in the Discharge Fact Finding Questionnaire that she knew she should always input the data as accurately as possible. At the hearing, the claimant stated that there were problems with the program that input test data into Excel spreadsheets on and off for over eight years, which resulted in omitted data, or data that did not import into Excel, or data was imported into the wrong cell. She also admitted to editing and omitting data when she saw 'out of specification' high counts, which resulted in "passing" results. She stated that she felt pressure from upper management to get product approved for sale, and that the Production

Manager, who did not work in the Quality Control/Quality Assurance Department, told her to alter data values that he believed were incorrect. The first time she admitted to altering this data and explained that she did so after the Production Manager told her to alter data values, was at the hearing. She did not explain this to the Quality Control Manager or the Quality Control/Quality Assurance Coordinator at the 5/14/19 meeting to discuss these data points, nor did she explain this at her termination meeting, or in the above Discharge Fact Finding Questionnaire. Additionally, the claimant failed to provide detailed information about how often she reported alleged issues with computer programs and testing equipment and how the employer responded to these alleged reports, and who was aware of the Production Manager's instructions to alter data. On cross-examination, the claimant was asked if the Quality Control/Quality Assurance Coordinator knew that the Production Manager told her to change data. The claimant stated that he was aware there were issues with the new testing product. She was then asked whether she told the Quality Control/Quality Assurance Coordinator that the Production Manager told her to change data, and she said, "Yeah". She was asked how the Quality Control/Quality Assurance Coordinator responded to this and she said, "I don't know" and "He wasn't there that often" and "I don't remember."

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant was terminated from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the period of unemployment next ensuing . . . after the individual has left work . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

This section of law disqualifies a claimant from benefits if his or her separation was attributable to either a knowing violation of a reasonable and uniformly enforced policy or deliberate and wilful misconduct. Under G.L. c. 151A, § 25(e)(2), the employer has the burden to show that the claimant

is not eligible to receive unemployment benefits. Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

At the outset, we note that the employer has established the existence of reasonable policies that, among other things, prohibit employees from altering data, or fabricating data or otherwise deviating from the employer's documentation practices. The policies are in place to ensure that the information upon which the employer and customers rely is accurate and truthful. The claimant was aware of such policies. However, the employer did not establish that these policies were uniformly enforced. Thus, we conclude the employer has not met its evidentiary burden under the "knowing policy violation" prong of G.L. c. 151A, § 25(e)(2). We now consider whether the employer has established that it discharged the claimant for deliberate misconduct in wilful disregard of the employer's interest within the meaning of this provision.

The Massachusetts Supreme Judicial Court has held that "deliberate and 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, 4306 (1978) (citations omitted). Thus, 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 "take into account the worker's knowledge of the employer's expectation, the reasonable 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).

The consolidated findings establish that the employer reasonably expected its employees to accurately and honestly collect and record all quality control data. The employer codified its expectation in this regard, in previously referenced falsification and documenting policies. The consolidated findings further establish the claimant was aware of these policies and the reasonable expectations contained therein, including the employer's written Documentation Practices. The claimant was trained on the employer's Documentation Practices and consequently knew that deletions of data were not allowed, as well as that any corrections made to the data need to reflect the original data and document why any change or edit was made. *See Consolidated Finding # 8.*

Despite the claimant's awareness of the employer's documentation expectations, the consolidated finding show that the quality control data collected by the claimant was deleted, altered, or fabricated on five separate occasions in April and May of 2019, when the claimant edited various testing data by deleting the first of several test values. Consolidated Finding #15.

Over the course of the DUA proceedings in this matter, the claimant has offered various explanations to account for the deleted quality control numbers in her data. These explanation range from a total denial of culpability, to clerical error, and later an admission to editing the data, but with permission from a Production Manager. In her credibility assessment, the review examiner considered and addressed the claimant's various explanations. Ultimately the review examiner rejected these explanations and concluded that the employer's testimony was more credible, logical, detailed, and consistent. 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). As stated, we believe the credibility assessment here is reasonable.

Because the claimant offered no credible explanation for her conduct and has not presented any evidence suggesting that there were mitigating circumstances that caused her to bypass required quality control protocols, we conclude claimant acted deliberately and with wilful disregard for the employer's interest in maintaining the integrity of its quality control operations.

We, therefore, conclude as a matter of law that the employer has met its burden to prove 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).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning May 12, 2019, 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 - December 6, 2019



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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.

MJA/rh