

**A claimant, who was discharged for falsifying company data records, primarily that he had face to face meetings with employer's customers, and who offered no explanation or mitigating circumstances, is disqualified for deliberate misconduct under G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0031 6912 08**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

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

The claimant was discharged from his position with the employer on April 12, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 21, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on September 28, 2019.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we accepted the employer's application for review and remanded the case to the review examiner to allow the employer an opportunity to provide evidence regarding the claimant's separation from employment. The employer and the claimant 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 is not subject to disqualification pursuant to G.L. c. 151A, § 25(e)(2), is supported by substantial and credible evidence and is free from error of law, where, following remand, the review examiner's consolidated findings of fact show that the claimant falsified client information reporting records, including face-to-face meetings and actual hours of recorded employment.

### **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 as a Senior Account Executive for the employer, a delivery company, from 10/10/09 until 4/12/19 when he became separated.
2. The claimant was hired to work full time, earning an annual salary of \$89,000.00 plus bonuses.
3. The claimant was discharged for failing to input correct information into the employer's workplace platform software. The employer has no uniformly enforced, written rule or policy which addresses this behavior. Whether an employee is terminated for this behavior is left to the discretion of Legal after an investigation by Human Resources.
4. The employer maintains a policy which provides a process for addressing behavior issues. Under the employer's Misconduct Policy, deliberate falsification of applications or other company related documents including electronic records and/or fraudulent activities may result in severe disciplinary action up to and including discharge. The employer expected the claimant to enter correct information into their software system.
5. The claimant was aware of the employer's policy as he had received it at orientation on 10/19/09 and had access to it in the employee handbook.
6. The claimant was made further aware on 12/27/18, when the Manager of Sales met with the claimant putting him on verbal notice. He was informed of his lack of information in the software system and with his five at five reporting.
7. Subsequently, the Sales Manager became aware that a customer had called a Representative in [City A] with a complaint. He notified the Representative that he was having issues with one of his employees and was concerned with the company's level of service. The Sales Manager met with the customer who informed him that the claimant had not been out to see them, and they were having issues. The Sales Manager looked at the information entered by the claimant into the software system and noticed the claimant had indicated that he had a face to face meeting with the customer. The customer told the Manager they have not met with the claimant for 8 months.
8. The Sales Manager accessed more records pertaining to the claimant and saw a lot of missing data in the comments section of the software system. The Sales Manager reached out to others who also said claimant had not met with them when the claimant had indicated in the system he had these face to face meetings.

9. The Sales Manager brought this information to Human Resources. Human Resources reviewed the data with Legal and in turn recommended termination.
10. On 3/15/19, the claimant had met with management who accused him of falsifying records by not entering time he had taken off last November 2018. The claimant had requested and informed management in November of 2018 that he was taking the day before and the day after Thanksgiving off. His Aunt was passing away during this time and ultimately passed on the Monday after Thanksgiving. The claimant mistakenly forgot to enter his time off for the two days.
11. The claimant had 120 hours of vacation and floating time available to him. He explained to the employer that it had slipped his mind at the time due to other personal issues he was dealing with at the time.
12. The employer told the claimant at that time he was being suspended for four weeks.
13. On 4/12/19, the claimant was called in to meet with his Supervisor, the Vice President of Sales and Human Resource on the phone. He was questioned about not inputting the correct information into the workplace system.
14. The claimant had no explanation for the inaccurate information or missing information in the system. He could not recall the meetings he was specifically asked about nor could he answer any questions regarding specific calls that were posed to him.
15. The claimant's Supervisor told the claimant since he did not follow the guidelines in entering accurate information into the workplace system, he deliberately falsified records and engaged in fraudulent activities and was therefore being discharged.
16. Prior to his separation, the claimant had not received any prior discipline.
17. There was no further communications between the parties after discharge.

#### Credibility Assessment:

Given the claimant's admission at the remand hearing that he had been advised by the employer to ensure data is correctly and accurately entered into the software system and his acknowledgement that he did not accurately record his meeting with his customers, the employer's testimony is deemed more [credible].

#### 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 conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. In Consolidated Finding of Fact # 16, the review examiner found the claimant "prior to his separation, had not received any discipline." However, this is inconsistent with Consolidated Finding of Fact # 6, where the review examiner found the claimant had received a "verbal notice" as a form of discipline, and Consolidated Finding of Fact # 13, where the review examiner found the claimant had been suspended for a four-week period prior to discharge. As discussed more fully below, we conclude that the review examiner's consolidated findings of fact support a conclusion that the claimant is subject to disqualification.

Because the claimant was terminated from his employment, his qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in relevant 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 . . . .

Under this section of law, 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).

The claimant was discharged from his position for falsification of company records, specifically relating to entering inaccurate information into the employer's workplace platform software. *See* Consolidated Finding of Fact # 3. Since the employer has not demonstrated that it has a uniformly enforced written rule or policy that addresses this behavior, we cannot disqualify the claimant under G.L. c. 151A, § 25(e)(2), for knowingly violating a reasonable and uniformly enforced rule or policy. *See* Consolidated Finding of Fact # 3. Alternatively, we consider whether the record shows deliberate misconduct in wilful disregard of the employer's interest.

The employer has an expectation and written policy that its employees do not falsify records, and to which the claimant acknowledged such policy at orientation. *See* Consolidated Findings of Fact ## 4 and 5. Here, the review examiner found that the claimant violated this policy in the weeks prior to his discharge, leading first to a verbal warning, followed by a suspension, and then by eventual discharge. The employer, following an internal investigation, found that the claimant was not conducting required face-to-face meetings with customers, and that he had falsely reported and inaccurately reported other data relating to employment responsibilities, including personal time benefits. *See* Consolidated Findings of Fact ## 7, 8, and 10. By not submitting accurate data to the employer's workplace platform system, the claimant violated the employer's expectation of accurate record keeping by employees.

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). The claimant's state of mind may be ascertained by analyzing whether the claimant was aware of the employer's expectation, whether the expectation was reasonable, and whether there were any mitigating circumstances. Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979).

Here, the employer testified that the claimant was told about the expectations at hire. Thus, the review examiner found that the claimant was aware of the employer's expectation that its employees not falsify their records. *See* Consolidated Finding of Fact # 5. The expectation is reasonable, as the employer has an obvious interest in keeping track of the services being performed by its employees, as well as accurately compensating its employees for work actually performed. This ensures that its business is operating as planned and that it does not suffer financial losses.

We next consider whether the claimant's misconduct was deliberate and whether any mitigating circumstances existed, which justify or explain the claimant's failure to meet the employer's expectation. The review examiner found that the claimant had no explanation for the inaccurate and missing information in the employer's record keeping system. Consolidated Finding of Fact # 14. Absent an explanation, we can reasonably infer that he acted deliberately and in wilful disregard of the employer's interest.

We, therefore, conclude as a matter of law the claimant is ineligible for benefits under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning April 7, 2019, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 13, 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](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

MJA/rh