

**The claimant stormed out of a meeting with the employer's director after she became upset with the director. Because the director had told the claimant to remain at the meeting, the claimant's decision to leave was deliberate and in wilful disregard of the employer's interest.**

**Board of Review  
19 Staniford St.  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0033 9361 16**

### 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 separated from her position with the employer on February 14, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 17, 2020. 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 June 11, 2020. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the employer failed to establish that the claimant 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 remanded the case to the review examiner to obtain additional evidence about the circumstances surrounding the claimant's discharge. Only the employer 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 employer failed to establish that the claimant had engaged in unprofessional workplace behavior, 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 opened a claim for unemployment benefits with an effective date of February 23, 2020.

2. The claimant worked part time for the employer as a school wellness counselor from September 3, 2019, until February 14, 2020, when the claimant was discharged.
3. The claimant worked about 15 hours per week for the employer.
4. The claimant's rate of pay was \$20.00 per hour.
5. The employer maintains a standard of conduct policy that requires employees to be professional at work.
6. The discipline for violating the employer's policies may vary as determined by the Director.
7. On September 24, 2019, the claimant acknowledged receipt of the employer's policy handbook.
8. The employer maintains an expectation that employees to refrain from rude or offensive behavior at work. The employer notified the claimant of the expectations from the policies at the time of hire.
9. The claimant shared an office with the employer's Head of School.
10. The claimant's sister behaved unprofessionally towards the employer's teachers. The sister was aggressive at drop off and used foul language during morning drop off at the school in the presence of children.
11. On February 12, 2020, the claimant learned that the employer dismissed her niece from the school.
12. On February 12, 2020, the claimant informed the Head of School that she was too upset to stay at work. The claimant left work prior to the end of her shift.
13. The employer's Director and the claimant agreed to meet on February 14, 2020, from 2:00 p.m. to 3:00 p.m.
14. The claimant was upset that her niece was dismissed from [sic] the school due to her sister's conduct without input for [sic] the claimant.
15. On February 14, 2020, the Director met with the claimant. The claimant informed the Director that she did not need the job and wanted to remove her children from the school. The claimant referred to her co-workers as liars and stated she could not be expected to work for the employer. The claimant called the Director a liar. When the claimant indicated that she was leaving the meeting, the Director informed the claimant that she would not be allowed to

return to work if she left the meeting since they agreed to meet from 2:00 p.m. to 3:00 p.m. The claimant gathered her belongings and left the meeting indicating that she had to go to work for another employer. The Director informed the claimant that there would be no need for her to return to work.

16. On February 14, 2020, the claimant left the meeting at about 2:30 p.m.
17. The Director was offended by the claimant referring to her as a liar.
18. After the meeting, the claimant sent a text message to the Director asking her to forward her termination letter to her email.
19. The employer discharged the claimant for leaving the meeting early and calling the Director a liar.
20. The claimant left the meeting early for unknown reasons.
21. The claimant called the Director a liar for unknown reasons.

Credibility assessment:

The employer witness, the Director, testified at the remand hearing that the claimant was rude by calling her and other employees liars. She further offered that she was offended by the claimant's statement. In addition, she offered that she informed the claimant before she left that the claimant would be separated if she left the meeting early. Nevertheless, the claimant left early. The claimant's failure to attend the remand hearing prevented her from offering rebuttal testimony. Therefore, the employer's testimony is accepted as 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 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the employer failed to present sufficient evidence to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

Because the claimant was discharged from employment, we analyze her eligibility for benefits under G.L. c. 151A, § 25(e)(2), which provides, in pertinent part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter . . . (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 . . . .

"[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).

While the employer presented a standard of conduct policy that requires employees to behave professionally in the workplace, there is insufficient evidence in the record to show that the employer discharged other employees for this type of behavior under similar circumstances. Therefore, on this record, we cannot determine whether the claimant was discharged for a knowing violation of a uniformly enforced policy.

We next consider whether the employer has met its burden to show that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest. 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 reasonableness of that expectation and the presence of any mitigating factors." Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979).

The findings establish that on February 12, 2020, the claimant left her workplace prior to the end of her shift. As a result, the employer's director scheduled a meeting with the claimant on February 14, 2020, to address the claimant's behavior on February 12, 2020. Consolidated Findings ## 10–12, 15. During this meeting, the claimant made disparaging comments about both the director and co-workers. At some point during this meeting the claimant stated her intention to leave. Consolidated Finding # 15. There is nothing in the record which suggests that any behavior or actions on the director's part justified the claimant's decision to leave prior to the meeting's conclusion. The director expressly told the claimant she would not be allowed to return to work if she left the meeting. The claimant, therefore, was aware the director expected her to remain. *See Id.* That expectation was reasonable as the employer wanted to address the claimant's prior behavior. *See* Consolidated Findings ## 10–12.

While the review examiner did not make specific findings as to the claimant's state of mind when she left the meeting, such a finding is not necessary in this instance. The record establishes that at the time the claimant left the meeting, she was aware that the employer expected her remain and that her failure to abide by this reasonable expectation would result in her termination from employment. Despite this awareness, the claimant made the conscious decision to leave the meeting without the employer's consent. Because nothing in the record explains or excuses the claimant's behavior at the meeting, the only reasonable inference is that her prompt departure was

a deliberate act in wilful disregard of the employer's interest. *See Grise*, 393 Mass. at 275 (a state of mind finding "is not required where obviously intentional conduct is present").

We, therefore, conclude as a matter of law 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 reversed. The claimant is denied benefits for the week beginning February 23, 2020, 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**

Paul T. Fitzgerald, Esq.  
Chairman

**DATE OF DECISION - December 11, 2020**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT 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.

LSW/rh