

Board of Review
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Issue ID: 0056 7753 77

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 separated from his position with the employer on October 26, 2020. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 23, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on December 17, 2022. The claimant sought review by the Board, which dismissed the claimant's appeal as untimely, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On April 10, 2023, the Board of Review issued an order rescinding its dismissal of the claimant's application for review. Pursuant to this order, the Board accepted jurisdiction to review the claimant's appeal. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was discharged for deliberate misconduct because he had made himself unavailable to take calls for extended periods of time after clocking in for his shift, is supported by substantial and credible evidence and is free from error of law.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

The review examiner conducted a comprehensive review of the documentary and testimonial evidence presented at both hearings. Based on corroborating documentary evidence of the claimant's activity in the employer's system during the dates in question, she accepted as credible the employer's witness' testimony that the claimant had made himself unavailable for calls during the first few hours of at least three different shifts. 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). Upon review of the record, we have accepted the

review examiner's credibility assessment as being supported by a reasonable view of the evidence. We, therefore, believe the review examiner properly concluded that the claimant was not entitled to benefits pursuant to G.L. c. 151A, § 25(e)(2), because he was discharged for deliberate misconduct in wilful disregard of the employer's interest.

The review examiner's decision is affirmed. The claimant is denied benefits for the week of October 25, 2022, 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.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 2023



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**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

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