

**Claimant abandoned her job after a client complained her missing credit card had been used after visiting the employer's salon, and the police identified the claimant as the person who had used the card. Held she is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0068 7028 31**

### 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 October 13, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 28, 2021. 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 December 22, 2021. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was discharged without engaging in deliberate misconduct in willful disregard of the employer's interest, and without knowingly violating a reasonable and uniformly enforced rule or policy of the employer, and, thus, was entitled to benefits 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 take additional evidence regarding the nature of the claimant's separation, and the circumstances which led to it. Only the employer attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 stopped scheduling the claimant for work and thus discharged her without establishing a knowing violation of a reasonable and uniformly enforced policy or rule and without establishing deliberate misconduct in willful 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 as a part-time receptionist for the employer, a salon, between July 7, 2020, and October 13, 2020, when she separated.
2. The claimant's immediate supervisor was the employer's Owner.
3. The claimant's job duties included interacting with customers, making phone calls, and checking guests in and out.
4. The claimant made weekly claims for unemployment while she was employed by the employer.
5. It is unknown if the claimant reported her gross wages from her employment with the employer when certifying for unemployment benefits.
6. During the week ending July 11, 2020, the claimant earned \$234.27 in gross wages from the employer.
7. During the week ending July 18, 2020, the claimant earned \$167.70 in gross wages from the employer.
8. During the week ending July 25, 2020, the claimant earned \$232.16 in gross wages from the employer.
9. During the week ending August 1, 2020, the claimant earned \$332.51 in gross wages from the employer.
10. During the week ending August 8, 2020, the claimant earned \$422.45 in gross wages from the employer.
11. During the week ending August 15, 2020, the claimant did not work for the employer.
12. During the week ending August 22, 2020, the claimant earned \$109.86 in gross wages from the employer.
13. During the week ending August 29, 2020, the claimant earned \$521.38 in gross wages from the employer.
14. During the week ending September 5, 2020, the claimant earned \$356.98 in gross wages from the employer.
15. During the week ending September 12, 2020, the claimant did not work for the employer.
16. During the week ending September 19, 2020, the claimant earned \$405.93 in gross wages from the employer.

17. During the week ending September 26, 2020, the claimant earned \$278.43 in gross wages from the employer.
18. During the week ending October 3, 2020, the claimant earned \$448.73 in gross wages from the employer.
19. During the week ending October 10, 2020, the claimant earned \$214.69 in gross wages from the employer.
20. The claimant last worked from [sic] the employer on October 10, 2020.
21. The Owner texted the claimant to let the claimant know her hours and communicate about the claimant's schedule.
22. During the weekend of October 10 and October 11, 2020, the employer was notified by a customer that the customer's credit card had been fraudulently used for unauthorized purchases.
23. The customer told the Owner that she believed that she lost the card at the employer's place of business sometime in September 2020, as it was the last place that she had used the card in question.
24. The customer told the Owner that the card had been used at multiple local stores and a local veterinarian's office.
25. The Owner was familiar with that specific veterinarian's office.
26. The Owner called the veterinarian's office and asked about the credit card that was used there.
27. The veterinarian's office confirmed that it was the claimant who had used the credit card there to pay for services for her pet.
28. The Owner told the customer what he had learned, and the customer called the [City] Police Department.
29. The [City] Police Department began an investigation into what had occurred with the customer's credit card.
30. On Sunday October 11, 2020, the Owner texted the claimant to confirm that she was going to be in for her shift on October 13, 2020.
31. The claimant confirmed with the Owner that she would be in for shift on October 13, 2020.

32. On October 11, 2020, the Owner spoke with the [City] Police Department about his knowledge surrounding the claimant and the client's stolen credit card.
33. The Owner fully cooperated with the police and had no knowledge that the claimant had taken the credit card until the customer notified him about the issues.
34. The claimant did not appear for her shift on October 13, 2020.
35. The claimant quit her employment on October 13, 2020, when she abandoned her job.
36. The Owner never heard from the claimant after October 11, 2020.
37. The employer had work available to the claimant.
38. The employer never told the claimant that she was discharged.
39. The police accounted the unauthorized charges on the customer's credit card to be approximately \$2,100.00.
40. On or about October 11, 2020, the [City] Police Department contacted the claimant by telephone to inquire about the credit card charges.
41. The claimant asked the police officer, "how can we resolve this?" and "how can I pay her back?"
42. At the time that the [City] Police Department spoke to the claimant, the customer intended to file charges against the claimant for the alleged fraudulent purchases with the customer's credit card.
43. The [City] Police Department generated police reports summarizing their findings regarding the customer's stolen credit card.
44. The employer's Owner did not know if any criminal charges were filed against the claimant or if the claimant paid any restitution related to accusations that the claimant stole a customer's credit card and use to it make unauthorized purchases.
45. It is unknown if the claimant was charged with credit card fraud over \$1,200.00 or any other crime as a result of the allegations of the fraudulent credit card purchases.
46. It is unknown if the claimant agreed to any form of restitution to avoid criminal prosecution for these charges.

### Credibility Assessment:

The employer's testimony is found to be more credible than that of the claimant. The employer's Owner credibly testified that the employer had ongoing work available to the claimant, including her shift on October 13, 2020, which the claimant confirmed by text message that she would be attending. The claimant did not appear for her shift on October 13, 2020, and the Owner never heard back from the claimant. The claimant abandoned her job at the same time that a police investigation began into a stolen credit card at the employer's salon. The Owner himself called the veterinarian's office and confirmed that the claimant was the one who used the customer's credit card to pay for veterinarian services. The Owner provided copies of police reports issued by the [City] Police Department, which outline the accusations against the claimant, including approximately \$2,100.00 in unauthorized charges to the customer's credit card. The employer had no direct knowledge if the claimant reported her wages earned with the employer in her weekly claims with the DUA. The claimant did not attend the remand hearing to explain the accusations against her in the police reports or to answer questions about her reported wages with her weekly claim filings with the DUA. As such, it is concluded that the employer's testimony is credible, as it was direct and corroborated by the claimant's text messages and the police reports.

The claimant's testimony at the first hearing, in light of the employer's documents and testimony, is found to be not credible. The claimant testified at the first hearing date that the employer stopped scheduling her for shifts after September 20, 2020. This was credibly refuted by the employer's testimony, who read into the record the claimant's wages through the week ending October 10, 2020. Furthermore, the employer supplied text message screenshots of the claimant confirming that she would be appearing for her shift on October 13, 2020. The claimant testified at the initial hearing date that she was never accused of any misconduct related to her employment with the employer. This was credibly refuted by the employer's testimony and documentation, including police reports. The claimant was accused of using a customer's card to make unauthorized purchases at a veterinarian's office and retail stores. The claimant failed to mention any of this at the initial hearing date. The employer's Owner provided direct and credible testimony refuting the claimant's statements at the first hearing and the claimant did not appear at the remand hearing date to answer to the employer's accusations, as such it is concluded that the claimant's testimony at the initial hearing date was not credible and has no indicia of reliability.

It was unknown at the time of the hearing what occurred regarding any charges that may have been brought against the claimant or any possible restitution the claimant may have paid because the claimant did not appear at the hearing and the Owner had no direct knowledge of any criminal charges filed against the claimant or restitution. The Owner relied on the statements the customer made to him, his phone call exchange with the veterinarian's office, and the police reports, which were admitted to the record.

## 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.<sup>1</sup> We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. After reviewing the review examiner's consolidated findings and credibility assessment, we conclude that the claimant is not entitled to benefits.

The review examiner initially awarded benefits after analyzing the claimant's separation 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. . . .

Under G.L. c. 151A, § 25(e)(2), it is the employer's burden to establish that the claimant was discharged for a knowing violation of a reasonable and uniformly enforced policy or rule or for deliberate misconduct in wilful disregard of the employer's interest. Still v. Comm'r of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted). Based on the claimant's undisputed testimony at the initial hearing that the employer initiated her separation by no longer scheduling her for work, the review examiner concluded that she had been discharged and the employer had not met its burden.

After remand, we conclude that the claimant's separation should be analyzed instead under G.L. c. 151A, §§ 25(e) and 25(e)(1). G.L. c. 151A, § 25(e) provides, in pertinent part, as follows:

. . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

G.L. c. 151A, § 25(e)(1), provides in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter . . . ] [f]or . . . the period of unemployment next ensuing . . .

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<sup>1</sup> We note that it is uncertain whether the wages reported for the claimant in Consolidated Findings ## 6–19 were the claimant's gross or net wages. However, clarification of this matter is not necessary to resolve the issue before us.

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 . . . .

Under G.L. c. 151A, §§ 25(e) and 25(e)(1), it is the claimant's burden to establish that her separation was for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons. We conclude that, because the claimant initiated her own separation by abandoning her job, she has not met her burden under the applicable provisions of the statute.

The claimant typically communicated about her schedule with the employer's owner via text message. *See* Consolidated Finding # 21. The claimant last performed services for the employer on October 10, 2020. *See* Consolidated Finding # 20. On Sunday, October 11, 2020, the employer texted the claimant to confirm that she was scheduled to work her next shift on October 13, 2020. *See* Consolidated Finding # 30 and Remand Exhibit 6, pp. 14–15. The claimant confirmed she would be able to work that day. *See* Consolidated Finding # 31.

However, the employer did not hear from the claimant again after October 11, 2020, and the claimant failed to appear for her shift on October 13, 2020. The review examiner found the claimant to have quit her employment on October 13, 2020, when she abandoned her job. *See* Consolidated Findings ## 34–36.

Although the parties disputed who initiated the claimant's separation, the review examiner explicitly found that the claimant quit. To support her findings, the review examiner provided a credibility assessment setting forth her reasons for accepting the employer's testimony over that of the claimant with regards to the nature of her separation. The review examiner noted that the employer had ongoing work available for the claimant prior to her abandoning her job on October 13, 2020, but he never heard from her after October 11. The employer credibly described events that transpired between his text message with the claimant on October 11 and her next scheduled shift on October 13, 2020.

Specifically, the employer described communications from one of his clients regarding unauthorized charges of approximately \$2,100.00 that had been made to her credit card following a visit to the employer's salon, at various local stores, and a local veterinarian's office. The employer confirmed with the veterinarian that it was the claimant who had paid for services with the client's credit card and cooperated with the local police who investigated the allegations of unauthorized credit card purchases. *See* Consolidated Findings ## 23–28. The employer corroborated his testimony by providing copies of his last text messages with the claimant (Remand Exhibit 6, pp. 14–15) and copies of the police reports investigating the allegations (Remand Exhibit 6, pp. 9–13).

Because the claimant did not appear for the remand hearing, she did not refute the employer's allegations regarding misuse of the client's credit card. In view of the employer's detailed testimony regarding the claimant's pay history with the company, the allegations from the customer (corroborated by the police reports), and the claimant's failure to mention any of this at the initial hearing, the review examiner rejected the claimant's testimony outright as not credible and lacking any indicia of reliability. Such credibility assessments are within the scope of the review examiner's fact-finding role, and, unless they are unreasonable in relation to the evidence

presented, they will not be disturbed on appeal. School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). For the reasons stated, we believe the assessment is reasonable.

In short, although the employer had work available for the claimant to perform, the claimant quit her employment by failing to report to work on October 13, 2020, thereby abandoning her job. *See* Olechnicky v. Dir. of Division of Employment Security, 325 Mass. 660, 661 (1950) (upholding the Board of Review's conclusion that the failure of an employee to notify his employer of the reason for absence is tantamount to a voluntary leaving of employment within the meaning of G.L. c. 151A, § 25(e)(1)).<sup>2</sup>

Since the claimant contended that she was discharged, she did not present evidence that she left for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons. To establish good cause, she must show that the employer acted unreasonably. *See* Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). We see nothing in the consolidated findings that indicates that the employer acted unreasonably. There is also nothing to suggest pressing personal circumstances that caused her to leave her job. *See* Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 851 (1992).

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment without good cause attributable to the employer, and without urgent, compelling, and necessitous reasons. She is disqualified under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending September 26, 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.

**N.B.:** We take administrative notice that the claimant was certifying for unemployment benefits throughout her employment with this employer, and that it does not appear that she reported her wages to the agency when she was claiming benefits in each such week. Consequently, we ask that the DUA investigate the claimant's eligibility for benefits under G.L. c. 151A, §§ 29, 1(r),

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<sup>2</sup> We note that, even if the claimant quit to avoid discharge for the allegations of credit card theft, this would still be a disqualifying separation. On the one hand, it is well-settled that an employee who resigns under reasonable belief that she is facing imminent discharge is not 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). For example, impending separations based on imminent layoff or poor job performance would not be for disqualifying reasons, and an employee who quits in reasonable anticipation of such would be eligible for benefits. *See* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597-599 (1981); and Scannevin v. Dir. of Division of Employment Security, 396 Mass. 1010, 1011 (1986) (rescript opinion). On the other hand, if the impending separation would have been for deliberate misconduct or a knowingly policy violation, then the employee would not receive benefits. Here, the claimant who abandoned her job under allegations of misusing a client's credit card falls into the latter category.



and 69(a), from July 5, 2020, through October 13, 2020. We further note that the employer reported the claimant's weekly wages during the remand hearing, but it was unclear whether the wages he cited were the claimant's gross or net pay. See Consolidated Findings ## 4-19.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 21, 2022**



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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](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.

JPCA/rh