

**Following remand, the review examiner found that the claimant was discharged because his assignment with the employer had ended. As the employer had previously told the claimant that they might seek to extend his job and there was no credible evidence suggesting that the claimant was discharged for a knowing violation or deliberate misconduct pursuant to G.L. c. 151A, § 25(e)(2), held the claimant was discharged for a lack of work and is therefore entitled to benefits.**

**Board of Review  
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**Issue ID: 0073 6388 13**

### 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 reverse.

The claimant separated from his position with the employer on October 8, 2020. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on December 22, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner reversed the agency's initial determination and denied benefits in a decision rendered on December 9, 2022. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On March 6, 2023, the Board of Review issued an order rescinding its decision to deny the claimant's application for review and remanding the case to the review examiner for the taking of additional evidence. Only the claimant participated in 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 voluntarily abandoned his job with the instant employer without good cause attributable to the employer, or urgent, compelling, and necessitous reasons, 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 graduation facilitator for the employer, a municipal school system, from February 3, 2020, until October 8, 2020, when he separated.
2. The claimant's immediate supervisor was the principal of the high school.
3. The claimant was hired pursuant to a grant. The parameters of the grant are unknown.
4. The claimant worked with special needs students to assist them in getting ready for leaving high school and either entering the workforce or attending higher education. The claimant's duties involved meeting with the students and their parents, and meeting with potential employers and higher education officials.
5. During the claimant's employment, the claimant was told he was doing well in his position and that the employer may seek to extend the grant or hire the claimant on a permanent basis.
6. Approximately two months before the claimant separated, the principal left his position.
7. On or about October 8, 2020, the claimant received a telephone call from the new principal. The new principal told the claimant his employment was ended.
8. The claimant did not receive any further communication from the employer.
9. The claimant did not move during his employment.
10. The claimant was not told he was being discharged for a violation of a policy or rule.
11. The claimant was not told he was being discharged for deliberate misconduct.
12. The claimant did not quit his job. The claimant loved his job and wanted to continue to work for the employer.
13. The employer classified the claimant's separation from employment as a quit by job abandonment.
14. The employer provided the claimant with a letter dated January 24, 2023, stating that the claimant worked for the employer from February 3, 2020, until the end of his seasonal assignment on October 8, 2020.

Credibility Assessment:

In this case, there was a dispute between the parties as to whether the claimant quit or was fired. The claimant credibly testified that he did not quit and loved his job,

and that he was contacted by the principal and told his employment was ended. The claimant's testimony is corroborated by the letter submitted for the remand hearing dated January 24, 2023, indicating that the claimant's assignment ended on October 8, 2020. The review examiner finds the direct testimony of the claimant as corroborated by the employer's letter to be more credible than that of the employer.

### 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. 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 claimant was not entitled to benefits.

The review examiner initially analyzed the claimant's case under G.L. c. 151A, § 25(e)(1). Following remand, however, she accepted as credible the claimant's contention that he was discharged because a letter he obtained from the employer corroborated his testimony. *See Consolidated Findings ## 7 and 14.* 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.

As the claimant was discharged, his eligibility 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 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 the foregoing provision, it is the employer's burden to show that the claimant was discharged for a knowing violation of a reasonable and uniformly enforced rule or policy or for deliberate misconduct in wilful disregard of the employer's interest. *See Still v. Comm'r of Employment and Training*, 423 Mass. 805, 809 (1996) (citations omitted).

The consolidated findings show that the claimant continued to perform his duties without incident through the day he was discharged. Consolidated Findings ## 5, 7, and 12. Absent any credible

evidence indicating the employer initiated the claimant's separation because acted inconsistent with an employer policy, rule, or expectation, we cannot conclude that the claimant was discharged for either a knowing violation or deliberate misconduct. *See* Consolidated Findings ## 10, 11, 12, and 14. Instead, as the employer's January 24, 2023, letter confirmed the claimant was separated when his assignment ended on October 8, 2020, we can reasonably infer that the employer did not have work available to the claimant after that date. Consolidated Findings ## 5 and 14.

We conclude as a matter of law that the claimant was laid off from his employment due to lack of work, and, therefore, the employer has failed to show that he separated either for a knowing violation of a reasonable and uniformly enforced policy or due to 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 entitled to receive benefits for the week of October 11, 2020, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 30, 2023**



Paul T. Fitzgerald, Esq.  
Chairman



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](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