

**The record did not support that the claimant quit after a reprimand but that he was discharged from his employment after his employer told him, “you are done.” Since there was no evidence of any misconduct, the Board held that the claimant was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
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: 0074 2001 37**

### 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 December 3, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 25, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on August 4, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or urgent, compelling, and necessitous reasons, and, thus, he was disqualified under G.L. c. 151A, § 25(e)(1). 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 voluntarily left his job after receiving a warning, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

The review examiner’s findings of fact are set forth below in their entirety:

1. The claimant worked as an Operations Manager for the employer logistics company from 3/12/18 until he separated from the employer on 12/3/21.
2. The claimant worked full time 40 hours, earning an annual salary of \$60,000.
3. The claimant left work because of a reprimand by his Supervisor, the Owner, which led him to believe that he was being discharged.

4. The claimant had requested days off for appointments. In September of 2021, the employer had raised concerns with the claimant's request for time off. The claimant had not received any disciplinary action for his attendance prior to his separation. He was never told his job was in jeopardy prior to his quitting.
5. On 12/3/21, during a conversation with the Owner, the claimant was asked about his grandmother's health. He informed the Owner that he did not want to discuss his grandmother's health and would only speak about business.
6. The employer sent the claimant an email message after the telephone conversation at 12:07 p.m. She told the claimant "If you do not answer me with respect of [sic] treat me the way I should be as your employer you are not going to be here much longer. You are rude and disrespectful so think about it."
7. At 12:22 p.m., the employer sent the claimant another email stating he was being issued a warning. She indicated four different areas for improvement including taking time off when he saw fit without notice to her; not calling customers and agents; customer complaints about the claimant's attitude, arrogance and not being helpful; and being rude and dismissing towards her. The employer stated that this email was a warning and told the claimant if he did not want the job, then he could resign and if he wanted the position, then she expected him to change and she would monitor his actions.
8. At 12:23 p.m., the employer sent another email to the claimant asking him to confirm he received the email.
9. At 12:33 p.m., the claimant replied in an email to the employer stating, "I can stop working right now if you want."
10. At 12:39 p.m., the employer responded with "Good, you are done."
11. The claimant would have continued working if he had not been issued the warning on 12/3/21.
12. The employer subsequently offered the claimant his job back. The claimant declined, indicating he had another job.

### 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 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 findings of fact except as follows. We reject the portion of Finding of Fact # 4, which states that the claimant quit. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as

discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

As an initial matter, we must decide which provision of law controls the claimant's separation from employment. In her decision, the review examiner applied G.L. c. 151A, § 25(e)(1), which is the section of law that applies to resignations. The findings, however, lead us to conclude that the claimant was discharged from employment, pursuant to G.L. c. 151A, § 25(e)(2). This distinction, between a resignation and a discharge, is a mixed question of law and fact. The "application of law to fact has long been a matter entrusted to the informed judgment of the board of review." Dir. Of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979).

According to the sequence of events outlined in the findings, the owner became displeased with the claimant's behavior during a telephone call on December 3, 2021. *See Findings of Fact ## 5–6.* As a result, the owner issued a written warning to the claimant via email. *See Finding of Fact # 7.* In response to the owner's email, the claimant wrote, "I can stop working right now if you want me to." The owner replied, "Good, you are done." *See Findings of Fact ## 9 and 10.*

When the employer told the claimant he was done, we think that the claimant was reasonable in thinking that he had been discharged. Because the findings show that the employer caused the claimant's separation, we think that G.L. c. 151A, § 25(e)(2) is applicable to the separation. That section of law 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 willful 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).

As a threshold matter, the employer must show that the claimant's termination was attributable to some sort of misconduct or rule violation. Here, there is insufficient evidence that the claimant did anything wrong. None of the findings provide that the claimant engaged in misconduct. All that we have are employer emails containing allegations. *See Findings of Fact ## 6 and 7.* During the hearing, the claimant denied the allegations in the employer's emails. The employer also failed to participate in the hearing or provide any documentation to refute the claimant's assertions. Since the employer has not presented substantial evidence that the claimant engaged in misconduct or violated any rule or policy, the employer has failed to meet its burden.

We, therefore, conclude as a matter of law that the claimant did not voluntarily leave his employment. We further conclude that his separation was not due to a knowing violation of a reasonable and uniformly enforced policy or 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 beginning December 5, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 28, 2023**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

MR/rh