

**Board of Review
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Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0075 2133 19

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 the claimant benefits following her separation from employment on January 28, 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm on different grounds.

On March 2, 2022, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and both parties attended the hearing. In a decision rendered on July 2, 2022, the review examiner affirmed the agency determination, concluding that the claimant knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, she was disqualified under G.L. c. 151A, § 25(e)(2). The Board accepted the claimant's application for review.

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 to disqualify the claimant pursuant to G.L. c. 151A, § 25(e)(2), is based on substantial evidence and is free from any error of law affecting substantive rights.

However, because the review examiner did not render any findings of fact pertaining to whether the employer's mandatory COVID-19 vaccination policy was uniformly enforced, we reject her conclusion that the claimant was discharged due to a knowing violation of a reasonable and *uniformly* enforced rule or policy. That said, the findings do show that the claimant's failure to comply with the employer's vaccination policy was done deliberately and in wilful disregard of the employer's interest. As such, the employer has met its burden of proof, and the claimant is ineligible for benefits on this separate ground under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning January 30, 2022, 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
DATE OF DECISION - December 23, 2022



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

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.

AB/rh