

**The employer could not provide substantial and credible evidence showing the claimant engaged in any action or inaction that was inconsistent with the employer's expectations. It, therefore, did not meet its burden to show that the claimant violated an employer policy or otherwise engaged in misconduct, and the claimant may not be disqualified pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0076 0677 58**

### 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 affirm.

The claimant separated from her position with the employer on March 22, 2022. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 21, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on September 21, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified 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 employer's appeal, we remanded the case to the review examiner to obtain additional evidence about the circumstances surrounding the claimant's separation. Both parties attended 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 employer did not meet its burden to show that the claimant knowingly violated an employer policy or deliberately acted in wilful disregard of an employer's expectation, 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. From February 11, 2020, until March 22, 2022, the claimant worked as a full-time (40-50 hours per week) case coordinator for the employer, a social services company.
2. When the claimant began working for the employer, her supervisor was the assistant program director (the APD).
3. The claimant's job duties included entering case notes on a daily or weekly basis, depending on the nature of the note.
4. The employer maintains a "work performance" policy (the policy) which required all employees' work product to meet the employer's standards and expectations.
5. The written contents of the policy are unknown.
6. A violation of the policy can lead to disciplinary action, namely being placed on a performance improvement plan.
7. The claimant was made aware of the policy during new employee training and through receipt of the policy, which all employees were able to access digitally.
8. The employer expects its employees to perform their work duties in accordance with the employer's standards.
9. A violation of the expectation can lead to disciplinary action, namely being placed on a performance improvement plan.
10. The claimant was aware of the expectation through receipt of the policy and as a matter of common sense.
11. The claimant and the APD did not get along with each other.
12. The claimant felt that she was treated disrespectfully by the APD.
13. The claimant perceived that the APD blamed her for unfinished work that was left behind by a previous case coordinator.
14. On October 18, 2021, the claimant sent an email that the APD felt contained improper language and punctuation.
15. The contents of the email are unknown.
16. The recipient of the email is unknown.
17. The claimant filed a complaint about the APD with the employer's human resources department in October of 2021. As a result of the complaint, the

employer's human resources department allowed the claimant to move her desk further away from the APD. The claimant then started reporting directly to the program director as a result of her complaint.

18. The claimant got along well with the program director but felt that he did not want to supervise her.
19. On November 3, 2021, the claimant sent an email that the program director felt was "unprofessional and uncivil."
20. The contents of the email are unknown.
21. The recipient of the email is unknown.
22. On November 5, 2021, the employer issued the claimant a written disciplinary warning regarding the emails she sent on October 18, 2021, and November 3, 2021.
23. On November 15, 2021, the claimant was late to a meeting.
24. It is unknown how long it took the claimant to report to the meeting.
25. On December 15, 2021, the claimant was placed on a performance improvement plan for performance, attendance, and communication issues. The exact nature of the issues are unknown.
26. The claimant attempted to meet the goals set in the performance improvement plan.
27. In January 2022, the program director went on vacation. While the program director was on vacation, the APD began supervising the claimant again. The claimant notified the human resources department about the change.
28. In response to the human resources department's interference, the program director began supervising the claimant again.
29. On March 22, 2022, the program director called the claimant into his office and asked her to sign a letter of resignation. The program director informed the claimant if she did not quit, she would be fired.
30. The claimant refused to sign the letter.
31. On March 22, 2022, the program director, the APD, and a human resources representative met with the claimant and discharged her from her employment as a result of their dissatisfaction with the claimant's performance. The claimant was not provided with a reason for her discharge.

32. The claimant had no intent to quit her employment.
33. The claimant never intentionally failed to meet the employer's standards of performance.
34. The claimant worked for the employer to the best of her ability.
35. At some point after the claimant's discharge, the employer hired a new Director of Human Resources.
36. The Director of Human Resources never had any conversations or contact with the APD, the program director, or the human resources representative regarding the claimant's separation.

Credibility Assessment:

During the remand hearing, the employer's Director of Human Resources provided vague and unspecific hearsay testimony that the claimant was discharged for attendance and performance issues. The Director of Human Resources did not work for the employer at the time of the claimant's discharge and was only able to identify one incident in which the claimant had an attendance issue. That incident, during which the claimant was late to a meeting, occurred on November 15, 2021. The Director of Human Resources further testified that the claimant submitted case notes that were late or incomplete but was unable to identify any specific incident in which the claimant failed to submit a timely, complete note. The claimant testified that she consistently worked for the employer to the best of her ability and never intentionally failed to meet the employer's standards of performance. Because the employer witness had no knowledge regarding any incident related to the claimant's termination, and where the claimant had been placed on a performance improvement plan, it is concluded the claimant was discharged as a result of the employer's dissatisfaction with her work performance.

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. As discussed more fully below, we agree with the review examiner's legal conclusion that the employer failed to meet its burden in this case.

Because the claimant was discharged from her employment, her qualification 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] . . . (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 . . . .

“[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 an initial matter, there is insufficient evidence in the record for us to conclude that the employer's work performance policy was uniformly enforced. Therefore, it has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* policy. As such, we consider only whether the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

The claimant was aware that the employer expected its employees adhere to specific performance standards set by the employer. Consolidated Findings ## 8 and 10. While the record is clear that the employer was unhappy with the claimant's performance, there is nothing in the record which describes exactly how the claimant's actions failed to meet its standards. *See* Consolidated Findings ## 14–16, 19–20, 25, and 31. For this reason, the record lacks substantial evidence showing that the claimant engaged in misconduct. Accordingly, the employer did not meet its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

We, therefore, conclude as a matter of law that the claimant is entitled to benefits pursuant to the provisions of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week of March 22, 2022, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 22, 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.

LSW/rh