

**The claimant allowed a man into a guest room of the employer's hotel without verifying the man's identity as required by the employer's policy, and a laptop was stolen. Given the absence of any mitigating circumstances, held that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest, and he is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0079 2288 56**

### 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 was discharged from his position with the employer on January 12, 2023. He filed a claim for unemployment benefits with the DUA, effective February 5, 2023, which was denied in a determination issued on March 2, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on June 30, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest or knowingly violate a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest when he allowed a man into a guest room without verifying the man's identity, 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 full time as an engineer for the employer, a hospitality business, from April 18, 2022, until January 12, 2023.
2. The claimant's immediate supervisor was the director of engineering.

3. The employer maintained a “Guest Room Key” policy that required employees to verify identification before giving access to guest rooms. The policy was communicated to the claimant by the handbook and during training.
4. The employer maintained an expectation that employees would not grant access to guest rooms without verifying identity. The purpose of the expectation is to ensure the safety of guests and belongings. The expectation was communicated to the claimant in the handbook and during training.
5. In July 2022, the claimant was given a warning for absenteeism.
6. On December 16, 2022, the claimant was given a written warning for inappropriate conduct.
7. On January 10, 2023, the claimant received a maintenance call to change thermostat batteries in a guest room.
8. When the claimant arrived at the room, a man was standing outside the room.
9. The claimant apologized for the wait. The man said it was “cold in there.”
10. The claimant opened the door and changed the batteries.
11. The man said he had left his key in the room.
12. The claimant thought the man “looked like he belonged there.”
13. The claimant did not check the man’s identity.
14. The claimant allowed the man to enter the room.
15. The claimant then moved on to another task.
16. The man was not a registered guest for the room. A laptop was stolen from the room.
17. The claimant was not expecting to be disciplined because he thought the man was a guest. The claimant thought the man looked like he belonged there. The man had known the reason the claimant was at the room.
18. On January 12, 2023, the claimant was discharged for allowing guest room access to a nonregistered guest.

#### 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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

Because the claimant was discharged from his employment, 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] . . . (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).

The employer fired the claimant because, on January 10, 2023, he allowed a person into a guest room without verifying that person's identity. *See* Finding of Fact # 18. It is undisputed that the employer had a policy requiring employees to verify an individual's identity before granting access to a guest room. *See* Finding of Fact # 3.

As the review examiner noted in his decision, the employer testified that it has zero tolerance for violations of this policy, and that a violation will result in immediate termination. However, as the review examiner further noted, the employer did not provide the portion of the written policy that addresses discipline. It did provide a written “discharge summary” stating that employees who violate this policy are “subject to disciplinary action up to and including termination.”<sup>1</sup> Because this document indicates that the employer maintains discretion over the discipline that it administers for violations of its policy, the employer has not met its burden to show that the claimant was discharged for a knowing violation of a reasonable and *uniformly enforced* policy.

Alternatively, the employer may demonstrate that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest. There is no question that, by letting the man into the guest room without checking his identity on January 10, 2023, the claimant violated the employer's policy. Inasmuch as nothing in the record suggests that he did so by accident, we can infer that his action was deliberate.

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<sup>1</sup> Exhibit 3, the discharge summary prepared by the employer's agent, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

However, deliberate misconduct is not enough. The employer must also show that the claimant acted in wilful disregard of the employer's interest. To determine whether an employee's actions were in wilful disregard of the employer's interest, the proper factual inquiry is to ascertain the employee's state of mind at the time of the behavior. Grise v. Dir. of Division of Employment Security, 393 Mass. 271, 275 (1984). To evaluate the claimant's state of mind, we must "take into account the worker's knowledge of the employer's expectation, the reasonableness of that expectation and the presence of any mitigating factors." Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979) (citation omitted). Mitigating circumstances include factors that cause the misconduct and over which a claimant may have little or no control. See Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987).

In this case, the claimant readily admitted that he was aware of the employer's expectation to verify a person's identity before allowing access to a guest room. See Finding of Fact # 4. Indeed, he testified that he had been shown how to look up registered guests in the employer's system during training so that he could complete such verifications, and that he had complied with the employer's expectation in the past.<sup>2</sup> This expectation is reasonable, as it protects the safety of the employer's guests and their belongings. Nothing in the record shows that there were any mitigating circumstances on January 10, 2023, over which the claimant had little or no control that interfered with his ability to comply with the employer's expectation.

We note that the review examiner declined to disqualify the claimant because he concluded that the claimant reasonably believed that the man he allowed into a guest room was the guest registered to that room. The Supreme Judicial Court has stated that "[w]hen a worker . . . has a good faith lapse in judgment or attention, any resulting conduct contrary to the employer's interest is unintentional; a related discharge is not the worker's intentional fault, and there is no basis under § 25(e)(2) for denying benefits." Garfield, 377 Mass. at 97.

In this case, we do not agree that this was a good faith lapse of judgment. Presumably, the employer's guest room key policy was put in place to avoid exactly this type of incident. A guest's laptop was stolen. See Finding of Fact # 16. As a result, the employer lost a new client account and thousands of dollars in revenue.<sup>3</sup> Nothing in the policy allowed employees to exercise their own judgment. In our view, granting access to a guest room based merely on the man's statement about the temperature in the room and a hunch that he "looked like he belonged there" demonstrated an unreasonable and inexcusable disregard of the employer's explicit rule for maintaining security. See Findings of Fact ## 9 and 12. The employer has met its burden to show wilful disregard of its interest.

We, therefore, conclude as a matter of law that the employer has met its burden to prove that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).

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<sup>2</sup> This testimony from the claimant is also part of the unchallenged evidence in the record.

<sup>3</sup> This testimony from the employer is also part of the unchallenged evidence in the record.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning February 5, 2023, and for subsequent weeks, until such time as he has had eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 30, 2024**



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.

REB/rh