Claimant submitted a mileage reimbursement request for a car trip in which he was neither a participant nor the driver in violation of the employer's travel policy that prohibits reimbursement requests for spouse's or partner's personal expenses. Because the claimant immediately brought it to his supervisor's attention, explaining that his bags were in the car, and asked how to submit a correct reimbursement, held the claimant's actions were not in wilful disregard of the employer's expectation. The claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

Board of Review
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Issue ID: 0079 7872 85

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 was discharged from his position with the employer on April 11, 2023. He filed a claim for unemployment benefits with the DUA, effective April 9, 2023, which was denied in a determination issued on May 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 affirmed the agency's initial determination and denied benefits in a decision rendered on June 15, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and, thus, was 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 claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant intentionally submitted a fraudulent travel reimbursement request for a car trip that he was not present in, 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. On June 19, 2017, the claimant began working as a full-time (40 hours per week) account executive for the employer, a software services company.

2. The claimant's most recent rate of pay was $125,000 annual base salary plus a commission eligibility of up to $125,000 annually.

3. The employer's [sic] direct supervisor (the supervisor) was the employer's head of sales.

4. The employer maintains guidelines on what it expects from employees in terms of reimbursement requests. These guidelines are part of the employer's travel policy.

5. The employer's travel policy is found in the employer's online repository that is accessible to all employees.

6. The employer's travel policy was refreshed in February, 2023. At that point, the employer sent a message with a link to the policy to all employees asking them to review it.

7. The claimant's supervisor also emailed the refreshed policy to employees under his supervision, including the claimant.

8. The policy states, in relevant part:

   "Spousal or partner expenses are your personal expenses and will not be reimbursed by [the employer.]"

9. The employer's travel policy does not address the consequences of violating the policy.

10. The employer's reimbursement requests guidelines are meant to give guidance to employees on what is eligible for reimbursement and what is ineligible.

11. The employer expects employees to submit reimbursement requests for "reasonable" work related travel expenses actually incurred by the employees.

12. The employer expects that employees will not submit a reimbursement request for travel expenses incurred by the employees' friends or family members accompanying the employee for an employer event.

13. The claimant had travelled numerous times during his time with the employer and had submitted reimbursement requests correctly.

14. On January 27, 2023, the employer launched a new system (the system) to be used by employees to make reimbursement requests.

15. On January 27, 2023, the employer's controller distributed to all employees a document with guidelines on how to submit reimbursement requests through the system. The document included guidelines, tips, and FAQs.

16. To submit a request through the system, an employee must press a "big yellow button" that says submit.

17. Once the employee hits submit, their supervisor gets the request in the supervisor's inbox.

18. Unless the employee hits submit, the request will not be submitted and will not be visible to the employee's supervisor.

19. It is impossible for the system to either approve or deny a request that has not already been submitted by an employee.

20. In March 2023, the claimant was living in Ohio.

21. From March 27 to March 30, 2023, the employer held an all staff "all hands" meeting (the event) in [City], Massachusetts.

22. Before the event, the supervisor told the team he supervised (including the claimant) to review the employer's travel policy.

23. The claimant, the claimant's girlfriend, and their child drove from Ohio to [City] for the claimant to attend the event.

24. After the event, the claimant's girlfriend and their child drove back to Ohio, but the claimant took a flight from [City] to Ohio.

25. The claimant bought his plane ticket from [City] to Ohio for $287.

26. On April 6, 2023, the claimant submitted two separate reimbursement requests: one for travel costs incurred driving from Ohio to [City], and one for travel costs incurred driving from [City] to Ohio.

27. The claimant's reimbursement request for the drive from [City] to Ohio was for $418.87 to cover mileage costs only.

28. After submitting the requests, the claimant spoke to his supervisor asking for guidance on whether he should make a reimbursement request for the flight to Ohio, or whether the request should be for the drive to Ohio. The supervisor told the claimant the request should be for the flight because he took the flight and was not in the car drive from [City] to Ohio.

29. On April 6, 2023, at 3:09 p.m., the supervisor rejected the claimant's reimbursement request for the drive from [City] to Ohio because the claimant was not in the drive.

30. The claimant submitted a new request for his flight from [City] to Ohio, including a request for reimbursement for baggage check in the plane.

31. After the supervisor rejected the request, he had a chat with the employer's controller and chief revenue officer (CRO) where he brought up the claimant's rejected request. In the discussion, the controller and the CRO pointed out that such a request was fraudulent.

32. On April 10, 2023, the supervisor placed the claimant on a performance improvement plan (PIP) for performance issues unrelated to the travel reimbursement request.

33. On April 11, 2023, the employer discharged the claimant for submitting a reimbursement request for a car trip he was not present in. The employer considered this a fraudulent request that violated the employer's travel policy and expectations.

34. Sometimes, the employer rejects reimbursement requests from employees. Typically, the employer does not discipline employees for rejected reimbursement requests.

35. The employer has never had any other employee- but for the claimant- submit a reimbursement request for a trip or activity that they did not participate in or that they were not actually part of.

36. No employee- but for the claimant- has ever claimed that the system submitted a reimbursement request before the employee hit the submit button.

37. Beginning in May 2023, the claimant had been approved for a 12-week paid leave of absence. The claimant had previously taken a paid leave of absence from work in 2018.

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 ineligible for benefits.

Because the claimant was terminated from his employment, his 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).

In this case, the employer discharged the claimant for submitting a fraudulent reimbursement request for a car trip he was not present in. *See* Finding of Fact # 33. The employer has a travel policy that gives guidance to employees on what is eligible and what is not eligible for travel reimbursement. *See* Findings of Fact ## 4 and 10. More specifically, the policy prohibits reimbursement for a spouse's or partner's personal expenses. Finding of Fact # 8. Because the employer imposes varying levels of discipline for violation of its policy, we agree that the employer has not shown that the claimant violated a reasonable and *uniformly enforced* rule or policy. *See* Findings of Fact ## 9, 34 and 35. Alternatively, the employer may prove that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

The findings show that the claimant submitted a travel reimbursement request for car mileage in a vehicle in which the claimant was neither a passenger nor the driver of the vehicle. *See* Findings of Fact ## 21, 23, 24 and 26. As reflected in its policy, the employer prohibited reimbursement requests for personal expenses incurred by family members and friends who accompany employees to work related events. *See* Findings of Fact ## 8 and 12. By submitting a travel reimbursement request for a car driven by the claimant's girlfriend, knowing he did not participate in this car trip, the claimant had engaged in misconduct. Additionally, to sustain its burden, the employer must prove that the claimant acted deliberately.

The claimant asserts that he did not submit the travel reimbursement requests. However, the review examiner rejected that notion. It is unrefuted that the employer launched a new software system for employees to submit travel reimbursements and distributed guidelines and tips on how to submit them to all its employees. *See* Findings of Fact ## 14 and 15. The software system requires that each employee enter the data into the fields and hit the yellow submit button, which then sends the information to the employee's supervisor's inbox for approval. *See* Findings of Fact ## 16 and 17. The review examiner found that the only plausible way a supervisor can approve or reject a reimbursement request is if the employee hits the submit button. *See* Findings of Fact ## 18 and 19. Absent any evidence indicating that someone submitted the reimbursement request on behalf of the claimant, which we do not see, the claimant's actions were deliberate.

However, deliberate misconduct alone is not enough to deny unemployment benefits. Such misconduct must also be in wilful disregard of the employer's interest. In order 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). In order 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).

The question is not whether the employer was justified in firing the claimant, but whether the Legislature intended that unemployment benefits should be denied under the circumstances. Garfield, 377 Mass. at 95.

In addition to receiving and being asked to review the employer's travel policy, the claimant had a history of submitting travel reimbursement requests correctly. *See* Findings of Fact ## 4–7 and 13. From this we can reasonably infer that the claimant was aware of, and comprehended, the employer's expectation not to submit travel reimbursement requests for personal expenses incurred by friends and family members. *See* Finding of Fact # 12. The employer's expectation is reasonable, as it ensures the employer is only reimbursing employees for work-related expenses and not reimbursing them for non-employee and non-work-related expenses.

On appeal, the claimant contends that he did not try to deceive the employer, or act in wilful disregard of the employer's expectation, but was fully transparent with his supervisor regarding the circumstances relative to his reimbursement requests.

The claimant submitted two separate requests for travel reimbursements. *See* Finding of Fact # 26. The record shows that at the time the claimant submitted his requests, he believed that he was entitled to reimbursement for the return car trip to Ohio that he was not present in, because his bags were in the car.[1] Perhaps realizing that his belief may have been incorrect, he immediately sought guidance from his supervisor as to what to do, explaining in detail the events that had transpired. *See* Findings of Fact ## 23–25 and 28. The supervisor informed the claimant that based upon their conversation, he would reject the submission for the return car trip to Ohio because the claimant was not physically in the car and instructed the claimant to resubmit a new travel reimbursement request for his flight return to Ohio. *See* Findings of Fact ## 28–30 and Exhibit # 2.[2]

Given that the claimant promptly notified the employer of his reasoning behind the travel reimbursement request and the circumstances surrounding his return travel to Ohio, we do not agree that the claimant acted with the intent to defraud the employer. *See* Findings of Fact ## 31 and 33. Thus, the employer has failed to show that the claimant acted in wilful disregard of the employer's interest.

[1] While not explicitly incorporated into the review examiner's findings, the claimant's testimony regarding his rationale behind his reimbursement request 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).

[2] Exhibit 2, a text message conversation between the claimant and his supervisor, is also part of the unchallenged evidence in the record.

We, therefore, conclude as a matter of law that the claimant neither knowingly violated a reasonable and uniformly enforced rule or policy of the employer, nor engaged in 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 ending April 15, 2023, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - July 30, 2024

Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

DY/rh