

The claimant was discharged because she left a mandatory meeting and did not tell anyone she was leaving. She did not think the meeting was valuable and did not want to have to work on her birthday. Her displeasure with the timing and substance of the meeting does not constitute mitigating circumstances. Held she engaged in deliberate misconduct in wilful disregard of the employer's interest pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 0080 1677 27

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 separated from her position with the employer on March 8, 2023. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 27, 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 July 14, 2023. 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 claimant was not discharged for deliberate misconduct because she was not aware her decision to leave a mandatory meeting early would result in her separation and she did not intend to harm the employer's interest by doing so, 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 for the instant employer as a full-time medical hairstylist from May 2022 until her separation on 3/8/2023.

2. The employer's salon is closed on Monday and on occasion, the employer offers stylist training courses which are optional for hairstylists.
3. The CFO and COO scheduled a team building meeting with a motivational speaker for Monday 3/6/2023.
4. The employer notified all employees that they needed to attend the meeting.
5. The claimant's birthday was on 3/6/2023.
6. The claimant was told to dress up and wear makeup for the meeting.
7. The claimant arrived to work for the meeting on 3/6/2023. The claimant was told to punch in and that it would be a paid meeting.
8. During the meeting, the claimant was dissatisfied with the motivational speaker who was educating the employees on how to ask questions. The claimant was dissatisfied that the training was not about hair.
9. The claimant did not find any value in the meeting and was dissatisfied that she needed to attend the meeting on her day off, which was also her birthday.
10. During the lunch period, the claimant was mentally exhausted from her dissatisfaction and decided to leave.
11. The claimant punched out and left during the lunch period.
12. The claimant decided to go home from [sic] the remainder of the day.
13. The claimant did not notify the CFO or COO that she was leaving.
14. Prior to the meeting resuming, the CFO and COO were unable to locate the claimant.
15. The CFO asked other employees if they knew where the claimant was, and they told the CFO that they did not know.
16. They told the CFO that the claimant did not have positive feedback from the meeting and that she did not like the small group exercises.
17. The CFO and COO both sent the claimant a text message which stated, "hey where are you."
18. The CFO also called the claimant's cell phone multiple times, and the claimant did not answer. The CFO did not leave any voicemail messages.

19. The CFO is aware that the claimant has bad cell phone reception at her home.
20. The claimant was back home sleeping and did not receive the text messages until hours later.
21. The claimant never received any missed calls on her cellphone.
22. The claimant read the text messages and was still upset about the meeting.
23. The claimant decided that she would wait until her next scheduled shift on 3/8/2023 to explain to the CFO and COO why she left training.
24. After the CFO and COO did not receive a response from the claimant, they decided that she was considered her have quit her employment.
25. The CFO and COO never sent any additional text messages.
26. The employer does not have any rule or policy which stated leaving work or a meeting early would result in a separation of employment.
27. The claimant had no intention of resigning her employment.
28. The claimant had just received a raise from the employer the Saturday prior the meeting.
29. The claimant was unaware that leaving the meeting early would result in her separation of employment.
30. On 3/8/2023, the claimant arrived to work as scheduled and her personal belongings had been placed in a box by the employer.
31. The COO told the claimant that she was not a team player by leaving the meeting and that she did not work there any longer.

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 her employment, her 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 did not provide any evidence of an attendance policy or rule that the claimant's actions on March 6, 2023, may have violated. *See* Consolidated Finding # 26. Therefore, the employer has not met its burden to show a knowing violation of a reasonable and uniformly enforced rule or policy. As such, we consider only whether the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

In order to meet its burden, the employer must first show the claimant engaged in the misconduct for which she was discharged. The employer discharged the claimant for leaving a mandatory meeting without informing the employer. Consolidated Finding # 31. As the claimant conceded that she decided to leave the meeting and did not notify the employer she would be absent for the remainder of the day, there is no question that she engaged in the misconduct for which she was fired. Consolidated Findings ## 11–13. It is also self-evident that her decision to leave before the meeting had ended was deliberate. *See* Consolidated Finding # 10.

However, the Supreme Judicial Court (SJC) has stated, “Deliberate misconduct alone is not enough. 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).

The review examiner concluded the claimant did not have the requisite state of mind for deliberate misconduct, because she did not know she would be discharged for leaving early, and because she did not intend to harm the employer's interests by leaving. Such is a misapplication of G.L. c. 151A, § 25(e)(2). This section does not require an employer show a claimant understood she would be fired for engaging in misconduct, nor require that it show a claimant intended to harm the employer. As the SJC has explained, the “purpose of Section 25(e)(2) . . . is to deny benefits to a claimant who has brought about [her] own unemployment through intentional disregard of standards of behavior which his employer has a right to expect.” Garfield, 377 Mass. at 97. In other words, claimants will not be entitled to benefits if they are discharged for deliberately acting in a way that they know is contrary to the employer's expectations.

As the claimant was present for the March 6th meeting even though she was not scheduled to work that day, her actions confirm that she understood that the employer expected employees to be present for the meeting. *See Consolidated Findings ## 4, 7, and 9.* Further, as there was no dispute that the employer had provided all employees with advanced notice that the meeting was mandatory, we can reasonably infer that the claimant understood her choice to leave work prior to the end of the meeting without notifying her supervisor was contrary to the employer's expectations. *See Consolidated Findings ## 4, 10, and 13.* We see nothing unreasonable about the employer's decision to require employees attend a paid training focused on team building and effective communication. *See Consolidated Findings ## 3 and 8.*

We next consider whether mitigating circumstances prevented the claimant from adhering to the employer's expectation. 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 absence of mitigating factors for the claimant's misconduct indicates that the claimant acted in wilful disregard of the employer's interest. *See Lawless v. Department of Unemployment Assistance*, No. 17-P-156, 2018 WL 1832587 (Mass. App. Ct. Apr. 18, 2018), *summary decision pursuant to rule 1:28.*

The claimant's decision to leave without notifying the employer stemmed from her preference that she not have to work on her birthday and her dissatisfaction with the fact that the meeting was unrelated to hairdressing. Consolidated Findings ## 8–10. Her distaste for the substance of the meeting and her preference that she not have to work on her birthday does not amount to a circumstance beyond her control that prevented her from remaining at the meeting.

We, therefore, conclude as a matter of law that the claimant's discharge was attributable to 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 denied benefits for the week of March 8, 2023, 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 - September 29, 2023



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.

LSW/rh