

**Where the Board previously affirmed an award of benefits involving the same events and circumstances leading to the same discharge and this was not appealed to District Court, that ruling became final. A second issue created by the DUA for the same separation after the claimant opened a new claim for benefits was improper.**

**Board of Review  
100 Cambridge Street, Suite 400  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0080 5320 56**

### 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 his separation from employment on April 2, 2023. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On June 30, 2023, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and only the employer attended the hearing. In a decision rendered on July 26, 2023, the review examiner reversed the agency determination, concluding 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). The Board accepted the claimant's application for review and provided the parties with an opportunity to submit written reasons for agreeing or disagreeing with the review examiner's decision. Neither party responded.

### Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, and information in the DUA's UI Online computer database, we note that the claimant's separation from this employer on April 2, 2023, had already been adjudicated under Issue ID# 0079 7078 78.

In the previous case, a DUA adjudicator determined on April 15, 2023, that the claimant's was entitled to benefits under G.L. c. 151A, § 25(e)(2). The employer appealed, and both parties attended a hearing, which was convened by another review examiner on May 15, 2023. On May 26, 2023, the review examiner affirmed the award of benefits, concluding that the claimant made a mistake in maneuvering his truck and the employer failed to establish that it discharged the claimant for deliberate misconduct in wilful disregard of the employer's interest.<sup>1</sup> On June 22,

---

<sup>1</sup> We note that the review examiner in the case before us found that the employer discharged the claimant on April 2, 2023, while the review examiner hearing the prior case found the discharge took place on April 3, 2023. Regardless of this minor discrepancy in dates, the substance of the incidents that led to the claimant's discharge were virtually identical and underscore that both of these decisions address the same separation.

2023, the Board denied the employer's appeal of the first review examiner's decision. The employer did not further appeal the Board's decision to District Court.

The instant issue was apparently created by the DUA in error when the unemployment claim the claimant filed in 2022 expired on June 10, 2023, and he had to open a new claim that was effective on June 11, 2023. Where the instant separation was previously adjudicated, a hearing on the separation was convened, and the Board's decision to affirm the first review examiner's decision to award benefits was not further appealed, that decision was final. "[A] final order of an administrative agency in an adjudicatory proceeding . . . precludes relitigation of the same issues between the same parties, just as would a final judgment of a court of competent jurisdiction." Tuper v. North Adams Ambulance Service, Inc., 428 Mass. 132, 135 (1998), quoting Stowe v. Bologna, 415 Mass. 20, 22 (1993).

In short, the issue on appeal in the present case has already been decided and resulted in an award of benefits. We, therefore, conclude as a matter of law that, in accordance with the Massachusetts Supreme Judicial Court's holding in Tuper, the review examiner improperly ruled to the contrary.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 8, 2023, and for subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 18, 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](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.

JPCA/rh