

Despite the claimant's repeated failure to follow a supervisor's directive about picking up linens during his deliveries, the incident which triggered his discharge was another motor vehicle accident with the company truck. Held the claimant is entitled to benefits pursuant to G.L. c. 151A, § 25(e)(2), because the employer did not prove that the claimant acted deliberately to cause the accident.

**Board of Review
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Issue ID: 0080 9009 45

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 August 3, 2023. He filed a claim for unemployment benefits with the DUA, effective July 30, 2023, which was approved in a determination issued on September 6, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 7, 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, he was 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 claimant's appeal, we remanded the case to the review examiner to make subsidiary findings of fact pertaining to the circumstances that caused the discharge. Thereafter, the review examiner issued his 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 claimant's discharge was for deliberate misconduct in wilful disregard of the employer's interest because he refused to pick up dirty linens as directed, 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 are set forth below in their entirety:

1. On 8/4/21, the claimant began full-time employment as a drop off and pickup Driver/Sales Worker for this employer's linen and uniform service company.

2. The claimant had received warnings that his job was in jeopardy if he continued to refuse to pick up the dirty laundry when he was dropping off the clean linens on his delivery route.
3. 7/25/23 was the last day of work that the claimant failed to pick up the dirty linens when dropping off the clean linens at the client location.
4. The claimant was permitted to continue working after 7/25/23.
5. Prior to 8/3/23, the employer had made no final decision regarding the claimant's failure to pick up the client's dirty linens on 7/25/23.
6. On 8/3/23 at the time of discharge, the claimant offered no defense for his decision not to pick up the dirty laundry on his route other than his desire to leave the task for the next driver. The claimant had been warned and told he would be discharged if he refused to pick up the dirty laundry, but the claimant refused to follow this work directive.
7. On 8/3/23, the claimant was told that he was also being discharged for being at fault in six accidents while driving his company vehicle. There were no moving violation citations issued to the claimant in connection with these unintentional accidents.
8. On 8/6/23, the claimant filed a claim for unemployment benefits effective 7/30/23.
9. On 9/6/23, the parties were sent a Notice of Approval beginning 7/30/23 noting that the employer had allegedly not shown that the claimant's discharge was due to deliberate misconduct in willful disregard of the employing unit's interest.
10. The employer requested a hearing.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for 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).

In rendering his decision, the review examiner concluded that the employer had discharged the claimant for two reasons: (1) failing to pick up dirty linens at the same time that he delivered clean linens to clients; and (2) having six accidents while driving a company vehicle. The review examiner's disqualification due to deliberate misconduct in wilful disregard of the employer's interest was based solely on the claimant's refusal to pick up dirty linens.

However, after remand, the consolidated findings show that, at the time of the claimant's discharge on August 3, 2023, the employer had not yet decided what to do about the claimant's failure to pick up dirty linens on July 25, 2023. *See* Consolidated Finding # 5. Until it decided, the claimant was allowed to keep working. *See* Consolidated Finding # 4. During the hearing, when the review examiner asked the Human Resources Director what triggered the discharge on August 3, 2023, he testified that the claimant rear-ended another vehicle.¹ This means that the employer fired the claimant for his motor vehicle accident, not the dirty linens. *See* Consolidated Finding # 7. For the purpose of deciding whether the claimant is eligible for unemployment benefits, our analysis focuses on the incident which caused his discharge.

Because there is nothing in the record to show that the employer always discharged employees under similar circumstances, we cannot conclude that the claimant knowingly violated a reasonable and *uniformly enforced* rule or policy. Alternatively, we consider whether the employer has shown that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

There is no question that the employer expected the claimant to avoid getting into motor vehicle accidents. Exhibit 1 includes a written policy about safe operation of vehicles, a training power point presentation about safe driving, and several documented warnings and suspensions given to the claimant due to getting into accidents with a company vehicle. There is also no dispute that, on August 3, 2023, the claimant rear-ended another vehicle with the employer's delivery truck, as

¹ While not explicitly incorporated into the review examiner's findings, this portion of the employer's testimony as well as its further testimony referenced below and Exhibit 1 are part of the unchallenged evidence introduced at the hearing and placed in the record. Thus, they are 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).

both parties reported the accident to the DUA. *See* Exhibits 2–5.² In this regard, the employer has established that the claimant engaged in the misconduct for which he was fired.

The question is whether the misconduct was deliberate. Whether or not the employer’s insurance company deemed the rear-end collision to be the claimant’s fault, we consider the claimant’s actions pursuant to unemployment law standards. Pursuant to G.L. c. 151A, the employer must show that the claimant did something deliberately. *See, e.g., Grise v. Dir. of Division of Employment Security*, 393 Mass. 271, 274–275 (1984) (leaving work without authorization and making himself unavailable was deliberate misconduct); *Sharon v. Dir. of Division of Employment Security*, 390 Mass. 376, 378 (1983) (refusal to make public apology for derogatory remarks was obviously intentional misconduct); and Board of Review Decision 0082 3744 75 (Oct. 30, 2024) (tractor trailer deliberately engaged in misconduct when he took his eyes off the road).

Despite the employer’s argument that the claimant had to have been following too closely behind the vehicle in front of him on August 3, 2023, there is no direct evidence of that. Both of the employer’s witnesses testified that they had not seen the accident. The consolidated findings indicate that a police citation was not issued. *See* Consolidated Finding # 7. Moreover, the claimant’s supervisor testified that the claimant told him that the vehicle in front of him stopped short, which is consistent with the claimant’s statement to the DUA in Exhibit 3.

We form no opinion about whether, in light of the claimant’s driving history, the employer made the right decision to end the claimant’s employment. We simply decide whether the claimant is entitled to unemployment benefits. In this instance, there is no evidence showing that the claimant deliberately took his eyes off the road or engaged in other behavior to cause the collision on August 3, 2023. Given the record before us, the only reasonable inference is that it was an accident in the plain sense of the word, meaning it was not done deliberately. *See* Consolidated Finding # 7.

We, therefore, conclude as a matter of law that the employer did not meet its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employing unit’s interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer, as meant under G.L. c. 151A, § 25(e)(2).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning July 30, 2023, and for subsequent weeks if otherwise eligible.

² Exhibits 2–5 are DUA fact-finding questionnaires completed by the employer and the claimant, in which both parties refer to the claimant’s rear-end collision on August 3, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 20, 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.

AB/rh