

**The claimant was discharged because he purportedly refused to complete a task assigned to him by his supervisor. The review examiner reasonably accepted as credible the claimant's testimony that he was not disrespectful or insubordinate towards his supervisor. Held the employer had not met its burden to show the claimant engaged in conduct that violated an employer policy or expectation and was, therefore, eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0081 5849 90**

### 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 separated from his position with the employer on October 25, 2023. He filed a claim for unemployment benefits with the DUA effective November 26, 2023, which was approved in a determination issued on December 23, 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 February 10, 2024. 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). 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 obtain testimony from the claimant, as he was unable to connect to the initial hearing due to technical issues beyond his control. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her 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 was discharged for deliberate misconduct in wilful disregard of the employer's interest because he was insubordinate in refusing to complete an assigned task, 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 and credibility assessment are set forth below in their entirety:

1. The claimant worked full-time as a Community Donation Center (CDC) Ambassador for the employer, a thrift store, from 4/14/2023 to 10/24/2023. The claimant earned \$17.00 per hour working for the employer.
2. The employer had a Respect in the Workplace Policy. The employer expected that all employees would act respectfully with each other.
3. The employer wanted to ensure that its workers act respectfully to maintain a positive work environment.
4. The employer wanted to ensure that its workers followed the directions of the supervisors and managers.
5. The claimant knew the employer's Respect in the Workplace Policy.
6. On 10/10/2023, the claimant was given instructions regarding how to close the store. The claimant had to catch the bus by 7:00 p.m. The District Manager wanted the claimant's help but the claimant told her that he was doing something for someone else. The claimant told the District Manager he could not stay any later or he would miss his bus.
7. On 10/10/2023, the District Manager wanted the claimant to provide his help in a timely manner and reprimanded the claimant.
8. On 10/10/2023, the claimant did not swear at the District Manager.
9. On 10/24/2023, the claimant was outside doing work and then was paged to help a customer. The claimant was helping the customer when a supervisor asked the claimant to sort books. The supervisor pointed at him and rudely asked him to move books.
10. The job of moving and sorting books is a job the claimant enjoyed.
11. On 10/24/2023, the claimant told the supervisor he was with a customer and could not move books right then.
12. The claimant never refused to move or sort the books.
13. On 10/24/2023, the supervisor told the claimant to come with her to the Store Manager's office.
14. In the office on 10/24/2023, the supervisor yelled and pointed at the claimant that he needed to sit down right now in the office. The claimant asked to go to the bathroom and the supervisor told him he could go to the bathroom. When the claimant came back to the office, the Store Manager was present and told him to go home and that he would get paid.

15. On 10/25/2023, the claimant called the store and the Store Manager told him to come in and pick up his last check.

16. The claimant was discharged on 10/25/2023.

#### Credibility Assessment:

Although the Store Manager set forth that the claimant was discharged from his job on 10/25/2023 because he was disrespectful to his supervisor and was insubordinate and would not follow the directions of his supervisor, the claimant credibly testified in the hearing that he was not sure why he was discharged from his job. He credibly testified that he never refused to move books on 10/24/2023. He credibly testified that the job of moving and sorting books was one of his favorite jobs. The claimant further testified that it was the supervisor who was rude and confrontational during their encounter on 10/24/2023. The claimant testified that he left to go to the bathroom and when he returned to the office, the Store Manager told him to go home for the day and that she would pay him for the day. The claimant credibly testified that he was not disrespectful and did not refuse to do work that was asked of him. The employer, who had the burden of proof, failed to attend the remand hearing to be cross examined and produce evidence.

#### 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not 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. . . .

“[The] 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).

As a threshold matter, to meet its burden under G.L. c. 151A, § 25(e)(2), the employer must show that the claimant engaged in some misconduct which either violated a policy or an employer expectation. At the initial hearing, the employer’s witness testified that the employer discharged the claimant for insubordination after he acted disrespectfully towards his supervisor on October 24, 2023, and disregarded her instruction to assist a customer.

Following remand, however, the review examiner accepted as credible the claimant’s testimony that he had not ignored the supervisor’s instructions or acted in a disrespectful manner on that day. *See Consolidated Finding # 12*. Such assessments are within the scope of the fact finder’s role and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). As the employer’s witness, the Store Manager, did not witness the alleged incident and could not provide firsthand testimony about the claimant’s interactions with his supervisor on October 24, 2023, we have accepted the review examiner’s credibility assessment as being supported by a reasonable view of the evidence.

Consistent with the review examiner’s credibility assessment, we conclude that the employer has not shown by substantial and credible evidence that the claimant engaged in any action that violated an employer policy or expectation on October 24, 2023. Consolidated Findings ## 9–14.

We, therefore, conclude as a matter of law that that the employer has failed to demonstrate that the claimant’s discharge was due 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. The claimant may not be disqualified 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 of November 26, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 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](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.

LSW/rh