

**The claimant tried his best to perform his housekeeping duties to the employer's standards, but was unable to, possibly due to significant health issues. Held he is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0082 1611 50**

### 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 February 8, 2024. He filed a claim for unemployment benefits with the DUA, effective February 4, 2024, which was approved in a determination issued on March 16, 2024. 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 May 9, 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 knowingly violated a reasonable and uniformly enforced rule or policy of the employer 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 give the claimant an opportunity to testify and present other evidence. 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 engaged in deliberate misconduct in wilful disregard of the employer's interest and knowingly violated a reasonable and uniformly enforced rule or policy of the employer when he failed to meet the employer's performance expectations, 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. The claimant worked full-time as a housekeeper for the employer, a senior living facility, from 1/24/22 to 2/8/24.

2. The claimant's supervisor was the Maintenance Director. The employer's current Maintenance Director is "[A]", who started in that role in August or September, 2023. The previous Maintenance Director was "[B]".
3. The employer has written cleaning standards that describe how often cleaning is to be done and tasks that need to be completed. The cleaning standards say, in part, that housekeepers are never to leave housekeeping carts unattended, and they may be left in the hallway while cleaning a resident's apartment but must be locked.
4. The cleaning standards describe routine cleaning which must be done weekly. In bathrooms, housekeepers must remove dirty towels and replace with clean ones; clean toilet, including tank and outside of bowl, spray with disinfectant; clean the shower/tub, including shower walls, floors, and fixtures; clean shower curtain if applicable; clean the mirrors, sink, counters, and fixtures; sweep and mop floor, and empty trash cans and replace lining.
5. Regarding furniture and fixture cleaning, housekeepers must dust the tops, sides, and front of all furniture; wipe windowsills and air conditioning units; and clean any mirrors or glass in the apartment except for windows.
6. Regarding the kitchen, housekeepers must clean the sink, countertop, and microwave; wipe the top and door of refrigerator; sweep and mop floor; check the refrigerator for old/outdated food and discard with resident permission; and ensure the temperature of the refrigerator is in appropriate range.
7. Regarding changing beds, housekeepers must maintain at least two sets of linens for use by residents; remove all linen from the bed and remake with clean linens; and remove dirty linens to be laundered.
8. Regarding floor and carpet areas, housekeepers must vacuum the living room, bedroom, kitchen, and bathroom; mop the kitchen floor first and bathroom last; always change mop water between cleaning apartments; and use spot remover for carpets where needed.
9. The cleaning standards are in place to make housekeepers aware of their duties and to ensure that living spaces are cleaned thoroughly.
10. The employer informed the claimant of the above cleaning standards when the claimant was hired.
11. Employees who fail to follow cleaning standards receive a documented verbal warning, first written warning, second written warning, final written warning, and are discharged from employment for subsequent violations after a final written warning.

12. On 4/25/22, the claimant received a favorable performance review. He performed his job duties according to employer expectations prior to receiving the review.
13. On 12/27/22, “[B]” gave the claimant a documented verbal warning. He explained to the claimant that the housekeeping department received multiple complaints that the apartments the claimant was assigned to clean were dirty, and the claimant was not spending enough time cleaning.
14. “[B]” reviewed housekeeping procedures with the claimant and said he was supposed to spend thirty to forty minutes cleaning each apartment, and the Housekeeping Supervisor would re-train him.
15. The claimant did his best to complete all assigned tasks properly and to meet performance expectations prior to receiving the above warning.
16. On 4/26/23, “[B]” gave the claimant a first written warning after the housekeeping department continued to receive complaints about apartments still being dirty and dusty after the claimant cleaned the apartments. The Housekeeping Supervisor inspected some of the apartments the claimant cleaned on 4/23/23 and 4/25/23 and noted that showers were still dirty, rooms were dusty, bed sheets were not changed, and floors were dirty.
17. On 8/16/23, “[B]” gave the claimant a second written warning after the housekeeping department continued to receive complaints about the cleanliness of apartments the claimant cleaned. His workload was reduced after he received this warning to help him improve his work performance.
18. The claimant continued to do his best to complete all assigned tasks properly and to meet performance expectations after he received the first and second written warnings.
19. On 10/12/23, “[A]” gave the claimant a final written warning. “[B]”, who was the Regional Maintenance Director at that time, was also at this meeting.
20. The claimant received the final written warning for not thoroughly cleaning the apartments he was assigned to clean, after receiving the above discipline for failure to clean apartments thoroughly.
21. The housekeeping department received complaints about the lack of cleanliness of apartments the claimant cleaned and complaints about the claimant taking long breaks and sitting down in common rooms when he was not on break after he received the final written warning.
22. Each warning contains the following language, “My signature below confirms that this...document has been discussed with me and that I understand both the seriousness of its content and the expectations of me going forward. It does not

necessarily reflect my agreement, however, any comments that I wish to make are attached.”

23. The claimant signed each of the above warnings. No comments were attached.
24. On 2/8/24, the Executive Director and “[A]” met with the claimant and informed him that he was discharged from employment.
25. The claimant was discharged from employment because the employer continued to receive complaints about the lack of cleanliness of apartments the claimant was assigned to clean.
26. The claimant did his best to meet performance expectations after receiving the final written warning.
27. On 5/7/24, the claimant’s primary care physician wrote the following information about the claimant in a letter: “[The claimant] has been unable to work due to multiple chronic medical conditions that are permanent. He has permanent memory loss secondary to anoxic brain damage from dissecting aortic aneurysm, coronary artery disease, nonrheumatic aortic valve regurgitation and nonrheumatic mitral valve regurgitation, requiring cardiac surgery, chronic anticoagulation for prosthetic valve replacements, chronic systolic heart failure, chronic kidney disease, and gouty arthritis. He is applying for disability because he is unable to work due to the above conditions.”
28. The claimant’s aortic aneurysm was diagnosed in 2011.
29. The claimant’s valve replacements were in 2020.
30. On 5/31/24, the claimant was approved for SSDI benefits.

### 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 reject the review examiner’s legal conclusion that the claimant is not eligible 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 relevant 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 willful 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).

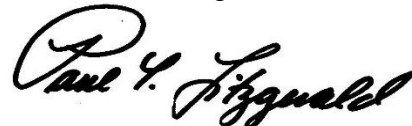
The employer has not met its burden. The findings reflect that the employer discharged the claimant because his job performance was not up to the employer's standards. Consolidated Findings ## 24–25. The review examiner found that the claimant did his best to meet the employer's performance standards. Consolidated Findings ## 15 and 26. Further, we can reasonably infer from the findings that the claimant's various chronic medical conditions affected his ability to properly perform his duties prior to discharge. *See* Consolidated Finding # 27. Since the findings do not show that the claimant deliberately failed to perform his duties to the employer's expectation, it appears that the claimant was simply "ill equipped for his job. . . ." *See Garfield v. Dir. of Division of Employment Security*, 377 Mass. 94, 97 (1979).

In light of the above, the employer has not shown that the circumstances of the claimant's separation constitute deliberate misconduct, and there is nothing to indicate that the claimant knowingly violated an employer policy. As such, the employer has not met its burden to establish deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced policy under G.L. c. 151A, § 25(e)(2).

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or that he knowingly violated a reasonable and uniformly enforced policy 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 beginning February 4, 2024, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 20, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

SVL/rh