

**The employer demonstrated that the claimant's misrepresentation of her work experience when hired and failure to meet reasonable performance expectations amounted to deliberate misconduct in wilful disregard of the employer's interest and not inability to perform. Held the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0082 1781 39**

### 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 affirm.

The claimant was discharged from her position with the employer on November 14, 2023. She re-opened an existing claim for unemployment benefits with the DUA, effective April 23, 2023,<sup>1</sup> which was approved in a determination issued on February 13, 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 April 24, 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 afford the claimant an opportunity to testify. Both parties attended the remand hearing, which took place over two sessions. 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 disqualifying conduct when she misrepresented her work experience to the employer and was subsequently unable to perform the job duties for which she was hired, 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:

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<sup>1</sup> UI Online, the DUA's record-keeping database, shows the claimant subsequently filed claim 2024-01, effective June 2, 2024.

1. The claimant worked as a paralegal for the employer, a law firm, from 10/10/23 until 11/14/23, when she became separated.
2. The claimant was hired to work full-time, Monday through Thursday, 9:00 a.m. to 5:30 p.m., earning an annual salary of \$50,000. The employer had initially offered the claimant a \$48,000 salary but the claimant refused, stating she wanted \$50,000 based on her experience, to which the employer agreed.
3. The claimant was discharged for misrepresenting her work experience and failing to perform the job as expected. The employer has no written, uniformly enforced policy or rule, accompanied by specific consequences, which address [sic] this behavior.
4. The employer expects employees to accurately represent their work experience at the time of hire and to perform the job duties required of the position. This is necessary for the law firm to run well.
5. The claimant was made aware of the employer's expectations in this regard through the job description and posting. She was made further aware of the employer's expectations through conversations with the employer.
6. Prior to hiring the claimant, the owners of the law firm sat with the claimant and went over her resume. Her resume had stated that the claimant had over 20 years of paralegal experience. The claimant's resume indicated that the claimant had extensive experience, she was highly motivated, able to multitask and had organizational skills. In addition, her resume stated that she had experience in billing, was able to solve problems and paid attention to detail. The claimant also included in her resume that she had litigation and senior paralegal experience and had obtained an associate degree in paralegal studies. She stated further in her resume that she had experience coordinating the invoice approval process, created expense reports, and ensured timely filings with the court, she [sic] drafted legal documents and responded to clients. The claimant sent the employer a separate email indicating that she obtained a 3.9 grade point average in the paralegal studies program.
7. Upon hiring, the claimant was trained by two different staff members. She was trained on the phones and how to do billing.
8. Not long into the claimant's employment, after she had been trained, the employer became aware that the claimant could not answer phones and would freeze up. She was not able to get names or phone numbers correct, leaving clients on the phone, not getting back to them. The employer received complaints from both clients and attorneys indicating that the claimant was not performing her job. The claimant was responsible to complete [sic] an intake form for any new clients calling in. One of the questions on the intake form asks if there had been anything filed with the court and the claimant would circle

- “yes or no.” On one of the intake forms, the claimant wrote yes and no for that question. The claimant was told that the forms need to be accurate because they go to the attorneys. The claimant responded to the employer that it was no big deal.
9. For billing, the claimant was taught how to create a simple spreadsheet with information as to what was paid and owed, etc. The employer found that the claimant was inputting incorrect information into the spreadsheet. The employer attempted to address this with the claimant, but the claimant would respond that it was not a big deal. The employer explained to the claimant that every penny needed to be accounted for.
  10. The claimant had worked for two larger law firms and a medium size law firm.
  11. The claimant had been told that she may need to work remotely in October due to Halloween and how busy the area will be during that time. The claimant told the owners that would not be a problem and that she had a good computer. The owners asked the claimant to bring in her computer so they could set it up for her to perform her job remotely and she told the owners that her computer was not working, and she needed to get it fixed. She was subsequently asked if she had gotten it fixed, and she told the owners her “computer guy” was not available. The claimant was ultimately told by the owners if she did not have a computer to work remotely, they would not be able to keep her. The claimant purchased a computer from Staples.
  12. The owners continued to train the claimant and re-train her throughout her employment.
  13. On or about 10/27/23, the owners realized that the claimant was not performing her job duties. They had noticed that she was not answering telephone calls correctly, she was not taking messages or doing the billing duties of her position. They also noticed it was taking her 5 minutes to walk 10 feet to the copier.
  14. The employer had other staff training her who informed the employer that the claimant was not performing minor administrative procedures.
  15. The owners asked the claimant why she was not doing well with the training. She stated she was not doing well with training because the phone was continually ringing. The owner stated they would have the office manager bring her in [sic] the back, where it was quiet, for two hours of one-on-one training. The owner told the claimant that she needed to master the position before she returned from vacation.
  16. The owner received a message while on vacation from an attorney who told the owner that the claimant was not doing her job. The owner was told that the claimant had clients sitting on the phone and that she was not taking messages.

17. The owner subsequently contacted the office manager to ask how the claimant was doing with the one-on-one training. The office manager indicated to the owner that every day is like the claimant had not been there the day before, and that there is a lack of effort on the claimant's part. The office manager had also told the owner that the claimant had gone to lunch for 3 hours without telling anyone.
18. While one of the owners/partners was away, the other owner handed out paychecks. He gave the claimant her paycheck on 11/9/23 and the claimant did not show up the next day for work on 11/10/23, and did not call anyone before the start of her shift. She did call at 9:15 a.m. to state she was not feeling good and would be out. The owner told the claimant she would need to notify the employer before her shift if she is absent.
19. The owner expected to see the claimant on Monday, 11/13/23 to terminate her employment, but the claimant did not show up for work. She sent the owner a text message stating she was still not feeling well and would be out again.
20. On 11/14/23, the claimant came into work and was notified of her termination. She was provided her final check at that time.
21. The claimant blamed the senior paralegal that was training her for not being able to perform her job. She complained that other employees kept taking her pencils and stapler off her desk and that there were too many interruptions and distractions. She did not know the firm would be as busy as it was or that she needed to be well organized to be good at the job.

#### Credibility Assessment:

The claimant's assertion that she did not misrepresent her work experience on her resume lacks credibility. This assessment is supported by the employer's comprehensive testimony, which outlined the circumstances surrounding the claimant's separation from employment. If the claimant indeed possessed the skills and experience as claimed on her resume, it is reasonable to expect that she would have been capable of adequately performing the job for which she was hired. However, the evidence presented, including the claimant's own testimony and the consolidated facts, suggests otherwise. It appears that the claimant made little to no effort to perform her job duties to the best of her ability, further undermining the credibility of her initial contention.

#### 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. After such review, the Board adopts the review examiner's consolidated findings of fact, except

where Consolidated Finding # 6 provides that the claimant's resume stated that she had over 20 years of paralegal experience and experience in billing, because nothing in the claimant's resume contains this language.<sup>2</sup> In adopting the remaining findings, we deem 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. As discussed more fully below, we believe the review examiner's decision to deny benefits is supported by substantial and credible evidence and free from error of law.

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 discharged the claimant for misrepresenting her work experience and subsequently failing to meet performance expectation standards, which had been communicated to her at the beginning of, and throughout, her employment. Consolidated Findings ## 3, 5, 7–9, and 11–12. However, the employer has no policy or rule, accompanied by specific consequences, which addresses this behavior. Consolidated Finding # 3. The employer also presented no evidence that it has disciplined any other employees who engaged in the same behavior that led to the claimant's separation from employment. As a result, there is no basis to conclude that the claimant knowingly violated a reasonable and uniformly enforced policy or rule. Alternatively, we consider whether the employer has shown that the claimant engaged in deliberate misconduct which was in wilful disregard of the employer's interest.

The employer expected the claimant to accurately represent her work experience at the time of hire and subsequently perform the duties required for her position. Consolidated Finding # 4. The employer communicated these expectations to the claimant through its job description and posting, and through numerous conversations the owners had with the claimant throughout her

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<sup>2</sup> The claimant's resume is included as part of several documentary submissions by the claimant, and therefore appears in Remand Exhibits 1, 3, and 9. Remand Exhibit 1 is the claimant's appeal to the Board of Review, which includes supporting documentation and a narrative statement, while Remand Exhibits 3 and 9 are additional documents that the claimant submitted during the remand hearing process, comprising largely of narrative statements in response to the employer's testimony. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); and Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

employment. *See* Consolidated Findings ## 3, 5, 7–9, and 11–12; Remand Exhibit 7.<sup>3</sup> As Consolidated Finding # 4 shows that the employer maintains these expectations so that its law firm may run well, we believe them to be reasonable.

In September, 2023, the employer posted an online job description for a paralegal to perform certain duties that included, but was not limited to, preparing, updating, and sending out bills to clients; answering telephones and taking messages; engaging with clients; and preparing and updating client financial statements. Remand Exhibit 7. The paralegal job description further stated, in pertinent part, that candidates for the position must be “well-organized,” be “familiar with probate and family law,” and “must have a familiarity with utilizing a billing system.” *Id.* On September 19, 2023, the claimant submitted her resume and an email in application for the employer’s paralegal position.

The claimant has denied misrepresenting her work experience to the employer.<sup>4</sup> In support of her contention, she submitted several documents, including, but not limited to, her Indeed profile, copies of her paralegal studies degree and certificates, a 2015 performance review from a different employer, and a high school report card. Remand Exhibit 3. Notwithstanding, the review examiner determined that the claimant’s assertion lacks credibility. 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). Upon review of the record in its entirety, we believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented.

The record establishes that, before she was hired, the claimant made statements to the employer that suggested she possessed more years of paralegal and administrative experience than she obtained and possessed billing skills and familiarity with family law that she lacked. Consolidated Finding # 6 refers to the separate email the claimant sent the employer as part of her application for the paralegal position. In that email, the claimant wrote that she had a “strong foundation in paralegal/administrative skills,” including “billing,” and is “competent in managing multiple deadlines in a fast-paced environment, and I’m familiar with probate and family law.” Remand Exhibit 8. It is undisputed that the claimant told the employer during her interview that she would be able to work on the employer’s financial ledgers after having viewed them, but she also told the employer that she needed training with billing, because she was not accustomed to the system used. Although she wrote in her email that she was familiar with family law, the claimant subsequently informed the employer that she had never worked for a family law practice. It is also undisputed that, before she was hired, the claimant told the employer that she had 14 years of experience in paralegal and administrative roles; however, the claimant’s resume shows that she

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<sup>3</sup> Remand Exhibit 7 is one of the employer’s submissions, which contains multiple documents. In this exhibit is a copy of the job description and posting for its family law paralegal position. This submission as well as those from the claimant referenced below are also part of the unchallenged evidence in the record.

<sup>4</sup> During day 2 of the remand hearing, the claimant admitted that one of the position summaries listed in her resume had been written by one of the attorneys in that organization. Although this may be viewed as an ancillary matter, this information tends to further diminish the claimant’s credibility relating to her assertions that she did not misrepresent her work experience and reinforces the soundness of the review examiner’s credibility assessment.

has obtained approximately 12.5 years of experience. *See* Remand Exhibit 8.<sup>5</sup> Because these statements inaccurately portray the length of the claimant's work history and breadth of her skill set, we are satisfied that the employer has shown that the claimant misrepresented her work experience, in violation of the employer's expectation that she refrain from doing so. As there is nothing about the claimant's conduct that can be reasonably viewed as accidental or inadvertent, we believe that, in engaging in this misconduct, the claimant acted deliberately.

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 made no specific findings of fact regarding the claimant's state of mind. However, based on how emphatically the claimant has denied engaging in this behavior in her written submissions and during the remand hearing, we can reasonably infer that she knew, as a matter of common sense, that she was supposed to refrain from misrepresenting her work experience when applying for a job. Again, an employer's expectation that an applicant will present truthful information when seeking a job is self-evidently reasonable.

The record did not contain any evidence of mitigating circumstances that caused the claimant to disregard the employer's expectation to accurately represent her work experience. 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*.

Because the employer also discharged the claimant for failing to meet its performance standards, we also consider whether this failure was disqualifying within the meaning of G.L. 151A § 25(e)(2). *See* Consolidated Findings ## 3–4.

We note at the outset that the expectation that an employee meet performance standards is reasonable to ensure that the employer's business operates efficiently. Consolidated Finding # 4. As noted earlier, the review examiner found that the employer communicated its expectations to the claimant through its job description, posting, and conversations that the owners had with the claimants throughout her employment. *See* Consolidated Finding # 5; Remand Exhibit 7. Several consolidated findings demonstrate how the claimant not only improperly performed tasks, but that, at times, she failed to perform them entirely. *See* Consolidated Findings ## 13–14. Despite telling the employer that she possessed paralegal credentials, the claimant could not answer phones, take messages, get back to clients, properly complete new client intake forms, input information correctly into a spreadsheet, or otherwise perform minor administrative procedures. *See*

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<sup>5</sup> Along with her appeal to the Board of Review, the claimant provided a supporting narrative statement, in which she indicated that her resume reflects 12.5 years of experience. However, in the same statement, the claimant also stated that "she told them she had 14 years' experience" in paralegal and administrative roles.

Consolidated Findings ## 8–9. Nothing in the record suggests that these duties were unreasonable, that they fell outside the scope of the paralegal job description, or otherwise fell outside the skill set the claimant claimed to have possessed before commencing employment. Based on this record, we believe that the claimant’s failure to meet the employer’s performance standards constitutes misconduct.

The question is whether this failure was deliberate. The purpose of the unemployment statute is to provide temporary relief to persons who are out of work through no fault of their own. Connolly v. Dir. of Division of Unemployment Assistance, 460 Mass. 24 (2011) (further citations omitted).

“When a worker is ill equipped for his job . . . any resulting conduct contrary to the employer’s interest is unintentional; a related discharge is not the worker’s intentional fault, and there is no basis under § 25(e)(2) for denying benefits.” Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979). If this were a case where the record showed that the claimant applied her best efforts to meet the employer’s performance expectations but could not, we would have considered the claimant’s separation to have occurred under non-disqualifying circumstances, such as poor judgment or poor performance.

Here, however, the record shows that the claimant did not put in the effort to meet the employer’s expectations. The consolidated findings show that the claimant’s behavior amounts to deliberate misconduct rather than an inability to perform. Over the course of her five weeks of employment, the claimant made no improvement in her performance, despite having received training from two staff members on multiple occasions. Consolidated Findings ## 7, 12, and 15. Clients and attorneys had complained to the employer that the claimant was not performing her job. Consolidated Finding # 8. When the employer spoke with the claimant to explain why information needed to be accurate, the claimant told the employer more than once that it was “not a big deal,” dismissing the employer’s concerns about her work performance. *See* Consolidated Findings ## 8–9. After initially telling the employer that she had a “good computer” and would be able to work remotely, the claimant’s computer was inexplicably no longer working by the time she needed to bring it to the employer in preparation for remote work on October 31, 2023. Consolidated Finding # 11. The employer noticed that she took five minutes to walk ten feet to the copier.<sup>6</sup> Consolidated Finding # 13. The claimant left for a three-hour lunch while one of the owners was away on vacation without telling anyone. Consolidated Finding # 17. Given these findings, the frequency with which the employer spoke with the claimant about its performance expectations, and her failure to improve her performance by any discernible measure, we conclude that the claimant’s behavior is part of a pattern of deliberately refusing to adhere to the employer’s expectations, not of poor judgment or poor performance.

We next consider whether the claimant’s refusal to adhere to the employer’s performance expectation was “wilful” within the meaning of the statute. As discussed above, the employer reasonably expected the claimant to perform duties which she claimed to be able to do upon applying for the job. In this record, we see no mitigating circumstances for her failure to perform them. Mitigating circumstances include factors that cause the misconduct and over which a

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<sup>6</sup> As part of the claimant’s unchallenged testimony during the remand hearing, she stated that she has no physical or medical conditions that would cause a slow gait, denied utilizing orthotics, and described herself as “mobile.”



claimant may have little or no control. *See* Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987).

The claimant offered several excuses for why she was not performing well, including: the senior paralegal who was training her; the phone was continually ringing; other employees kept taking pencils and staplers off her desk; she had too many interruptions and distractions; she did not know the firm would be as busy as it was; or that she needed to be well-organized to be good at the job. Consolidated Findings ## 15 and 21. Despite her extensive testimony about these issues, nothing in the record shows that these factors prevented her from performing her job.

We, therefore, conclude as a matter of law that the employer has met its burden to show that it discharged the claimant for 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 affirmed. The claimant is denied benefits for the week beginning November 12, 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 - December 26, 2024**



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.

JMO/rh