**The claimant was discharged for insubordination because she refused an administrator's instruction to disburse petty cash for a day. As she had previously disbursed cash and agreed to assist the employer with petty cash during her transition to a new job, the administrator's instruction was reasonable. The claimant's concern that she might be overwhelmed with tasks is not mitigating circumstances for her refusal. Her insubordinate act was deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).**

**Board of Review**
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**Member**
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**Issue ID: 0082 4682 39**

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on March 21, 2024. She filed a claim for unemployment benefits with the DUA, effective March 17, 2024, which was approved in a determination issued on June 20, 2024. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on July 25, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not 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 employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 not at fault for her insubordination because her supervisor had made a confrontational statement in response to the claimant's refusal to perform a task, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked as an aftercare coordinator for the employer, a nursing and rehabilitation provider. The claimant began work for the employer on April 18, 2023. She worked full-time and earned $21 per hour.

2. The employer maintains an employee code of ethics requiring employees to "Treat everyone – residents, coworkers and families – with care, courtesy, respect and dignity."

3. The employer maintains a workplace violence policy that prohibits "Behavior or actions that convey the potential for violence or a dangerous lack of self-control (i.e., throwing objects, waving fists, shouting, etc.).

4. The employer maintains a separation policy that includes examples of conduct that may result in discharge. The list includes "Insubordination."

5. The claimant was aware of the employer's policies.

6. The employer uses discretion in determining what level of discipline to issue employees.

7. Before working as an aftercare coordinator, the claimant worked as an office assistant. Her duties included dispensing and reconciling patient petty cash. The claimant applied for and received the new job as an aftercare coordinator in mid-February 2024. When the employer gave her the new assignment, they asked if she would continue to help with the petty cash until the new staff was trained. The claimant agreed she would.

8. The employer hired an office manager and an office assistant.

9. The claimant became concerned about the responsibilities of her new position and having to pay petty cash when needed. She talked to her new supervisor, the social services manager, about having to do petty cash. The new supervisor agreed that it was not a good idea.

10. On Monday, March 18, 2024, the office manager asked the claimant if she would help with petty cash. The claimant told the office manager she would not help with the petty cash.

11. The administrator met with the claimant and told her she heard she refused to hand out petty cash. The administrator reminded the claimant that she agreed to do petty cash when needed. The claimant became upset. The administrator could see that the claimant was upset and excused her. She told her that she would call her back to her office.

12. Approximately 30 minutes later, the administrator called the claimant back to her office. She discussed taking on extra duties occasionally and being a team player. The claimant told her she had many responsibilities at her new position

and that petty cash was more of a responsibility than people realized. The administrator told her it was only for the day and that she should go home and think about what she was asking of her. She told the claimant that working for her might not be the right thing if she could not be a team player working for her.

13. The claimant told the administrator she had to put her mental health first, that she knew her limits, and that it would be stressful for her to be responsible for petty cash. She said she had the right to express her concerns.

14. The administrator told the claimant that her being overwhelmed had nothing to do with her mental health. The administrator said she did not have mental health problems.

15. The claimant became upset and said, "Well, good for fucking you. It's awful. It's hard." She told the administrator she could take her badge and was welcome to fire her. As she did so, she stood up quickly.

16. The administrator felt a little threatened by the claimant's quick movement.

17. The claimant did not intend to threaten the administrator.

18. The administrator told the claimant she was going to write her up.

19. The employer placed the claimant on a two-day suspension.

20. The administrator decided to discharge the claimant in consultation with the employer's human resources coordinator and the corporate office.

21. On March 21, 2024, the employer discharged the claimant.

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 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 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 entitled to benefits.

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).

While the employer maintains a policy prohibiting insubordination, it did not provide any evidence showing it discharged all other employees who engaged in insubordinate conduct. Findings of Fact ## 3 and 4. Absent such evidence, the employer has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* policy.

We next consider whether the employer has met its burden to show the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest. The review examiner awarded the claimant benefits, concluding that the claimant was not at fault for her conduct because the administrator made statements that did not de-escalate the conflict between the claimant and the administrator. *See* Consolidated Finding # 14. This was in error.

To meet its burden, the employer must first show the claimant engaged in the misconduct for which she was discharged. While the review examiner omitted the reason that the employer discharged the claimant from the findings of fact, the employer's witnesses explained that the claimant was discharged for insubordination.[1] Specifically, the claimant refused to comply with the employer's administrator's directive that she disburse petty cash on March 18, 2024. As the claimant confirmed that she refused the administrator's directive to disburse the petty cash, her own testimony confirms that she engaged in the misconduct for which she was discharged. Consolidated Findings ## 12–15. Further, the claimant's explanation for why she declined to follow the administrator's directive confirms that her refusal was a deliberate act. *See* Consolidated Finding # 13.

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). 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).

As the claimant was aware the employer maintained a policy prohibiting insubordination, she understood that the employer expected her to follow reasonable directives. Consolidated Findings

[1] The employer's witnesses' uncontested testimony in this regard, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus 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).

## 4 and 5. The administrator met with the claimant twice on March 18, 2024, and both times instructed the claimant to help with petty cash for that day. Consolidated Findings ## 11 and 12. The administrator's commentary on the claimant's stress level may have been inadvisable under the circumstances. *See* Consolidated Findings ## 14 and 15. However, there is no indication that it impacted the claimant's understanding of the employer's directive. Therefore, the record shows that the claimant understood her refusal to disburse the petty cash was contrary to the employer's expectations.

Inasmuch as the claimant had previously performed that task and had agreed to assist with tasks such as disbursing petty cash while she transitioned to a new role, the administrator's request that the claimant disburse the petty cash for the day of March 18, 2024, was reasonable. *See* Consolidated Finding # 7.

Finally, we consider whether the claimant showed any mitigating circumstances for her behavior. Mitigating circumstances include factors that cause the misconduct and over which a claimant may have little or no control. *See* Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987). The claimant refused to disburse the petty cash because she felt that completing the task would be stressful, and that she needed to put her own mental health first. Consolidated Finding # 13. However, she did not provide any testimonial or documentary evidence of a medical condition that precluded her from assuming responsibility for disbursing petty cash on March 18, 2024. Thus, the claimant has not presented substantial evidence to show that her mental health or any other circumstances beyond her control compelled her to refuse the administrator's directive. As such, the claimant has not shown mitigating circumstances for her insubordinate act.

We, therefore, conclude as a matter of law that the claimant was discharged 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 reversed. The claimant is denied benefits for the week of March 17, 2024, 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.

Charlene A. Stawicki

**BOSTON, MASSACHUSETTS**
**DATE OF DECISION - September 27, 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.

LSW/rh