

The review examiner reasonably rejected the employer's assertions that the claimant quit because the documentary evidence showed the claimant continued to ask to return to work for several months after the employer alleged that she quit. As the employer informed the claimant that no work was available for her and failed to show that the claimant engaged in any misconduct, the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review**  
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**Issue ID: 0082 5727 55**

### 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 affirm.

The claimant separated from her position with the employer April 26, 2024. She filed a claim for unemployment benefits with the DUA, effective April 7, 2024, which was denied in a determination issued on June 4, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on December 19, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest or knowingly violate 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 remanded the case to the review examiner to obtain additional evidence pertaining to the timing of, and reason for, the claimant's separation. Both parties 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 laid off due to a lack of work while recovering from surgery, 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. On October 13, 2023, the claimant began working full-time for the employer as a delivery driver. She reported to a manager. Her most recent rate of pay was \$22.50 per hour.
2. When the claimant was hired, she was given information about applying for family and medical leave.
3. The claimant has Section 8 housing.
4. On December 23, 2023, the claimant slipped and fell in an icy parking lot as she was trying to get into her van. She injured her left knee. She did not immediately go to a doctor or seek any type of medical attention.
5. On March 23, 2024, the claimant was discharged for allegedly being combative with the owner. She was rehired on March 25, 2024, after a meeting with human resources.
6. On March 27, 2024, the claimant fell and injured her left knee again, this time while she was at home. She went to the emergency room where she learned that her leg was broken and that she would need surgery.
7. The claimant informed her manager that she would need time off to get surgery. Her manager agreed and told her to text her when she was ready to return to work. (Remand Exhibits 5 and 15).
8. After March 27, 2024, the claimant performed no work for the employer.
9. On March 28, 2024, the claimant texted her manager and told her that she was expecting to go home in 2 weeks, that she would not be available to come back to work right away, that she was planning on returning, that she could work as a dispatcher, and that she would be seeking unemployment until her leg healed. (Remand Exhibits 5 and 15).
10. As the claimant was hospitalized and had no income, she needed a letter stating that she was not working to give to her social worker so she could keep her Section 8 housing.
11. On April 4, 2024, the claimant texted human resources and asked for an employment verification letter. She stated that she needed a letter to show to her social worker that she was not currently working. The exact words of her request were as follows: "I need a latter [sic] from you guy said I'm no [sic] at work for this moment for my social worker". (Remand Exhibit 10).
12. In the same test, the claimant also stated, "I broke my leg at home last week", "I text [manager]", and that she was planning on applying for unemployment because she had learned that she would need surgery and that it could take up to 3 months for her to recover. (Remand Exhibit 10).

13. The claimant told her manager that “I applied for the unemployment benefits but I need to wait for that they said that I can get benefits if the company approved me a medical leave.” (Remand Exhibits 5 and 15).
14. The claimant did not formally request a leave of absence.
15. The claimant was not reminded that she needed to fill out a formal request to take a medical leave of absence.
16. The claimant did not tell the employer that she was quitting her job in the April 4, 2024, text.
17. The claimant filed a claim for unemployment benefits effective April 7, 2024. In her initial application for unemployment benefits, she characterized her separation as a leave of absence. (Exhibit 2).
18. On April 11, 2024, the claimant had surgery. After two weeks, the claimant was able to walk with the help of crutches.
19. On April 16, 2024, a representative from the employer’s human resources department sent the claimant an employment verification letter. In the letter, it stated that the claimant’s dates of employment were October 13, 2023, until March 23, 2024. (Exhibit 9). The March 23, 2024 [date] was the date the claimant was discharged for allegedly being combative with the owner before she was rehired on March 25, 2024.
20. In the fact-finding questionnaire submitted by the employer, the employer stated that the claimant had separated from work by quitting via a no-call, no-show and by not responding to text messages and calls. They then stated that the claimant told them that she could not work because she was having surgery and would not recover for 3–4 months. In addition, the employer stated that they had offered her light duty, but that the claimant had refused. (Exhibit 10).
21. The claimant was paid through April 26, 2024. This represented all of her paid personal time off.
22. During the week beginning April 28, 2024, the claimant reached out to the manager and informed her that she was ready to return to work in a dispatch position. She let them know that she could not yet put weight on her leg, but that she was able to walk with crutches. (Remand Exhibit 5).
23. The claimant believed that she could work as a dispatcher because she had seen other employees with mobility aides perform the duties of that position.
24. In late April of 2024, the claimant learned that the employer had determined that she had quit her position from the unemployment application process.

25. On May 3, 2024, the claimant asked her manager why the employer claimed that she had quit. Her manager responded and denied saying that the claimant quit. She told the claimant that she would have to speak to human resources. (Exhibit 8 and Remand Exhibits 12 and 15)
26. The manager stated that she had asked about a dispatch position, but was told that there was no position available as the claimant could not move. She never told the claimant that she was fired. (Exhibit 8 and Remand Exhibit 15)
27. The claimant continued to text her manager and ask for work. Her manager continued to tell her that there was no dispatch work for her.
28. The claimant reached out to human resources about their statement that she had quit work. The human resources representative informed her that the claimant had stated that it would take her 3 months to return to work and had not asked the employer to hold her position. She also told the claimant that they have family and medical leave but not disability insurance. The claimant insisted that she never quit. (Remand Exhibits 6 and 13).
29. In August of 2024, the claimant was able to walk without any aid.
30. In August of 2024, the claimant sent her final text message to her manager asking for work. Her manager blocked her and did not respond.
31. The claimant never informed the employer that she was quitting her position.
32. The employer never formally discharged the claimant. She was not provided with written information about applying for unemployment.
33. The claimant believed that she was still employed until August of 2024 because she had never been told that she was fired. She remained in contact with the employer and believed that she would be able to come back to work. She believed that she had cleared up the quit issue and that she would return to work when her leg had fully healed.
34. The claimant did not violate any of the employer's policies, rules, or expectations.
35. The employer had no problems with the claimant's job performance.
36. The employer effectively discharged the claimant due to a lack of work for her while she was recovering from surgery.
37. On June 4, 2024, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 25(e)(1) of the Law commencing the week beginning March 17, 2024, and until she has had 8

weeks of work and has earned an amount equivalent to or in excess of 8 times her weekly benefit amount. The claimant appealed the Notice of Disqualification.

38. On December 18, 2024, the claimant and the claimant's representative attended an appeal hearing.
39. On December 19, 2024, the claimant received the decision reversing the Notice of Disqualification. The review examiner changed the issue type from a quit to a discharge under Section 25(e)(2).

#### Credibility Assessment:

The claimant and the claimant's attorney attended a hearing on December 18, 2024. The claimant, the claimant's attorney, and the employer's witness (a human resources representative) attended two sessions of a remand hearing on February 10, 2025, and March 6, 2025.

During both sessions, the claimant and the employer's witness disagreed about whether the claimant quit or was discharged. According to the employer's witness, the claimant gave notice that she was quitting on April 4, 2024, via a text message. (Remand Exhibit 10). She maintained that when she received the claimant's April 4, 2024, text asking for a letter for her social worker indicating that she was not working at the moment, she assumed that it was a quit notice. At no point in the text message did the claimant inform the employer that she was quitting or that she was not intending to return to work. The employer's witness argued that she could not interpret the claimant's April 4, 2024, text because it was in "broken English". Despite a few spelling and grammatical errors, which are quite common in text messages, the claimant's English is understandable. The employer's witness testified that the claimant never informed her that she broke her leg. This is directly contradicted by the April 4, 2024, text message which includes the statement "so I broke my leg at home last week". When the employer submitted their factfinding questionnaire, the April 4, 2024, text message was not mentioned. Instead, the questionnaire stated that the claimant had separated from work by quitting via a no-call, no-show and by not responding to text messages and calls. In addition, the employer stated that they had offered her light duty, but that the claimant had refused. (Exhibit 10).

The claimant contended that she did not intend to quit when she asked for the letter. After reviewing the April 4, 2024, text, it is determined that the employer's witness's belief that this text was a quit notice is not reasonable. At no point in the text does the claimant ever say that she was quitting or leaving her position, only that she was not working "at this moment", that she was going to apply for unemployment benefits, and that she was going to need 3 months to recover. None of these statements constitutes a quit. In fact, the statement that she was not working at that moment implies that she anticipated returning to work in the future, which, when read in conjunction with the statement that she will need 3 months to recover

from the surgery, implies that the claimant would be out of work for the duration of her recovery period, and then would return. Furthermore, her statement that she would be applying for unemployment benefits is not a statement that she intended to separate from work where it is possible to receive benefits while still employed or while on a leave of absence, as long as a claimant meets the requirements under the Law. The claimant also contradicted the employer's answers to the fact-finding questionnaire that she had refused work. The record shows the claimant had informed her manager that she was going to need time off work before she could return, but offered to return as a dispatcher because she could walk with crutches. It was the employer who did not grant her request.

The claimant's testimony during the remand hearing is considered to be more credible than the employer's testimony. The employer's testimony was inconsistent, unreasonable, and either not supported or directly contradicted by the submitted documentation. The claimant's testimony that she never quit and that she always intended to return to work is more consistent and better supported by the documentary evidence submitted during the hearings.

### 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. As discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is eligible for benefits.

The review examiner rejected as not credible the employer's assertion that the claimant resigned her position with the employer on April 4, 2024. *See Consolidated Findings ## 31 and 36.* 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 claimant made no mention of resigning in the April 4, 2024, text and the language she used indicated she intended to return to work, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence. *See Consolidated Findings ## 11–13.*

While the employer never formally discharged the claimant, it is apparent that it made the decision to sever the claimant's employment relationship. *See Consolidated Finding # 28.* As such, and consistent with the credibility assessment, the claimant's eligibility for benefits is properly analyzed under the provisions of 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).

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 an employer policy or expectation.

In its filings with the DUA and at the remand hearing, the employer provided multiple reasons for the claimant's separation. The employer asserted that the claimant quit when she failed to respond to the employer's request for additional medical documentation, declined an offer of light duty, and ultimately severed all communications with the employer. However, the claimant requested to return to light duty shortly after surgery and was told no light duty work was available. Consolidated Finding # 26. The claimant continued to remain in contact with the employer well beyond the date that the employer alleged the claimant separated and only stopped communicating with the employer when the claimant's manager blocked her number. *See* Consolidated Findings ## 11, 12, 22, 25, 27, 28, and 30. Inasmuch as there is no evidence that the claimant engaged in any misconduct to warrant being discharged, there is no basis to disqualify her under G.L. c. 151A, § 25(e)(2).

We, therefore, conclude as a matter of law 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 is not disqualified under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending April 28, 2024, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 25, 2025**



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.

LSW/rh