

**The record shows that the claimant's errors and failure to submit completed reports stemmed from poor performance and being ill-equipped for the job, not from deliberate misconduct in wilful disregard of the employing unit's interest. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0082 7977 58**

### 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 her position with the employer on April 30, 2024. She filed a claim for unemployment benefits with the DUA, effective May 12, 2024, which was approved in a determination issued on June 4, 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 July 5, 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 and provide other evidence. Both parties attended the remand hearing, which took place over two sessions. Thereafter, the review examiner issued his 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 deliberately and in wilful disregard of the employer's interest, did not perform her work to the best of her ability, 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 supervisor of patient registration for the employer, a hospital, from July 17, 2023, until April 30, 2024.

2. The claimant's supervisor was the operations manager of patient registration (the OM).
3. The employer maintained a corrective action policy establishing progressive discipline for policy violations, including "failure to comply with policy, protocol, or established procedure" and "unsatisfactory performance". Violators of the policy were subject to progressive discipline: verbal warning, written warning, final written warning, and termination. The policy was in the employer's handbook and covered in training. The claimant was additionally made aware of the policy during warnings.
4. The employer maintained an expectation that the claimant would perform all job duties, including timely completion of quality reports. The purpose of the expectation was to ensure that responsibilities were completed, and proper care was provided for patients. The claimant was informed of the expectation through the policy, training, and during prior warnings.
5. On October 8, 2023, the claimant was placed on a performance improvement plan due to poor attendance.
6. In December 2023, the claimant was assigned responsibility of [sic] completing monthly quality reports, beginning with the November 2023 report. The reports included a review of patient registrations to monitor errors and insurance validation. The reports required daily tracking of information and needed to be completed sequentially in order to ensure accurate information.
7. The claimant was assigned the task of completing the reports because of her qualifications.
8. The claimant was trained on completing the reports by the OM and the former supervisor of patient registration (the FS). The claimant was trained through one-on-one training with the OM and the FS, emails, and manuals for reference. The claimant did not tell the employer that she had any trouble understanding how to complete the reports or that she did not understand the importance of the reports.
9. The claimant was expected to submit the reports to the OM in printed form. The OM and the FS had access to a shared computer drive, which the claimant used to complete work documents, including the reports.
10. On February 20, 2024, the claimant had not submitted completed reports for November 2023, December 2023, or January 2024. The claimant was verbally asked to complete the reports by February 23, 2024. The claimant was told that going forward, the reports would be due on the 15th of the month.
11. On February 23, 2024, the claimant submitted some reports which were not complete, or to the employer's expected standards. The OM and the FS offered

to help the claimant complete the reports. The claimant did not accept help from the OM or the FS. The claimant told the employer she would have the reports completed by February 27, 2024.

12. On February 27, 2024, the claimant did not submit completed reports.
13. On February 28, 2024, the claimant was verbally warned to complete the reports. The OM told the claimant to prioritize the reports over her other job duties.
14. On March 15, 2024, the claimant had not completed the reports.
15. On March 15, 2024, the claimant was issued a documented verbal warning for failing to complete any of the reports. The claimant was given a deadline to complete the reports by March 29, 2024. The claimant was told to prioritize the reports over other job duties. The claimant was offered help in completing the reports, which the claimant declined.
16. On March 29, 2024, the claimant had not completed the reports.
17. On April 3, 2024, the claimant submitted two months of the reports to the OM. The reports were not accurate or complete. The OM reviewed the errors with the claimant. The claimant did not submit corrected reports. The claimant was told to prioritize the reports over other job duties. The claimant was offered help in completing the reports, which the claimant declined.
18. On April 8, 2024, the claimant was issued a written warning for failing to complete any of the reports accurately. The OM, the FS, and the human resources business partner (the HRBP) met with the claimant to discuss the warning. The claimant was given a new deadline of April 15, 2024. The claimant was told to prioritize the reports over other job duties. The claimant was offered help in completing the reports which the claimant declined.
19. On April 15, 2024, the claimant had not completed the reports.
20. On April 18, 2024, the claimant was issued a final written warning for not completing the reports. The claimant was given a final deadline of April 23, 2024. The warning stated that failure to meet the deadline would lead to further corrective action, including termination. The claimant was told to prioritize the reports over other job duties. The claimant was offered help in completing the reports, which the claimant declined.
21. On April 18, 2024, the claimant spoke to the OM about the reports. The claimant told the OM that the reports were complete but that she had to finish printing them. The reports were not completed on the claimant's shared drive.

22. On either April 19 or April 22, 2024, the claimant called out of work for an excused absence due to anxiety.
23. On April 23, 2024, the claimant had not submitted any reports.
24. On April 26, 2024, the claimant submitted partial reports to the OM's desk. The claimant sent the OM an email that she would have the rest submitted by April 29, 2024. The reports were not completed fully or correctly. The claimant did not submit the remaining reports on April 29, 2024.
25. On April 30, 2024, the claimant was discharged for not completing the duties of her assignment after a final warning.
26. During the end of the claimant's employment, the claimant worked an unknown number of overtime hours to work on the reports.
27. The claimant did not complete the reports due to several reasons including: performing other job duties, anxiety, the cumulative nature of the reports creating a backlog, and unfamiliarity with how to complete the reports.
28. The claimant did not tell the employer that she did not understand how to complete the reports.
29. The claimant did not have any reason for not accepting help from the OM or the FS to complete the reports.

#### Credibility Assessment:

The claimant did not attend the initial hearing. The claimant attended the remand and continued remand hearing. The claimant's witness attended the first remand hearing but did not testify and did not attend the continued remand hearing. The HRBP and an agent attended the initial hearing on behalf of the employer. The HRBP and a different agent attended the remand hearing and continued remand hearing on behalf of the employer.

During the remand hearing and the continued remand hearing, the claimant was extremely distraught. The claimant gave conflicting, vague, or non-responsive answers. The claimant was adamant that she was not discharged for attendance, which was not alleged by the employer.

The employer's witness, the HRBP, was unable to testify to specifics regarding what was deficient with the claimant's submitted reports because the reports were outside of her job duties. Most of the HRBP's testimony was based upon hearsay from the OM and the FS. Additionally, the HRBP was not familiar with the training the claimant received other than that the claimant had received training. However, the HRBP was present during the April 8 warning meeting. The HRBP testified that the claimant was offered help and declined the help during the meeting. The HRBP

also testified that the claimant did not tell the employer that she did not understand the reports. The HRBP's testimony was consistent during the initial hearing and the remand hearing with the documentary evidence.

The claimant admitted that she was aware that the reports had not been completed to the employer's satisfaction. The claimant admitted that the OM spoke to her about the reports frequently since at least February 2024 and that the OM told the claimant to prioritize the reports over other work. The claimant admitted that she was made aware of each deadline.

The claimant contended that she was not trained adequately on completing the reports. However, the claimant admitted that she did not tell the employer that she did not understand the reports. The claimant contended that the employer did not offer assistance. However, the HRBP's consistent testimony in that regard was more credible as she was a direct witness to the claimant being offered help and declining. The claimant did not provide a reason for declining help.

The claimant contended that she was not aware that failing to complete the reports would lead to termination. However, the claimant admitted to receiving the verbal warnings and written warnings which stated that non-compliance would lead to further discipline, up to termination. Therefore, it is not credible that she was not aware that failing to complete the reports could lead to her termination.

The claimant contended that she was unable to complete the reports due to the volume of reports, other job duties, and due to her anxiety. The claimant's testimony in this regard was credible as it was in relation to her state of mind and was not refuted by the employer. Furthermore, the claimant's demeanor during the remand hearings supports the claimant's assertion that she experiences anxiety, as the claimant had trouble maintaining her composure. However, the claimant admitted that the OM told her to focus on the reports over other job duties.

The claimant contended that she had completed the majority of the reports prior to being discharged. The claimant contended that she merely needed to print the rest of the reports. However, the HRBP credibly testified that the documents submitted by the claimant were not complete. Furthermore, the employer had access to the claimant's shared drive and could see the claimant's progress in completing the reports. As such, the claimant's contention that she completed the reports correctly is not credible.

### 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 as follows. Those portions of Consolidated Findings ## 11, 17, and 20, which state the OM and FS offered to help the claimant and the claimant refused assistance on these occasions, are

unsupported by the record. Nothing in the record shows the OM offered the claimant assistance at any time apart from the initial training, or that assistance from any other employee, including FS, had been offered to the claimant on these dates. Further, Consolidated Finding # 29 is unsupported by the record also because the OM never offered the claimant assistance after the initial training took place, and the employer's witness provided unrefuted testimony that the claimant had offered specific reasons for declining assistance on at least two occasions. Additionally, the written warning and final written warning show that the claimant accepted and received training by the FS.<sup>1</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we reject the review examiner's legal conclusion that the claimant was ineligible for benefits.

Because the claimant was terminated from her employment, her qualification 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).

Consolidated Finding # 25 states the employer discharged the claimant for not completing the duties of her assignment after a final warning. The employer maintains a corrective action policy, which states that it will impose progressive discipline for policy violations, including "unsatisfactory performance." Consolidated Finding # 3. We believe that the employer's policy and corresponding expectation that the claimant perform all her job duties, are reasonable, as this ensures efficient business operations. *See* Consolidated Finding # 4. The review examiner also found that the claimant was aware of the employer's policy against unsatisfactory performance and the expectation to perform all her job duties, because the policy relating to job performance was in the employer's handbook and covered in training. The claimant had also been made aware of the policy and expectation through warnings. Consolidated Findings ## 3–4. However, because the employer has not shown that it discharged all other employees who had engaged in similar behavior, we cannot conclude that the claimant knowingly violated a reasonable and *uniformly enforced* policy under G.L. c. 151A, § 25(e)(2).

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<sup>1</sup> The written warning, dated April 3, 2024, is Exhibit 5, while the final written warning, dated April 22, 2024, is Exhibit 1. While not explicitly incorporated into the review examiner's findings, these exhibits, as well as the portion of Exhibit 7 discussed below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

Alternatively, we consider whether the employer has shown deliberate misconduct in wilful disregard of the employer's interest.

The employer expected the claimant to perform all job duties, including the timely completion of quality reports. Consolidated Findings ## 4 and 6. There is no dispute that the claimant failed to meet the employer's performance expectations over the course of her employment in that she struggled to submit completed reports, and the reports she did submit contained numerous errors or were incomplete. *See* Consolidated Findings ## 10–12, 15–20, and 23–24. Thus, the record shows that she engaged in the misconduct for which she was fired. The question is whether her poor performance was deliberate.

The review examiner found that several reasons contributed to the claimant's failure to complete the reports, including the performance of other job duties, anxiety, the cumulative nature of the reports creating a backlog, and unfamiliarity with how to complete the reports. Consolidated Finding # 27. In his credibility assessment, the review examiner determined that the employer offered the claimant help with the reports, but she refused and did not provide a reason for refusing the employer's assistance. 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). We believe that this portion of the review examiner's assessment is unreasonable in relation to the evidence presented.

The HRBP provided unrefuted testimony that the type of assistance offered consisted solely of the claimant working with FS to complete the reports, and that "part of that would have been coming in early for her [claimant's] shift, or switching her regular hours or coming in during the day . . . she did at one point say that she had daycare issues, and at one point said she was picking up her son at daycare." Based on this information, the claimant would have had to alter her work schedule significantly to receive this assistance from FS, and doing so could have adversely impacted her childcare arrangements. Moreover, it is undisputed that the claimant worked the second and third shift hours, while FS worked during the first shift. Therefore, it cannot reasonably be stated that the claimant failed to provide any reason for refusing assistance. The record also demonstrates that, beginning April, 2024, the claimant did accept and receive training from FS, as this was stated in the claimant's written warning and final written warning. *See* Exhibits 1 and 5. Although she may have initially declined, these warnings show the claimant had worked with FS on the reports in the weeks before she was discharged. Taken together with Consolidated Finding # 27, this evidence tends to show that the claimant's poor performance was not due to refusing help.

The record raises a question as to whether the claimant was deliberately dishonest by telling the OM that she would provide completed reports by each of the employer's deadlines, but nonetheless submitted only partial, incomplete, or inaccurate reports, often past the deadline. *See* Consolidated Findings ## 10–12, 15–20, and 23–24. During both remand hearing sessions, the claimant reiterated that she provided completed reports, only to be told by the OM that they were inaccurate and that she had to redo them, which made her get further behind. Specifically, the claimant testified that "they were not being completed the way she [OM] wanted it, according to her, they

were not being done correctly, and she wanted me to do it over again in a very short time frame . . . I told her that I would do my best.” The claimant further testified that, despite having taken excused absences from work due to her anxiety in April, 2024, she worked overtime to focus on the reports and believed that the reports would be completed once she finished printing them, which took a considerable amount of time, since these were daily reports that ranged anywhere in size from 15–100 pages per day. *See Consolidated Findings ## 9, 21–22, and 26.* The HRBP, on the other hand, testified that the documents submitted by the claimant were not complete, as the employer had access to the claimant’s shared drive and could see her progress in completing the reports. Consolidated Finding # 9. However, as the review examiner pointed out in his credibility assessment, the HRBP, who was the only witness for the employer, was unable to testify to specifics regarding what was deficient with the claimant’s submitted reports and was not familiar with the training that the claimant had received.

Nothing in the consolidated findings, employer’s testimony, or the documentary evidence suggests that the claimant deliberately failed to produce these reports for the employer.<sup>2</sup> Given the claimant’s explanation and the record as a whole, we believe that the claimant was not being deliberately dishonest.

The record shows that the employer assigned a workload that the claimant could not handle without making frequent mistakes. “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). The weight of the evidence shows that the claimant was working to the best of her ability. She was simply ill-equipped for the job.

We, therefore, conclude as a matter of law 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 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 May 12, 2024, and for subsequent weeks if otherwise eligible.

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<sup>2</sup> In both the initial and remand hearings, the employer witness testified that the claimant was discharged for performance reasons. When the review examiner explicitly asked if the claimant failed to complete the reports intentionally, the employer witness only offered that “she repeatedly missed extended dates to get them done.” In its DUA fact-finding questionnaire responses, the employer also reported that the claimant was discharged for poor performance. *See Exhibit 7.*



**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