

The claimant EMT failed to meet the employer's expectation that he complete his patient care report in a timely manner. The claimant did not establish any mitigating circumstances that prevented him from complying with the employer's expectation, as the findings show that the claimant had sufficient time to complete this task. He is disqualified from receiving benefits pursuant to G.L. c. 151A, § 25(e)(2), due to deliberate misconduct in wilful disregard of the employer's interest.

**Board of Review
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Issue ID: 0082 8339 05

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 was discharged from his position with the employer on May 14, 2024. He filed a claim for unemployment benefits with the DUA, effective May 19, 2024, which was denied in a determination issued on June 22, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on August 23, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant neither engaged in deliberate misconduct in wilful disregard of the employer's interest, nor 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 remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's state of mind. Only the employer 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 neither engaged in deliberate misconduct in wilful disregard of the employer's interest, nor knowingly violated a reasonable and uniformly enforced rule or policy of the employer when he failed to complete a work task in a timely manner, 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 an emergency medical technician (EMT) for the employer, an ambulance service, from October 12, 2023, until May 14, 2024.
2. The employer has a written policy (the policy) that requires EMTs to submit patient care reports (PCRs) as soon as practicable after answering a call for services or before the end of a work shift in accordance with the Department of Public Health's (DPH) regulations contained within 105 CMR 170.345.
3. The DPH regulation reads, in relevant part, "(B) Patient Care Report Preparation and Contents. Each service shall maintain dispatch records, in either computer-aided (CAD) or handwritten form, and written patient care reports, for every EMS call ... Each patient care report shall be accurate, prepared contemporaneously with or as soon as practicable after, the EMS call that it documents. ..."
4. The claimant became aware of the policy on October 12, 2023, when he signed an acknowledgement of having reviewed the policy online.
5. The purpose of the policy is to advise hospitals of the care given to patients while being transported to the hospital by ambulance, which assists the hospital in providing proper care to the patient.
6. The employer applies a progressive scheme of discipline to policy violations which includes a verbal warning, a written warning, sometimes a second written warning, a final written warning, then termination.
7. The employer has terminated other EMTs for failing to comply with the policy after a written warning, absent extenuating circumstances.
8. The employer has an expectation that EMTs will complete their PCRs timely.
9. The employer communicated its expectation to the claimant when he was hired and during training.
10. The reason for the expectation is to comply with DPH regulations.
11. The reason employees are expected to keep the details of investigations confidential is to avoid interference with the investigation.
12. The employer is harmed when EMTs do not complete their PCRs timely because it compromises patient care and safety and exposes the employer to fines by the DPH.
13. The claimant was aware of the harm to the employer because it is detailed in the employer's policy and in the DPH regulations.

14. The employer has a system in place for completing PCR's electronically.
15. After a call is placed for service is dispatched and completed by the EMTs, the dispatch department "drops" the PCR into the employer's electronic system for completion by the EMTs.
16. The claimant received training from the employer at the time he was hired on how to use the electronic system to complete the PCR's and what to do if he could not complete a PCR.
17. It usually takes less than 30 minutes for employees to complete a PCR.
18. If a PCR could not be completed in the electronic system, an EMT could complete the PCR manually in writing.
19. The employer does not have a system for completing PCR's by handwriting.
20. If a PCR could not be completed in the electronic system, an employee would have to let a supervisor know.
21. The claimant was aware he needed to alert a supervisor if he could not complete a PCR because he had received training and warnings about not completing his PCR's.
22. The employer provided the claimant with the telephone numbers of all four supervisors and for dispatch.
23. The claimant did not contact his immediate supervisor with issues regarding the completion of PCR's.
24. The employer expects employees to complete their PCR's as soon as possible and by the end of their shift.
25. The employer, through the claimant's supervisor and human resources director, communicated to the claimant that the PCR's were to be completed as soon as possible or by the end of his shift.
26. The employer received no complaints about the functionality of its PCR recording system from other employees.
27. On December 28, 2023, the claimant received a final written warning from the employer for improper use of a company vehicle and for sleeping at the EMT base while not on duty.
28. On February 14, 2024, the claimant received a first written warning for tardiness.

29. On April 21, 2024, the claimant received a final written warning for failing to complete his PCRs timely and for “hanging out” at home while on shift. The warning reads, in part, “Complete PCRs in a timely manner which includes ‘as soon as practicable after a call’ or before the end of shift. No exceptions.” The warning states that “Consequences of further infractions” will be “Administrative leave.”
30. The human resources director told the claimant that he would be terminated if he failed to complete a PCR again by the end of his shift.
31. The claimant often worked consecutive shifts of two-to-four days with two to three days off in between days he worked.
32. The employer has a spreadsheet that shows when the claimant completed a call and when he completed the corresponding PCR.
33. Prior to April 21, 2024, the claimant sometimes did not complete his PCRs until days after services had been rendered.
34. After receiving the final warning on April 21, 2024, the employer’s spreadsheet shows the claimant completed his PCRs within 24 hours of the service.
35. On Thursday, April 25, 2024, the claimant was suspended by his immediate supervisor until the following Monday for failing to complete his PCRs timely.
36. On May 8, 2024, the claimant left his shift without completing a PCR. The employer is unaware when the PCR was completed. There are no outstanding PCRs in the employer’s system under the claimant’s name.
37. On May 8, 2024, the claimant had an hour or two hours between ambulance calls.
38. The claimant did not go home during his shift on May 8, 2024.
39. On May 8, 2024, there were no unusual or unexpected circumstances that prevented the claimant from timely completing the PCR.
40. On May 14, 2024, the claimant was terminated by telephone call from the director of human resources for failing to timely complete his PCRs after receiving a final written warning.

Credibility Assessment:

The employer’s witnesses are deemed to be credible in their testimony.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject Consolidated Finding # 18, which states that EMTs could complete their PCRs in handwriting, as Consolidated Finding # 19 states that the employer does not have a system for completing PCRs in handwriting. 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant was discharged 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 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 review examiner found that the employer has a policy that requires EMTs to submit patient care reports (PCRs) as soon as practicable after answering a service call, and by the end of the work shift. Consolidated Finding # 2. Because Consolidated Findings ## 6–7 reflect that the employer applies various degrees of discipline on a case-by-case basis, we cannot conclude that the claimant violated a reasonable and *uniformly enforced* rule or policy of the employer. Alternatively, we consider whether the employer has met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

As a threshold matter, the employer must demonstrate that the claimant engaged in the misconduct or policy violation for which he was discharged. In this case, the employer discharged the claimant for failing to complete his PCRs in a timely manner. Consolidated Finding # 40. Specifically, on May 8, 2024, the claimant failed to complete a PCR for a service call before the end of his shift. Consolidated Finding # 36. Inasmuch as the employer expected employees to complete a corresponding PCR for all service calls before the end of their shift, and the claimant failed to do this on May 8th, we agree that he engaged in misconduct. Further, there is no indication in the record that the claimant's misconduct was other than deliberate.

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).

The claimant here was aware of the employer’s expectation that he complete all PCRs before the end of his shift, as he had reviewed the policy at hire on October 12, 2023, and during training. Consolidated Findings ## 4 and 9. We further believe that the employer’s expectation was reasonable, as it was in place to ensure that proper care was provided to patients and to comply with the Department of Public Health regulations. Consolidated Findings ## 2, 10, and 12.

We next consider whether the claimant presented evidence of mitigating circumstances. 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 review examiner found that PCRs usually take less than 30 minutes to complete. Consolidated Finding # 17. Further, on May 8, 2024, the claimant had anywhere from one to two hours of downtime in between service calls, and there were no unusual or unexpected circumstances that prevented the claimant from completing his PCRs in a timely manner. Consolidated Findings ## 37 and 39. In light of these findings, we conclude that no mitigating circumstances existed that prevented the claimant from complying with the employer’s expectation.

We, therefore, conclude as a matter of law that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest, as meant under G.L. c. 151A, § 25(e)(2).

The review examiner’s decision is reversed. The claimant is denied benefits for the week beginning May 12, 2024, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his 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

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