

**The claimant told the employer that it could replace her because she could not keep up with the workload but would continue working indefinitely until then. Held this was a discharge because ultimately, the employer decided whether and when to replace her. Because there was no evidence of misconduct or a rule or policy violation, the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0083 4475 83**

### 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 separated from her position with the employer on July 5, 2024. She filed a claim for unemployment benefits with the DUA, effective July 7, 2024, which was denied in a determination issued on September 10, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on October 24, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without showing good cause attributable to the employer or urgent, compelling, and necessitous reasons, and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant 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 resigned when she offered to let the employer replace her by someone who could handle the workload, and that she did not have good cause attributable to the employer to do so, 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 was employed as a patient coordinator for the employer, a dental office, from July 2023 until July 5, 2024, when she separated.

2. The claimant worked full-time Tuesday through Friday between 8:00 a.m.-6:00 p.m., earning \$36.00 per hour.
3. The claimant's immediate supervisor was the owner (owner).
4. During the hiring process, the owner informed the claimant that she intended to hire another person. The claimant would have still accepted the job even if another employee was not hired.
5. About six weeks after the claimant was hired, the owner hired a third employee.
6. In April 2024, the claimant perceived that there was tension in the office between herself, the owner, and another employee (employee A) due mistakes the owner had found in the claimant's and employee A's work.
7. On April 30, 2024, employee A resigned and gave the owner her two weeks' notice. The owner did not allow employee A to continue working her notice period.
8. On April 30, 2024, after employee A resigned, there were two remaining employees, including the claimant, who were still employed.
9. The owner did not hire anyone else after employee A quit April 30, 2024.
10. On May 7, 2024, the claimant and owner had a meeting to discuss the claimant's job and the tension in the office.
11. On May 7, 2024, the owner informed the claimant that she would not be hiring a third employee, based on her consultant's advice that the work could be managed with just the two remaining employees.
12. On May 7, 2024, the claimant, who did not agree with the owner or consultants [sic], told the owner that the workload could not be completed with only two employees and that she should let her go if she could find someone to handle the workload, and she would seek another job.
13. On May 7, 2024, the owner agreed to let the claimant go and she would find another employee.
14. The owner and the claimant agreed that the claimant would continue working for the employer until the claimant's replacement was found.
15. The claimant would have continued to work for the employer if the employer had rehired a third person.
16. The claimant worked until July 5, 2024, when her replacement was found.

17. The employer did not discharge the claimant.

18. The claimant was not at risk of being terminated prior to quitting.

19. Work was available to the claimant at the time she quit.

### 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portions of Findings of Fact ## 17–19 that refer to the claimant's separation as a quit and not a discharge, as this is a mixed question of fact and law, which at this point in the proceedings is for the Board of Review to decide. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463–464 (1979). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The first question we must decide is whether the claimant resigned or was discharged. When a claimant separates from employment, we must analyze her eligibility pursuant to the G.L. c. 151A, § 25(e) which states, 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 (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent, [or] (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 . . . .

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

If the separation is deemed to be a discharge, the burden of proof is assigned to the employer. *See Still v. Comm'r of Department of Employment and Training*, 423 Mass. 805, 809 (1996) (citations omitted). If it is a resignation, the statute expressly assigns the burden to the claimant.

There is no question that the underlying cause for the separation was the claimant's asserted inability to perform all of the work assigned to her after Employee A resigned. *See* Findings of Fact ## 8 and 12. At some point in April, 2024, the owner had discovered mistakes in the claimant's work, and the claimant felt tension between the owner and herself. *See* Finding of Fact

# 6. When Employee A resigned on April 30, 2024, the findings indicate that Employee A's workload fell to the claimant and another employee. *See Findings of Fact ## 7–9.* During a meeting on May 7, 2024, the claimant made it clear to the owner that she could not complete the workload without a third employee. *See Finding of Fact # 12.* On July 5, 2024, the employer replaced her. Finding of Fact # 16.

The separation is not voluntary simply because it was the claimant who first raised the notion of discharging her due to her inability to sustain the workload. *See Finding of Fact # 12.* At the time, the claimant agreed to continue working indefinitely until the employer replaced her. *See Finding of Fact # 14.* Further, Finding of Fact # 15 provides that she would have continued working if the employer had decided to hire a third person instead of replacing her. *See Finding of Fact 15.* Inasmuch as it was up to the employer to decide whether and when to end her employment, we treat this as a discharge.

Because the claimant was discharged, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(2). In order to sustain its burden to prove either deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced rule or policy, the employer must first establish that the claimant engaged in some form of misconduct. Here, we see no evidence of that. Finding of Fact # 6 indicates that the employer found mistakes in the claimant's work. However, there is nothing in the record to suggest that such mistakes were done deliberately, or that they somehow violated a rule or policy. Therefore, the employer has not sustained its burden of proof.

We, therefore, conclude as a matter of law that the claimant was discharged from employment. We further conclude that she 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, as meant under 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 July 7, 2024, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 24, 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.

AB/rh