

The employer discharged the claimant because he drove the company van for personal use without permission. Because the claimant was not aware of that he needed permission, the claimant is not disqualified from receiving benefits under G.L. c. 151A, § 25(e)(2).

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0084 1050 89

*** CORRECTED DECISION ***

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 his position with the employer on October 16, 2024. He reopened a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 27, 2024. The effective date of the claim is May 19, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant and the employer, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 18, 2025. 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). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant knew that using the employer's van for personal reasons was wrong, 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 in-house electrician for the employer, an electrical contractor. The claimant began work for the employer on June 10, 2024. He worked from 6:30 a.m. to completion Monday through Friday and earned \$63 per hour.

2. The employer maintains a Company Vehicles policy which states: "Company vehicles may only be used for job-related travel."
3. The claimant was not aware of the Company Vehicles policy.
4. The employer gave the claimant a van for use in his job. When they gave him the van, they told him he should use his seatbelt and not speed.
5. After the claimant finished work on Thursday, August 22, 2024, the claimant's supervisor, the General Manager (GM), asked him to help his sister with some work at her home. The claimant agreed and went to her home, where he assisted her for approximately two hours. The employer did not pay the claimant for the work.
6. On Saturday, September 14, 2024, Saturday, September 28, 2024, Saturday, October 12, 2024, and Sunday, October 13, 2024, the claimant performed electrical work at an address in [City A], MA. He performed electrical work for several hours each day.
7. The claimant did not tell the employer or ask permission to drive the van to [City A].
8. The round trip from the claimant's home to the address in [City A] is approximately 110 miles.
9. The claimant recorded a video of some of the work he performed in [City A]. The employer's Service Manager was provided a copy of the video on October 9, 2024.
10. The employer's vans are equipped with GPS devices. The employer reviewed the GPS records for the claimant's van and observed his trips to [City A].
11. On Wednesday, October 16, 2024, the GM and the Service Manager met with the claimant. The GM asked the claimant if he was doing side work. The claimant said he was. The GM asked the claimant if he used the employer's van. The claimant denied he was. The Service Manager told the claimant that their GPS records showed him on four weekend days using the van.
12. The claimant admitted he used the van. He told them he used the van because his personal vehicle's windshield wipers were not working, and it was raining. He told them, "A man has to make a living."
13. The GM and the Service Manager excused the claimant and met. They decided to discharge him.
14. The GM informed the claimant that he was discharged for driving the van on a Saturday to do side work.

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 was not entitled to benefits.

Because the claimant was terminated from his employment, this case is properly analyzed as a discharge. G.L. c. 151A, § 25(e)(2), 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).

We note at the outset of our analysis that the employer has not met its burden to establish that the claimant knowingly violated a reasonable and uniformly enforced policy. This is because the review examiner found that the claimant was not aware of the employer's company vehicle policy. *See* Finding of Fact # 3. Thus, the employer has not established that the claimant knowingly violated said policy. Accordingly, our inquiry will focus on whether the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).

As a threshold matter, the employer must show that the claimant engaged in some type of misconduct. Here, the claimant used the employer's van for personal use without asking the employer for permission. *See* Findings of Fact ## 4 and 6–7. There is nothing in the record to indicate that this was an accident. Thus, we conclude the claimant deliberately engaged in the alleged misconduct.

We now address whether the claimant's actions were done 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 record indicates that the employer had an expectation that its employees seek permission prior to engaging in any personal use of a company vehicle. *See* Finding of Fact # 14. This expectation is reasonable on its face, as it is designed to protect company property. The Supreme Judicial Court, however, has made clear that a claimant may not be disqualified from receiving benefits when the worker had no knowledge of the employer’s expectation. Garfield, 377 Mass. at 97.

The findings further indicate that the claimant was not aware of the employer’s policy or expectation that he could not use the employer’s van for personal use. *See* Findings of Fact ## 2–4. Additionally, the claimant’s supervisor, the General Manager, did not follow the employer’s expectations when he asked the claimant to use a company vehicle to perform work for the General Manager’s sister and did not pay the claimant for this work. *See* Finding of Fact # 5. This action by the General Manager shows that the employer was not following its own expectations regarding van use and side work. It was reasonable, therefore, for the claimant to believe that using the van for side work was acceptable to the employer. Because the claimant did not have knowledge of the employer’s expectation, he did not willfully disregard the employer’s interests.

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest or that he knowingly violated a reasonable and uniformly enforced policy 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 as of the week beginning October 13, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
*** DATE OF DECISION – April 22, 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

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.

MR/rh