

Because the review examiner found that the claimant complied with the employer's expectation that he refrain from making threats of violence at the workplace, the employer has not proven misconduct, and the claimant is not disqualified from receiving benefits pursuant to 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 7402 46

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 in October, 2024. He filed a claim for unemployment benefits with the DUA, effective November 3, 2024, which was approved in a determination issued on February 5, 2025. 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 March 8, 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). 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 give the claimant an opportunity to testify and present other evidence. Only the claimant attended the remand hearing. 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 engaged in deliberate misconduct in wilful disregard of the employer's interest, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant did not engage in the alleged misconduct.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The employer is a retailer. The claimant worked as a full-time associate for the employer. The claimant worked for the employer from 6/19/2024 to 9/7/2024.

2. The employer did not allow the claimant to make threats of violence in the workplace. The employer communicated this prohibition to the claimant in his new hire orientation.
3. The claimant had a bag at work. This bag contained personal items. Someone tampered with the bag and the items.
4. The claimant filed a report with the employer's security officer (Officer 1) on 9/7/2024. The claimant told Officer 1 that someone had tampered with his bag. The claimant did not say that he wanted to file a report so that he does not "punch someone in the face." The claimant did not make any threats of violence when he communicated with Officer 1. No one else was present when the claimant spoke to Officer 1.
5. The employer placed the claimant on paid suspension after his interaction with Officer 1 on 9/7/2024. Sometime in October, 2024, the employer informed the claimant that it had discharged him.
6. The employer discharged the claimant because it concluded that he told Officer 1 on 9/7/2024 that he wanted to file a report so that he does not "punch someone in the face." The employer concluded that this was a threat of violence in the workplace.

Credibility Assessment:

In the hearing held on 3/7/2025, the employer's human resources partner testified that the claimant told security personnel on 9/7/2024 that he wanted to file a report so that he does not "punch someone in the face." In the remand hearing held on 4/10/2025, the claimant testified that he did not say this and that he did not make any threats of violence. Given the totality of the testimony and evidence presented, the claimant's testimony is accepted as more credible because the employer did not attend the remand hearing and thus was not available for cross examination and because the employer did not present any witnesses to the claimant's alleged misbehavior.

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 and deems them to be supported by substantial and credible evidence. We reject the portion of the credibility assessment, which states that the employer "did" present witnesses to the claimant's alleged behavior, as this appears to be a scrivener's error in light of the portion of the credibility assessment which states that the employer's witness was not present to observe the claimant's alleged behavior. As discussed more fully below, we disagree with the review examiner's original legal conclusion that the claimant is not eligible for benefits.

Because the employer terminated the claimant's employment, his separation is properly analyzed under 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).

In the instant case, the employer maintains a policy that prohibits threats of violence in the workplace. Consolidated Finding # 2. However, because it is unknown on this record how the employer disciplines employees for violations of the policy, we cannot conclude that the claimant violated a reasonable and *uniformly enforced* rule or policy. 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 making a threat of violence in the workplace. Consolidated Finding # 6. However, after the remand hearing, the review examiner found that the claimant did not make any threats of violence in the workplace. Consolidated Finding # 4. Therefore, the employer has not met its burden to show that the claimant engaged in the misconduct for which he was discharged.

We, therefore, conclude as a matter of law that the claimant did not knowingly violate a reasonable and uniformly enforced rule or policy of the employer or engage 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 entitled to receive benefits for the week beginning November 3, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 14, 2025


Charlene A. Stawicki, Esq.
Member


Michael J. Albano

Member

Chairman Paul T. Fitzgerald, 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