

The claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest, because she impersonated a client on a call with MassHealth even though she knew that she, as an agent of the employer, was not authorized to speak with MassHealth on the client's behalf. Although her supervisors were pressuring her to try to resolve the issue with MassHealth, the claimant was not forced to impersonate the client. She is disqualified under G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 334-FFR8-9NHT

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 separated from her position with the employer on February 28, 2025. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 30, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on June 7, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined 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 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party 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 did not act in wilful disregard of the employer's interest because her motivation in misrepresenting herself on a phone call to MassHealth aligned with the employer's intent, 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 area director for the employer, a social services agency. The claimant began work for the employer on August 5, 2024. She worked full-time and earned an annual salary of \$68,000.
2. The claimant's duties were to manage case managers who assisted with the care of disabled individuals (clients). The case managers managed the care and services for the clients.
3. In December 2024, a client was injured while under the care of one of the claimant's case managers. Because of a delays [sic] in medical services, the client's injury became infected, and he developed sepsis.
4. On February 11, 2025, the employer gave the claimant an evaluation that required her to improve her performance. The evaluation was critical of the claimant's communication, leadership, professionalism, quality and attention to detail. In the evaluation, the employer referenced the issue with the client injury from December 2024.
5. In February 2025, the client's injury had not completely healed. He continued to require care including transportation to medical appointments and facilities. The case manager had difficulty getting transportation for the client because he had moved, and MassHealth had not updated his address.
6. The case manager sent MassHealth [sic] authorizing them to speak for the client so that they could update his address. However, for unknown reasons, it was not received.
7. The client was not getting transportation to his appointments and there was a danger he would become septic again.
8. The claimant reassigned the client to herself.
9. The claimant attempted to reach MassHealth multiple times but could not.
10. The claimant's supervisors were asking her about the client multiple times each day.
11. The client had a wound treatment medical appointment scheduled for February 25, 2025. On February 24, 2025, MassHealth would still not provide the client transportation because they did not have his updated address.
12. The claimant called MassHealth. While on the call, the claimant's supervisor called her for an update with the client.
13. The claimant decided to represent herself as the client so that she could have his address changed and ensure he would have transportation to his medical

appointment. She represented herself as the client to the MassHealth representative and updated his address.

14. The claimant recorded the phone call to document the address change.
15. After the call, the claimant emailed an update of the client's care to her supervisors. She included the recording so that they would know she was successful in changing his address.
16. The claimant was motivated by caring for the client. She did not think her misrepresenting herself to MassHealth would place her job in jeopardy.
17. On February 28, 2025, the employer discharged the claimant for poor performance and for misrepresenting herself on the phone call with MassHealth.

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 is entitled to benefits.

Because the claimant was discharged from her employment, her eligibility 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).

The employer fired the claimant for poor performance and misrepresenting herself to MassHealth. Consolidated Finding # 17. However, the employer did not present any specific policies pertaining to poor performance or that it alleged the claimant violated when she impersonated a client while on the phone with MassHealth. Therefore, the Board cannot conclude that the claimant knowingly violated a reasonable and uniformly enforced policy under G.L. c. 151A, § 25(e)(2).

We next consider whether the employer has met its burden to show the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest. To meet its burden, the employer must first show that the claimant engaged in the misconduct for which she was discharged.

We need not consider the claimant's alleged poor performance, as it is not grounds for denying unemployment benefits. Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979) ("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.").

The claimant confirmed in her testimony that she misrepresented herself as one of the employer's clients on a phone call with MassHealth on February 24, 2025. She, therefore, engaged in the misconduct for which she was discharged. Findings of Fact ## 11–13, and 17. Further, as the claimant conceded that she chose to impersonate the client on that call, her actions in so doing were self-evidently deliberate. *See* Findings of Fact ## 13 and 15.

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, 377 Mass. at 97. 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 concluded that the claimant did not have the requisite state of mind to act in wilful disregard of the employer's interest because she was not intending to harm the employer with her actions, and that her motivation to assist the client aligned with the employer's interests. *See* Findings of Fact ## 13 and 16. Such is a misapplication of G.L. c. 151A, § 25(e)(2). This section does not require an employer to show that a claimant engaged in behavior with the intention of harming the employer. As the SJC has explained, the "purpose of Section 25(e)(2) . . . is to deny benefits to a claimant who has brought about his own unemployment through intentional disregard of standards of behavior which his employer has a right to expect." Garfield, 377 Mass. at 97.

There is no dispute that the employer was concerned about the client's injury and the claimant's supervisor continued to check on the status. *See* Consolidated Findings ## 4 and 10. Given MassHealth's refusal to change the client's address without receiving authorization from the client, the claimant knew that the agency needed this authorization to make the change. We are hard pressed to imagine how the claimant could have believed that either MassHealth or her employer

would condone deceiving the agency in order to obtain a government benefit.¹ Absent evidence to the contrary, and we see none, we can infer that the employer expected her to follow MassHealth's rules and she was aware of this. As a matter of common sense, that expectation is reasonable.

While the claimant's concern over her performance evaluation and her desire to secure transportation for the client may have influenced her decision to impersonate the client, it is not evidence that she was forced by circumstances beyond her control to act in a way that she understood was contrary to the standards of behavior that her employer has a right to expect. Nor are we persuaded that this was an urgent situation that called for such unethical behavior. The client's appointment was not until the following day. Consolidated Finding # 11. Nothing in the record suggests any reason why the claimant could not ask her employer for help arranging some other form of transportation. As such, we see no mitigating circumstances.

We, therefore, conclude as a matter of law that the employer has met its burden to show that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest pursuant to G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning February 23, 2025, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 31, 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)**

¹ In fact, in a questionnaire she submitted to the DUA on April 25, 2025, the claimant explained that her job duties included "assuring compliance with state, federal and local safety, health and/or regulatory requirements." This questionnaire, which was admitted into evidence as Exhibit 10, is part of the unchallenged evidence introduced at the hearing and placed into the record, and it is 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).

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.

LSW/rh