

The claimant reported to work two to three hours late over the course of several days but did not notify the employer she was tardy or request PTO to cover the hours she was not working. As the claimant was aware she was supposed to report her tardiness and not misrepresent information on employer documentation, her failure to do so constituted deliberate misconduct in wilful disregard of the employer's interests under G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 334-FH5N-KNJ6

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 December 12, 2024. She filed a claim for unemployment benefits with the DUA, effective December 8, 2024, which was denied in a determination issued on May 9, 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 July 16, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or 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 reasons for the claimant's separation. Both parties 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 employer did not meet its burden to show that the claimant knowingly violated a uniformly enforced policy or engaged in deliberate misconduct in wilful disregard of the employer's interests, 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 for her latest employer, a medical billing and coding company, as a supervisor of the medical records department from September 6, 2016, to December 12, 2024. The claimant's salary was \$58,000 per year.
2. The claimant was initially hired as an in-office employee. Due to COVID, the claimant's status changed in 2020 to fully remote.
3. The employer maintains a written Standards of Conduct policy in its employee handbook, which states in pertinent part: Among other things, the following may result in disciplinary action, including discharge:
 - Providing false information on any employee application, personnel record or document, including absences, sickness, or production-related records;
 - Not being ready to begin to work at the start of shift... leaving before the end of shift;
 - Excessive absenteeism or tardiness
 - Absence from work without notifying the employee's supervisor or absence without an excuse acceptable to the employee's supervisor...
4. The purpose of the Standards of Conduct policy is to inform employees of the behavior expected of them by the employer.
5. The policy applies to all employees.
6. Violations of the Standards of Conduct policy are met with disciplinary action as deemed appropriate under the circumstances of the individual situation from warnings up to termination.
7. All prior confirmed violations concerning time theft have resulted in termination of the employee.
8. The claimant received the employee handbook upon hire in September of 2016.
9. The claimant is responsible for enforcing the Standards of Conduct policy in her department and reporting violations to her manager.
10. On October 8, 2024, the claimant was instructed by her manager to return to in-person working with the final work hours of 7:00 a.m. to 3:30 p.m., effective October 14, 2024. The change to in-person was due to management's concerns regarding the claimant's performance of her supervisory responsibilities.
11. On October 8, 2024, the claimant confirmed in an email her understanding of the need for improvement and the change to in-person hours of 7 a.m. – 3:30 p.m.

12. On or about December 10, 2024, the claimant's manager, who worked remotely, requested the human resource department review the building video camera recordings to determine if the claimant had been attending work the hours as she was scheduled.
13. On December 2, 2024, the claimant was observed on video arriving at the office building at 11:20 a.m. The claimant did not notify her supervisor that she would be late, nor did she request personal time off for the hours she was not at work.
14. On December 3, 2024, the claimant was observed on video arriving at the office building at 9:42 a.m. The claimant did not notify her supervisor that she would be late, nor did she request personal time off for the hours she was not at work.
15. On December 4, 2024, the claimant was observed on video arriving at the office building at 9:28 a.m. The claimant did not notify her supervisor that she would be late, nor did she request personal time off for the hours she was not at work.
16. On December 5, 2024, the claimant was observed on video arriving at the office building at 9:59 a.m. The claimant did not notify her supervisor that she would be late, nor did she request personal time off for the hours she was not at work.
17. On December 12, 2024, the claimant met with the senior director of human resources and the director of medical records. The human resource director informed the claimant of her investigation and review of the building video recordings. She asked the claimant why she arrived late December 2nd through December 5th. The claimant told her that she was having trouble waking up. The human resource director asked the claimant why she did not inform her supervisor that she was going to be late or enter PTO for the time she was not in the office. The claimant did not answer the question.
18. On December 12, 2024, after the initial meeting with two directors, the claimant met with the human resource director alone. The claimant informed the human resource director that she had a medical procedure in November with prescribed medication which causes her to have a difficult time waking up in the mornings.
19. On December 12, 2024, the claimant's employment was terminated [sic] falsifying time records and stealing time from the company.

Credibility Assessment:

The claimant testified to mitigating circumstances for her tardiness and that she worked late to make up the lost time. However, the claimant did not provide any corroborating evidence, therefore, a credibility assessment is necessary.

The claimant's testimony is generally found to be lacking credibility. The claimant provided conflicting responses from the first hearing to the second hearing, she stated that her hours were set at 8 a.m.-4:30 in the first hearing and stated that she

was aware that her hours were 7 a.m. to 3:30 p.m. in the second hearing. In the first hearing, the claimant testified that she always informed the employer when she was running late, in the second hearing, the claimant testified she did not always call to say running late because if she answered a work call, she was working from home as she was getting ready for work. In the first hearing the claimant stated that she did not tell the employer about her medical issue and the medication causing the difficulty because it was personal and private, and in the second hearing, the claimant stated that she did not tell the employer about her medication issue causing difficulty waking up because she was still doing the job.

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 conclusion is free from error of law. Upon 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 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 was 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 maintains a policy prohibiting employees from falsifying employer documentation and being absent from or tardy to work without notifying the employer. Consolidated Findings # 3. However, as it retains discretion over how to discipline employees who violate that policy, it has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* rule or policy. See Consolidated Finding # 6.

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 the claimant engaged in the misconduct for which she was discharged.

In this case, the employer discharged the claimant because she falsified time records and stole time from the company when she reported to work late without notifying her employer or taking PTO for the time she was not in the office. Consolidated Findings ## 17 and 19. Following remand, the review examiner rejected as not credible the claimant's assertion that she had not falsified time records or stolen time. See Consolidated Findings ## 13–16. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. See School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). As the claimant provided internally inconsistent testimony, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

Pursuant to the review examiner's credibility assessment, the claimant reported to work late on multiple occasions and failed to notify the employer that she was tardy. See Consolidated Findings ## 13–16. Because she did not notify the employer or use PTO to cover her tardiness, the consolidated findings confirm the claimant engaged in the misconduct for which she was discharged.

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 confirmed at the remand hearing that she understood the employer's attendance policies and understood that it expected her to report to work as scheduled.¹ As the claimant was responsible for enforcing the employer's Standards of Conduct policy, we can reasonably infer that she understood the employer expected her not to misrepresent her hours worked on employer records. Consolidated Findings ## 3 and 9. Therefore, we can reasonably infer that the claimant understood that her failure to account for her tardiness either by notifying her manager or requesting PTO was contrary to the employer's expectations. See Consolidated Findings ## 13–16.

Inasmuch as the employer paid the claimant based on an agreement that she would work a certain number of hours each week and would work a specific schedule each day, its expectations around attendance and standards of conduct are facially reasonable.

Finally, we need not consider whether the claimant presented mitigating circumstances for her misconduct, because she maintained she had not misrepresented her time worked to her employer. The defense of mitigation is not available to employees who deny engaging in the behavior leading

¹ The claimant's testimony in this regard 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).

to discharge. *See Lagosh v. Comm'r of Division of Unemployment Assistance*, No. 06-P-478, 2007 WL 2428685, at *2 (Mass. App. Ct. Aug. 22, 2007), *summary decision pursuant to rule 1:28* (given the claimant's defense of full compliance, the review examiner properly found that mitigating factors could not be found).

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

The review examiner's decision is reversed. The claimant is denied benefits for the week of December 8, 2024, 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 - October 21, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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.

LSW/rh