

The claimant submitted his resignation notice. Because the employer had a business practice of not allowing employees in managerial positions to work through their notice period, it discharged the claimant immediately. The Board held that discharging a claimant because he gave his resignation is not misconduct. Thus, the claimant was eligible for benefits during his notice period pursuant to G.L. c. 151A § 25(e)(2).

**Board of Review
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Issue ID: 334-FHHT-4F7M

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 we affirm in part and reverse in part.

The claimant separated from his position with the employer on October 20, 2024. He filed a claim for unemployment benefits with the DUA, effective October 13, 2024, which was denied in a determination issued on March 29, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on April 30, 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). 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was eligible for benefits because he was discharged for giving his resignation notice 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 a kitchen supervisor for the employer from August 2023 through 10/20/24.
2. In 2024, the claimant wanted to change his work schedule so he could have time to visit with his young nephew.

3. The employer was unable to accommodate the claimant's schedule change due to business needs.
4. The employer offered the claimant alternate days off, but the claimant chose not to accept the employer's offer.
5. On 10/20/24, the claimant left his letter of resignation on the employer's desk after he finished his shift.
6. The claimant quit his job for personal reasons to spend more time with his family.
7. The claimant indicated that he would work out a notice period until 11/17/24.
8. Before the claimant's next shift, the employer called him and indicated that they did not need him to work out his notice period.
9. For business reasons, the employer did not allow the claimant to work out his notice period because they typically did not allow individuals in management positions to work out their notice periods.
10. The claimant's job was not in jeopardy at the time of his resignation.
11. The claimant began working full-time for another employer as of 11/20/24 and stopped claiming unemployment benefits.

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 agree the claimant is eligible for benefits but only for a finite period of time.

The findings show that the claimant left his letter of resignation on the employer's desk after he completed his shift on October 20, 2024. *See Finding of Fact # 5.* He offered to work until November 17, 2024, as his last day of work. *See Finding of Fact # 7.* The findings also show that the employer contacted the claimant to inform him that it did not need him to work out his notice period, ending his employment effective immediately. *See Finding of Fact # 8.* Thus, the employer chose to discharge him rather than have the claimant continue to work through his notice period.

Where a claimant is discharged from employment, his 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, . . .

“[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).

As a threshold matter, the employer must demonstrate that the claimant's termination was attributable to some sort of misconduct or rule violation. Here, there is no evidence of any wrongdoing by the claimant. The findings reflect that, after the claimant completed his shift, he submitted a letter of resignation to the employer. *See* Finding of Fact # 5. His reason for doing so was because he wanted to spend more time with his family. *See* Finding of Fact # 6. The claimant intended to work for the duration of his notice period and intended for his resignation to become effective on November 17, 2024. *See* Finding of Fact # 7. However, because the employer typically does not allow individuals in management positions to work out their notice period, the claimant was discharged. *See* Findings of Fact ## 1, 8 and 9. Without any evidence of any wrongdoing or rule violation, and we see none, submitting a letter of resignation is not misconduct.

Therefore, we agree with the review examiner's conclusion that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced policy or rule of the employer and, thus, is eligible for benefits beginning October 20, 2024.

However, we disagree with the portion of the review examiner's decision that states the claimant was eligible for benefits indefinitely thereafter under the provisions of G.L. c. 151A, § 25(e)(2). The employer discharged the claimant on October 20, 2024, effectively causing him to be unemployed. The claimant intended to resign on November 17, 2024. *See* Findings of Fact ## 6–8. Based upon these facts, the claimant's eligibility for benefits after November 17, 2024, is governed by the separate provision pertaining to voluntary separations, G.L. c. 151A, § 25(e)(1). For this reason, the claimant's eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(2), is limited to the notice period.

Simply stated, the claimant is eligible for benefits for the weeks between the discharge date, October 20, 2024, and the effective date of the resignation, November 17, 2024.

We, therefore, conclude as a matter of law that the claimant was eligible for benefits for the four weeks following his discharge by the employer pursuant to G.L. c. 151A § 25(e)(2).

The review examiner's decision is affirmed in part and reversed in part. We affirm the portion of the review examiner's decision that the claimant is eligible for benefits for the period beginning October 20, 2024. We reverse the portion of the review examiner's decision that renders the claimant eligible for benefits indefinitely. The claimant is entitled to receive benefits for the four weeks ending October 26, November 2, 9, and 16, 2024, if otherwise eligible.

The DUA will be asked to investigate the claimant's eligibility for benefits under G.L. c. 151A, § 25(e)(1), beginning on the effective date of his resignation, November 17, 2024, and thereafter.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 26, 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.

DY/rh