

The claimant was discharged because the employer asserted he was insubordinate to supervisors on three different days prior to his discharge. Because the review examiner reasonably rejected as not credible the employer's hearsay testimony about the claimant's actions, the employer did not meet its burden to show the claimant engaged in the alleged misconduct. Therefore, the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review**  
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**Issue ID: 334-FHJ5-M6V3**

### 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 September 9, 2024. He filed a claim for unemployment benefits with the DUA, effective September 29, 2024, which was approved in a determination issued on December 6, 2024. 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 February 25, 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 allow the claimant an opportunity to present testimony and evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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's discharge for insubordination constituted deliberate misconduct in wilful disregard of the employers' interest, 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 employer is a manufacturer. The claimant worked as a calenderer for the employer. The claimant worked for the employer from 11/14/2022 to 9/9/2024.
2. A certain manager (Supervisor 1) supervised the claimant.
3. The employer had a lead worker (Lead Worker 1). Lead Worker 1 had the authority to supervise the claimant when Supervisor 1 was not at work.
4. The employer did not allow the claimant to commit insubordination. The employer expected the claimant to comply with work instructions.
5. The claimant worked on 8/29/2024. The claimant worked in his assigned work area. The claimant worked on a certain task. Supervisor 1 approached the claimant. Supervisor 1 asked the claimant how long he had been working on the task. The claimant responded that he had been working on the task for twenty minutes. Lead Worker 1 asked the claimant several questions about the task. The claimant determined Supervisor 1 did not believe him based on the questions. The claimant directed Supervisor 1 to ask Lead Worker 1 for verification. Lead Worker 1 worked next to the claimant. The claimant did not refuse to perform any work on 8/29/2024.
6. The claimant worked on 8/30/2024. The claimant did not refuse to perform any work.
7. The claimant worked on 9/6/2024. The employer's inventory control specialist (Specialist 1) directed the claimant to assist another worker (Worker X). The claimant complied. Later, Specialist 1 told the claimant that Worker X did not need his assistance anymore and she directed the claimant to help another worker (Worker Z). Worker X did continue to need the claimant's assistance. The claimant then went to assist Worker Z. Worker Z told the claimant that he did not need help. The claimant did not refuse to perform any work on 9/6/2024
8. The employer created a document. The document is titled "Employee Performance Improvement Plan Notice." The document is dated 9/9/2024. The document indicates that the employer discharged the claimant. The document reads:

8/29/24: Stock Prep supervisor went to check on the status of a hot jobs assigned to [the claimant]. When asked why the job was not complete, [the claimant] responded dismissively to "go talk to [area lead]." The supervisor asked [the claimant] again and the claimant continued to "go talk to [area lead]." The supervisor then asked how long ago he had been given the job and again was evasive and continued to tell his supervisor to go talk to [area lead]. The supervisor asked again how long ago he had started the job and [the claimant] replied about 20 mins to a ½ hour ago. The supervisor went to verify this information with the lead, [area lead], who responded that the Inventory Control Specialist had asked [the claimant] to work this job over an hour ago. The

supervisor verified this information with the Director of Process and Facilities by watching the surveillance videos. Additionally, while watching the videos, it was observed that [the claimant] milled and left pigs of rubber unattended and against best practices and procedures of the area which [the claimant] has been trained on. Also, [the claimant] was observed spinning and throwing scissors up in the air which is a clear violation of our safety policies.

8/30/24: (Note both the Stock Prep Supervisor and the Materials Manager were on vacation). There were 4 jobs that needed attention (2 silicone and 2 rubber). [The claimant] was asked to do the 2 rubber jobs by the area lead. [The claimant] refused stating that the lead could do all the jobs and did not do any of the jobs. The lead completed all the jobs while [the claimant] stood by.

9/6/24: The Inventory Control Specialist asked [the claimant] to complete some hot jobs on the calendar. [The claimant] replied that he was helping a coworker. The Inventory Control Specialist pointed out the coworker no longer needed any assistance. [The claimant] continued to stand there, and the Inventory Control Specialist had to repeat herself several times before [the claimant] had finally begun the jobs needed.”

9. The employer discharged the claimant on 9/9/2024 because it determined that he was insubordinate on 8/29/2024, 8/30/2024, and 9/6/2024.

#### Credibility Assessment:

In the hearing, the employer testified about what happened on 8/29/2024. The employer testified that the claimant was flippant to Supervisor 1 and was dismissive of Supervisor 1. In the hearing, the employer testified about what happened on 8/30/2024. The employer testified that a supervisor instructed the claimant to perform a certain task and the claimant refused to perform the task. In the hearing, the employer testified about what happened on 9/6/2024. In the hearing, the employer testified that a supervisor instructed the claimant to perform a certain task and the claimant refused to perform the task. In the hearing, the claimant testified about what happened on 8/29/2024, 8/30/2024, and 9/6/2024. The claimant's accounts differed from the employer's accounts. Given the totality of the testimony and evidence presented, the claimant's testimony about what happened on 8/29/2024, 8/30/2024, and 9/6/2024 is accepted as more credible than the employer's accounts about what happened on those days because the employer did not present any witnesses to any of the interactions. The employer did not submit any written sworn statements from any witnesses to any of the interactions.

#### 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 initial legal conclusion and conclude that the claimant is entitled to benefits.

Because the claimant was discharged from his 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, 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 did not present evidence that it maintains a policy or rule prohibiting employees from refusing to follow managers' instructions or from engaging in insubordination. Absent such evidence, the employer has not shown that it discharged the claimant for a knowing violation of a reasonable and uniformly enforced rule or policy.

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 under this provision, the employer must first show that the claimant engaged in the misconduct for which he was discharged.

In this case, the employer claimed that it discharged the claimant for refusing to perform tasks as directed by supervisors on August 29, August 30, and September 6, 2024. Consolidated Finding # 8. After remand, the review examiner rejected as not credible the employer's contention that the claimant had refused to perform tasks as directed by his supervisors on the three days at issue. *See* Consolidated Findings ## 5–7. 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).

Although both parties presented differing testimony regarding the alleged incidents that precipitated the claimant's discharge, the review examiner accepted the claimant's direct testimony about what happened and rejected the employer's contentions as not credible, because neither employer witness had observed the incidents themselves, and because the employer also failed to provide written, sworn statements from anyone who personally witnessed the alleged incidents. The employer's witnesses were only able to provide hearsay evidence of the claimant's

actions on either day. Hearsay evidence is admissible in informal administrative proceedings and may constitute substantial evidence on its own if it contains “indicia of reliability.” Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), *quoting* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 530 (1988). However, because the employer’s witnesses had no firsthand knowledge of the claimant’s alleged misconduct and failed to provide contemporaneous evidence confirming their allegations of misconduct, we agree the evidence lacks indicia of reliability. We accept the review examiner’s credibility assessment favoring the claimant’s direct testimony as supported by a reasonable view of the evidence.

Given the review examiner’s credibility assessment and corresponding findings, the employer has not shown that the claimant acted contrary to an employer policy or expectation on August 29, August 30, and September 6, 2024. *See* Consolidated Findings ## 5–7.

We, therefore, conclude as a matter of law that the employer has failed to demonstrate that the claimant’s discharge was due 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, pursuant to G.L. c. 151A, § 25(e)(2).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending September 14, 2024, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 16, 2025**



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](http://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.

JPCA/rh