

The employer incorrectly assumed the claimant quit his position when a receiver was appointed to run the long-term care nursing facility. Because the employer failed to show that the claimant violated a rule or policy or otherwise engaged in misconduct, the Board held that the claimant is entitled to benefits pursuant to G.L. c. 151A, § 25(e)(2).

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

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 April 3, 2024. He filed a claim for unemployment benefits with the DUA, effective April 14, 2024, which was approved in a determination issued on May 10, 2024. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, where the first session was attended by both parties and the second session was attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on March 1, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left his employment without good cause attributable to the employer or for an urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). 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 obtain further evidence about the claimant's separation. Both parties 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 had quit his job as an administrator after a receiver was appointed, is supported by substantial and credible evidence and is free from error of law.

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 the instant employer as an Administrator from 2015 until his last physical day of employment on 4/2/2024.
2. The employer's business is long term care nursing facility.

3. On 4/2/2024, two petitioners appeared for a court hearing for a petition in Suffolk Superior Court, under the Patient Protection Act, to request appointment of a temporary receiver in order to protect more than 70 of its residents and patients from imminent danger of physical injury or death. The petition stated that a temporary receiver was necessary to protect the immediate health and safety of the facility residents by ensuring they receive the care and support they need and to protect the health and safety of the residents during the coming weeks by taking measures to ensure the facility retain adequate vendors and staff.
4. While in court for the hearing, employees provided allegations that residents did not have food at times, employees were buying food themselves, there were issues with no colostomy bags, a resident was accosted by the Administrator's dog, residents had been losing weight, a dietitian was a no show and there were [sic] a lack of funds to pay staff.
5. The claimant was at the petition hearing and disagreed with all the allegations raised except the issues with colostomy bags.
6. The claimant did not have any opportunity to respond to the allegations at the petition hearing.
7. There was an industry wide shortage of colostomy bags at that time, and the claimant had been using alternative means to secure catheter bags.
8. The claimant's job duties as an Administrator were to oversee all operations of the facility which centered around providing skilled care for the residents. The Administrator duties include responsibility for staffing, finances and supplies.
9. The claimant's duties are related to the health and safety concerns referred to in the court order.
10. The claimant did not engage in any deliberate conduct during his employment which placed the residents' health and safety at risk.
11. At the end of the day on 4/2/2024, the claimant removed a few of his personal belongings including his dog's bed from his office leaving various personal belongings behind including a shirt, jacket, and wardrobe closet.
12. The claimant did not work on 4/3/2024.
13. During the evening of 4/3/2024, the claimant saw on the news that the court had appointed a receiver for the facility.
14. The claimant decided to wait to hear from the employer about his employment status after seeing the court decision in the news.

15. On 4/3/2024, a Suffolk Superior Court judge issued an 11-page decision which approved the petition and appointed an attorney as the receiver to manage and operate the employer's nursing home facility.
16. The 11-page decision does not make any mention of the Administrator's position.
17. The Appointed Receiver read the approved petition on 4/3/2024 and felt there were irregularities that took place based on the content that he read in the 11-page decision.
18. The Appointed Receiver did not review any other documentation regarding the irregularities which led to his appointment.
19. The Appointed Receiver hired the Executive Assistant on 4/3/2024 to assist him with the court ordered receivership.
20. The Appointed Receiver and the Executive Assistant are not aware of the claimant violating any employer policy or expectation.
21. The claimant was not made aware that he engaged in actions that violated employer policies or expectations.
22. After being appointed on 4/3/2024, the Appointed Receiver was told by employees that on 4/2/2024, the claimant removed his personal belonging from his office, told staff that was "out" and left the facility.
23. The Appointed Receiver and the Executive Assistant did not reach out to the claimant after hearing from employees telling staff that he was "out."
24. The Appointed Receiver and the Executive Assistant and [sic] interpreted that the claimant quit his employment when he removed his belongs and told staff that he was "out."
25. The Appointed Receiver did not have any plan to have the claimant continue working in a different position.
26. The Executive Assistant reviewed multiple employer bank accounts such as payroll, a general account and resident account, which all were used by the claimant to pay bills, staffing and any expenses related to the operations of the facility.
27. The bank accounts had minimal funds to operate and insufficient funds in the payroll account. The bank accounts had minimum funds on a regular basis when paying operation expenses.

28. The claimant had issued checks from the various the [sic] accounts for preplanned operations bills and attorney fees prior to leaving on 4/2/2024.
29. The claimant had the authority to spend the funds for operational purposes.
30. The claimant did not completely deplete the bank accounts.
31. The Appointed Receiver and the Executive Director have not conducted their own investigation regarding any claimant misconduct with determinations to be made outside of the employment process.
32. The Appointed Receiver and the Executive Director have been contacted by the FBI and Attorney General regarding the finances of the facility.
33. The Appointed Receiver and the Executive Director are unaware if any investigation has been concluded or any determination issued.
34. The claimant has not been contacted by the FBI or Attorney General, however he has been contacted by the IRS about reviewing prior tax returns.
35. The claimant has not been criminally charged.
36. On 4/3/2024 at 6:12 p.m., the Appointed Receiver sent an email to a Human Resources employee which stated the following, "Dear (name), Thank you for attending my zoom meeting today. Please be advised that with my appointment as Receiver today, (claimant's name), the president, is removed from his position, and full authority for the (employer name) rests with me. Accordingly, I am directing you that from today forward you issue no checks and cancel all benefits previously authorized by (claimant's name), specifically, you are directed to cancel any credit cards, cell phones and other devices immediately. Should you have any questions taking this action, please contact me immediately. Thanks."
37. The Appointed Receiver sent this email because he had assumed that the claimant quit his employment.
38. On 4/4/2024, the claimant had a medical appointment and did not report to work or contact the employer.
39. The Appointed Receiver and the Executive Assistant did not contact the claimant.
40. The claimant continued to remain out of work waiting to hear from the employer or the Appointed Receiver about his employment status.

41. On 4/7/2024, the employer blocked the claimant's access to his work email, and the company issued mobile phone because he was no longer employed effective 4/3/2024, when he was considered to have quit.
42. Nobody from the employer notified the claimant that his employment had ended effective 4/3/2024, because he was considered to have quit.
43. After not hearing from the employer and after noticing his access was removed, the claimant assumed the employer decided to terminate his employment.
44. The claimant did not reach out to the employer inquiring if his employment was terminated because he assumed they decided to move on.

Credibility Assessment:

At the hearing, the Executive Assistant contended the employer's bank account were [sic] cleaned out by the claimant upon her arrival. When further questioned about amounts and details of the cleaning out of accounts as was testified, the Executive Director provided vague details and lacked knowledge of how many checks or amounts. No written proof was provided by the employer to support this spending contention. The claimant provided clear and concise testimony that the employer's bank account had minimal funds on a regular basis when paying operational and testified that there were minimal funds left in the account prior to his last day on 4/2/2025 [sic]. The claimant's testimony was accepted as credible in this contested area due to the above reasons.

At the hearing, the Executive Director contended that the claimant removed all his personal belongings including his dog's bed from his office prior to leaving on 4/2/2024. The Executive Director then contended that the claimant left his belongings in 10-15 packed boxes in his office prior to leaving on 4/2/2024. The claimant provided clear and concise testimony that he removed a few of his personal belongings including his dog's bed from his office leaving various personal belongings behind including a shirt, jacket and wardrobe closet. Due to the inconsistent and generalized testimony of the Executive Director, the claimant forthright and detailed testimony was accepted as credible in this contested area.

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. In light of the new consolidated findings, we reject the review examiner's original legal conclusion that the claimant is ineligible for benefits, as outlined below.

The initial question to be resolved is whether the claimant quit his employment or instead was discharged. Prior to remand, the review examiner concluded that the claimant voluntarily left his employment on April 2, 2024. The review examiner denied benefits after analyzing the claimant's separation under G.L. c. 151A, § 25(e)(1). After remanding the case, we conclude that the claimant's separation is more appropriately analyzed as a discharge under different provisions of the law.

Determining whether the claimant initiated his separation or instead was discharged requires a close review of the circumstances surrounding his final days of employment. Based solely on the employer's testimony at the initial hearing, the review examiner credited its testimony that the claimant took all his belongings out of the office, told his employees he was "out," and never returned to the employer's facility after April 2, 2024. The review examiner agreed it was reasonable to infer that these actions show the claimant voluntarily left.

After remand and listening to the claimant's testimony, the review examiner found that the claimant did leave some of his personal belongings in his office. *See Consolidated Finding # 11.* On April 3, 2024, the claimant became aware that a receiver had been appointed, and he did not go to work on this day because he was awaiting the receiver to contact him. *See Consolidated Finding # 14.* Then the claimant missed the following day, April 4, 2024, because he had a medical procedure. *See Consolidated Finding # 6.* The claimant testified that he missed work on April 5, 2024, because he needed additional time to recover from the medical procedure. Further, the claimant stated that he returned to the facility briefly to help with something in the kitchen on April 6, 2024, but did not see the receiver.¹

On April 7, 2024, the claimant could no longer access his work email or phone, because the employer restricted his access based on the assumption he had quit. *See Consolidated Finding # 41.* No one from the employer informed the claimant of this assumption. Instead, the claimant became aware of an email exchange where the receiver informed Human Resources that he had removed the claimant from his position effective April 3, 2024. *See Consolidated Findings ## 36, 37, and 42.* The claimant testified that, when he discovered that he no longer had access to his accounts, he called the employer, where he was told by a receptionist that employees were directed to call the police if the claimant was seen at the employer's facility.

On remand, the employer did not deny that it sent the April 3, 2024, email informing Human Resources of the claimant's removal from his position. *See Consolidated Finding # 36.* After being questioned about this email exchange, the employer was insistent in its testimony that the claimant was removed from his position, not because it had discharged the claimant, but because effectively a court order (the Order)² had discharged the claimant.

¹ While not explicitly incorporated into the review examiner's findings, the claimant's testimony in this regard, as well as the portions of his testimony referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record. As such, they are 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).

² The court order mentioned is the Suffolk Superior Court decision dated April 3, 2024, referred to in Consolidated Finding # 15. This document was entered on the record at the original hearing as Exhibit # 8.

In light of the facts that it was undisputed that the employer removed the claimant from his position and blocked his access to company accounts, and that the claimant was informed that he was not allowed back into the facility, the claimant's separation cannot be considered a quit. Even if, as the employer asserts, the Order removed the claimant from his position, this contention supports the conclusion that the claimant did not voluntarily leave his employment.

Because the claimant was discharged, we analyze his eligibility for benefits pursuant to 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's witnesses testified that they were unaware if the claimant violated any policies or expectations. *See Consolidated Finding # 20*. Thus, the employer has not met its burden to show a knowing violation of a reasonable and uniformly enforced rule or policy of the employer within the meaning of G.L. c. 151A, § 25(e)(2). Alternatively, we consider whether the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

As an initial matter, the employer must first prove that the claimant engaged in misconduct.

When questioned about the claimant's alleged misconduct, the employer's witnesses consistently referred to the Order. Although the Order outlines a series of distressing findings related to the health and safety of the employer's residents, the Order does not tie the misconduct to the claimant by his name or his position. *See Consolidated Finding # 16*. From reviewing the Order, the review examiner found that the misconduct cannot be connected to the actions or inactions of the claimant. *See Consolidated Findings ## 6 and 10*. We agree.

The employer's witnesses testified that they could not detail or confirm any of the misconduct which resulted in the Order, because they were not present at the facility when the alleged acts occurred.³ The Order does not meet the employer's burden to show that the claimant engaged in misconduct.

The employer stated that, when they took over the facility, the accounts had minimal funds for operations and payroll. *See Consolidated Findings ## 26 and 27*. The employer alleges that the

³ This portion of the employer's testimony is also part of the unchallenged evidence in the record.

claimant spent these funds for personal reasons, which could be considered an act of misconduct. However, the record lacks substantial evidence to show that the claimant did this. The employer failed to initiate an investigation into the matter. *See Consolidated Finding # 31.* Nor had the employer reviewed the results of any investigations that took place outside the employer. *See Consolidated Findings ## 31–33.*

Meanwhile the claimant asserted that the employer's accounts were frequently low due to operational costs, as was present here, and testified that this is often the case in nursing home facilities. *See Consolidated Finding ## 27, 28, and 30.* Considering the employer's lack of evidence in this matter, the review examiner found the claimant's account more credible, and we see no error in that determination. Because the employer has not met its burden to prove misconduct, it has failed to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

We, therefore, conclude as a matter of law that the claimant did not quit his employment. We further conclude that the employer has not met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, within the meaning of 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 April 2, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 29, 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.

MM/rh