The claimant was discharged because he left early without notifying the employer. Although he had seen other employees leave work early, he did not show he reasonably believed the employer tolerated such behavior, as he conceded he did not know whether those other employees had informed the employer they were leaving or if they had been disciplined for leaving. Held this was deliberate misconduct in wilful disregard of the employer's interest pursuant to G.L. c. 151A, § 25(e)(2), and the claimant is ineligible for benefits.

Board of Review
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Issue ID: 334-FHJ6-K2VP

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 his position with the employer on June 5, 2024. He filed a claim for unemployment benefits with the DUA, effective June 2, 2024, which was denied in a determination issued on October 29, 2024. 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 January 24, 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 remanded the case to the review examiner to obtain additional evidence about 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 claimant did not violate any employer policy or expectation when he left work early on June 4, 2024, because he later requested to use paid time off (PTO), 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 as a molder for the employer from October 14, 2020, until June 5, 2024, when the employer discharged the claimant.

2. The claimant's schedule was 7:00 a.m. to 3:30 p.m., Monday to Friday.

3. The claimant's last rate of pay was $24.15 per hour.

4. The employer's general manager was the claimant's immediate supervisor.

5. On June 4, 2024, the employer's owner met with the claimant and another employee who was also the claimant's girlfriend. The meeting was regarding their dissatisfaction with their raises.

6. During the meeting, the owner stated to the claimant and his girlfriend and that she would not be threatened or gouged for money or bent over a barrel." [sic] The owner further stated that if her parents were still running the business, they would have told them to "shut the fuck up and get out".

7. During the meeting, the claimant and the owner continued to argue about how the company was being run.

8. The claimant was upset and felt blindsided by the meeting.

9. The claimant left the meeting, approached the receptionist's desk to leave and use his PTO for the rest of his shift. The receptionist was not at her desk. The claimant gathered some of his belongings, punched out, left his timecard on the receptionist's desk and left.

10. The claimant did not notify his supervisor prior to leaving because he felt nauseous and threatened by the owner.

11. The claimant called his girlfriend and asked her to inform the receptionist that he would be using PTO for the rest of the day and would return to work the next day.

12. The receptionist refused to note the claimant's PTO and stated to the claimant's girlfriend that she thought the claimant had quit.

13. The receptionist was aware of the meeting and had left to locate the supervisor when she heard loud voices from the owner's office.

14. During the claimant's employment, on several occasions, the claimant would leave his timecard on the receptionist desk after punching out for the day.

15. On June 4, 2024, after the claimant left, the owner sent an email to the claimant stating "We have spoken with HR, and you have abandoned your job by walking out today. Please know that we will pay hours worked on 6/4/24, along

with vacation time owed in the next payroll. Please make an appointment with me directly, (owner's name) to pick up any personal items. If you have any questions, please speak with me directly."

16. On June 4, 2024, in a text message, the claimant asked the supervisor whether he was being fired. The supervisor replied that he is not involved and that the issue was between the claimant and the owner.

17. The next day, on June 5, 2024, the claimant, the supervisor and the owner met. The owner asked the claimant for the key to the office. The claimant replied that he would not be playing games and asked whether he was being fired. The owner replied that the claimant had abandoned his job.

18. On June 5, 2024, after the meeting, the claimant retrieved the rest of his items from his work area.

19. As the claimant left the employer's office, the claimant made derogatory comments to the owner. The police were called to remove the claimant from the premises. The claimant was not arrested.

20. The employer discharged the claimant for alleged job abandonment.

21. The claimant did not intend to abandon his job.

Credibility Assessment:

It is not disputed that the claimant, his co-worker/girlfriend and the owner were the only ones present and that the door to the office was closed during the meeting on June 4, 2024.

The claimant offered testimony corroborated by his co-worker/girlfriend that the owner stated in the meeting, that she would not be "threatened or gouged for money or bent over a barrel." And that "if her parents were still running the business, they would have told them to 'shut the fuck up and get out'".

The owner denies making these statements. The owner testified that the claimant abandoned his job, because he left his timecard on the receptionist's desk and removed his belongings. The claimant testified that when he left on June 4, 2024, the receptionist was not at her desk, so he asked his co-worker/girlfriend to let her know of his PTO request. The claimant's testimony is corroborated by his girlfriend/co-worker. It is not disputed that the receptionist refused to note the claimant's PTO.

Given the totality of the evidence presented, it is concluded that the claimant's corroborated testimony is more credible than the employer's testimony.

It is concluded that the claimant did not intend to quit when he left the employer's location on June 4, 2024.

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 is entitled to benefits.

While the employer maintained that the claimant abandoned his job, the review examiner's findings of fact show that the employer severed its employment relationship with the claimant after he left work on June 5, 2024. Consolidated Findings ## 15-17, and 21. Because the employer initiated the claimant's separation, his eligibility for benefits is properly analyzed under the provisions of 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 owner explained that she made the decision to notify the claimant that he had abandoned his job because he clocked out prior to the end of his shift and did not notify anyone before leaving work. *See* Consolidated Findings ## 15 and 17. However, the employer presented no written attendance policies requiring employees to notify the employer before leaving work prior to the end of their shift. Absent such evidence, the employer has not met its burden to show that the claimant knowingly violated any specific employer 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, the employer must first show that the claimant engaged in the misconduct for which he was discharged.

In this case, there was no dispute that the claimant did not notify anyone before leaving work early on June 4, 2024. Thus, he engaged in the misconduct for which he was fired. As the claimant chose to clock out and leave after discovering the receptionist was not at her desk, his decision not to notify the employer of his departure was self-evidently deliberate. Consolidated Findings ## 9–10.

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).

In her initial decision, the review examiner concluded that the employer had not shown that the claimant acted in wilful disregard of the employer's expectations because he attempted to notify the receptionist before leaving and later asked his girlfriend to notify the employer that he had elected to use PTO for the remainder of the day. *See* Consolidated Findings ## 9 and 11. We disagree.

Inasmuch as the claimant had attempted to notify the receptionist of his decision to leave, his own actions demonstrate that he understood the employer expected him to inform someone if he were going to leave work early and use his PTO. *See* Consolidated Finding # 9. We believe that the expectation is a reasonable way to ensure that the employer is aware that an employee is not working.

When asked why he did not attempt to speak with anyone else prior to leaving, the claimant asserted that he assumed that it was okay to leave without notifying anyone because he had previously witnessed another employee leave work early on multiple occasions.[1]

It is true that, if an employer allows employees to bend a work rule without consequence, it is reasonable for a claimant to believe that such conduct is acceptable to the employer. *See* New England Wooden Ware Corp. v. Comm'r of Department of Employment and Training, 61 Mass. App. Ct. 532, 535 (2004) ("[f]ailure to enforce a policy uniformly, whether to the employee's benefit or detriment, still influences the employee's belief regarding the consequences of his actions."). However, in this case, the claimant testified that, although he had seen one employee leave early on multiple occasions, he conceded that he had no knowledge of whether that employee had informed someone of his decision to leave or if the employer had issued him any disciplinary action for leaving. Moreover, the claimant's girlfriend, who had also witnessed the other employee leave early on multiple occasions, confirmed that she understood that employees were required to

[1] While not explicitly incorporated into the review examiner's findings, the portions of the claimant's testimony here and referenced below are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

obtain permission from the employer's general manager.[2] Because the claimant had no information from which he might reasonably infer that the employer would tolerate his decision to leave on June 4th without notice, its subsequent decision to terminate the claimant cannot fairly be characterized as a surprise.

The claimant also testified that he did not attempt to notify his supervisor of his decision to leave early because he felt nauseous and threatened following his argument with the owner. Consolidated Finding # 10. His testimony in this regard speaks to possible mitigating circumstances for his misconduct. 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 claimant's frustration following his interaction with the owner may have been understandable. However, it did not preclude him from notifying the general manager of his decision to leave. Thus, the claimant has not shown that circumstances beyond his control precluded him from notifying the employer that he was leaving early on June 4, 2024.

We, therefore, conclude as a matter of law that the claimant's discharge was attributable to deliberate misconduct in wilful disregard of the employer's interest 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 October 25, 2024, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 16, 2025

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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:

[2] This portion of the girlfriend's testimony is also part of the unchallenged evidence in the record.

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