

The claimant did not engage in a policy violation or misconduct when she notified the employer that she would quit as soon as she found another job. Therefore, the employer failed to meet its burden under § 25(e)(2), and the claimant is eligible for benefits.

**Board of Review
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Issue ID: 334-FHJ8-67D3

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 affirm.

The claimant was discharged from her position with the employer on August 28, 2024. She filed a claim for unemployment benefits with the DUA, effective September 29, 2024, which was denied in a determination issued on January 16, 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 February 20, 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 pertaining to the reason for the claimant's termination. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. We subsequently remanded a second time for subsidiary findings from the record and new consolidated findings of fact were issued. 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 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, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant was discharged for expressing her intention to quit after she found new employment.

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 the instant employer as a Caregiver from December, 2021 until her last physical day of employment on 8/28/2024.
2. The employer has a written policy in a handbook titled Standards of Conduct, which states, "Each employee has an obligation to observe and follow the company's policies and to maintain proper standards of conduct at all times. If an individual's behavior interferes with the orderly and efficient operation of a department, corrective disciplinary measures will be taken. Disciplinary action may include a verbal warning, written warning, suspension with or without, and/or discharge. The appropriate disciplinary action imposed will be determined by the company. The company does not guarantee that one form of action will necessarily precede another. Among other things, the following may result in disciplinary action, up to and including discharge: violation of the company's policies or safety rules; insubordination; unauthorized or illegal possession, use or sale of alcohol or controlled substances on work premises or during working hours, while engaged in company activities or in company vehicles; unauthorized possession, use or sale of weapons, firearms or explosives on work premises; theft or dishonesty; physical harassment; sexual harassment; disrespect towards fellow employees, visitors or other members of the public; performing outside work or use of company property, equipment or facilities in connection with outside work while on company time; poor attendance or poor performance. These examples are not all inclusive. We emphasize that discharge decisions will be based on an assessment of all relevant factors."
3. The claimant was never provided with a copy of the employer's handbook or policies.
4. After the claimant's hire in 2021, the employer started requiring new employees to acknowledge the receipt of the employee handbook.
5. While employed, the employer never issued the claimant and [sic] verbal or written warnings.
6. In February, 2024 and May, 2024, the claimant sent a [sic] text messages to the owner stating that she needed hours but not the stress. The claimant stated that she was thinking of taking a break and going to unemployment.
7. The claimant did not submit her resignation and continued to work for the employer.
8. The employer did not issue the claimant any warnings for stating that she was thinking of resigning.
9. The employer does not have any written rule or policy which addresses employees who offer to leave or threaten to quit employment.

10. In May and July, 2024, the claimant sent multiple text messages that included profanities to her supervisor. The claimant wrote that she was going to flip out on her co-worker and that she would end up exploding if the supervisor did not speak to the co-worker about her failure to perform her duties and her failure to perform them properly.
11. In July, 2024, the claimant sent a text message to her supervisor stating her dissatisfaction with other [sic] caregiver not breaking down boxes for the same client. The claimant wanted the other caregiver to assist with the cleaning duties for the client and stated she was going to end up flipping out on her.
12. The claimant had yelled at her co-worker informing her that she should not have to pick up after her.
13. The supervisor responded by text message informing the claimant that the caregivers were there for the client's care, and she was not too worried about them breaking down boxes, rather she was more concerned with ensuring the client was safe.
14. In August, 2024, the claimant had been working with other employees in the same client home for a husband and wife. The claimant was assigned to care for the wife and other employees had been assigned to care for the husband.
15. The employer had previously explained to the claimant that her co-worker, who cared for the husband on some of the days that the claimant worked, had to wait until the husband went [sic] asleep between 6:00 p.m. and 7:00 p.m. to perform her cleaning duties, such as washing the dishes used during breakfast and lunch.
16. The claimant typically left the client's home at 4:30 p.m., and she would not be present when her co-worker performing [sic] cleaning duties in the evening.
17. On 8/20/2024 at 5:05 p.m., the claimant sent the following text to the owner, "well, that's fine (owner's name). I have no problem with that because all that's going to mean for me is less work now. I don't have to pick up after them so just know that since (client name) aide are just there to sit there and literally watch (client name) all day and they...."
18. The claimant's text message continued with, "I'm serious since you do not want you help me in anyway all you do is makes excuses for these girls and I'm sick of it, I am currently looking for another job just to let you know and AS SOON AS I FIND ANOTHER JOB, I WILL BE GIVING YOU MY TWO WEEKS NOTICE! Because I am completely sick and tired of working my ass off all time I've been with you for how many years and all my clients have loved me and they never want another aid to come in because they like I do things and they know that I know what I have to do so sorry that you guys get mad that you're losing out on pay because you can't get another aid to go in there half of

- the age you're hiring these older people can't even understand (owner's name) I don't know what your getting your company into but all I know is the company that I started working for and the company that is now Are two completely different companies and I no longer want my name attached to this company. I do my work and I do my work, I don't make excuses. OK if you."
19. The claimant's text message continued with, "excuse the girl on Saturday has no problem getting everything done and watching (client's name) she's actually a good employee and friend me. But honestly, I don't even think you know what you hired and the people and the laziness but that's fine if that's what you want your company to be absolutely fine (owner's name), but I am not gonna be part of it as soon as I find another job, I am out of here. I'm sick of being miserable at my fucking job every day because my boss nor the lady that is supposed to be in charge of the scheduling ever does anything and you guys always say I'll come to me if you have any problems, blah blah blah Well."
 20. The claimant had not secured new employment and did not give her resignation notice.
 21. The claimant used profanity because she had been begging for more hours and because other employees were not performing job duties.
 22. The owner spoke with the claimant's supervisor, who informed the owner that the claimant had used profanities in prior text message exchanges.
 23. The owner was dissatisfied with the claimant threatening to quit again and over the course of the next week as well as her use of profanity and owner made the decision to terminate the claimant's employment.
 24. On 8/28/2024 at 11:08 a.m., the owner sent the claimant the following text message, "(claimant's name), based on your recent text to me your employment at "employer's name" is terminated, effectively immediately. Your final pay for last week and this week will be direct deposited to your bank account."
 25. The owner sent an additional text message to the claimant which stated, "Timing has nothing to do with next week. You forced my hand with that last text. This is the second threat of quitting. There is not a boss in the world that would employ somebody who says what you said below even once and this is your second time threatening me. I wish you good luck, but I can't have that. I think it's best for both parties."
 26. The employer copied, pasted and sent the claimant the following text messages; "I am currently looking for another job just to let you know as AS SOON AS I FIND ANOTHER JOB, I WILL BE GIVING YOU MY TWO WEEKS NOTICE!", "I no longer want my name attached to this company", and "as soon as I find another job. I am out of here. I'm sick of being miserable at my fucking job every day."

27. The owner did not send the claimant a separate interoffice memo or memoranda further explaining the reason for her termination.
28. The claimant was unaware that informing the employer that she planned to resign after she secured new employment would result in her termination.

Credibility Assessment:

The owner contended that somebody from the employer should have emailed the claimant a copy of the employer's handbook at the time of hire. The claimant testified that she was never emailed or provided with a company handbook containing the employer's policies at the time of hire. The claimant's direct first-hand testimony is [sic] this contested area was given more credibility due to the owner's overall vague contention with no evidence to support the [sic] such contention.

The owner contended that the claimant would have been discharged for her use of profanity, even if she had not threatened to quit. This contention by the owner is not accepted as credible given the owner waited 8 additional days to terminate the claimant's employment. Upon terminating the claimant 8 days later, the owner sent a text message to the claimant stating that she forced his hand since it was her second time threatening to quit. The owner did not make any mention of termination for profanity in the final text message exchange, which further diminished the credibility of his contention.

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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is entitled to benefits.

Because the claimant was discharged from 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).

As a threshold matter, the employer must show that the claimant’s discharge was attributable to some sort of misconduct or rule violation. Here, there is no evidence that the claimant did anything wrong relative to her discharge. As the review examiner explained in his credibility assessment, the employer was dissatisfied with the claimant’s use of profanity in the workplace, but she was not discharged for this reason. The employer terminated the claimant’s employment because she notified the employer of her intention to leave as soon as she found another job. *See Consolidated Findings ## 23–27*. Since there is nothing in the record to indicate that the claimant’s notice to the employer about looking for other employment violated an employer policy or constituted misconduct, she may not be disqualified from receiving unemployment benefits under G.L. c. 151A, § 25(e)(2).

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant’s separation was due to a knowing violation of a reasonable and uniformly enforced policy or 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 affirmed. The claimant is entitled to receive benefits for the week ending August 31, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 30, 2025



Charlene A. Stawicki, Esq.
Member



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

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.

SVL/rh