The claimant did not willfully disregard his employer's interest, where his supervisor had advised him to take extended lunch breaks in order to minimize overtime. His is not disqualified pursuant to G.L. c. 151A, § 25(e)(2), because he did not believe his decision to take an extended lunch on February 21st would be unacceptable to the employer.

Board of Review
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Member
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Member

Issue ID: 334-FHJD-VH38

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 separated from his position with the employer on February 28, 2025. He filed a claim for unemployment benefits with the DUA, effective March 9, 2025, which was approved in a determination issued on April 12, 2025. 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 May 21, 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 obtain additional evidence pertaining to the reasons for the claimant's separation. Only the claimant 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's decision to take an extended lunch break on February 21, 2025, constituted deliberate misconduct in wilful disregard of the employer's interests, 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. From December 9, 2024, until February 28, 2025, the claimant worked as a full-time (40 hours per week) field life insurance agent for the employer, a membership organization.

2. The claimant reported directly to the employer's field life insurance sales team leader (the supervisor).

3. The employer maintained an attendance policy, contained within its employee handbook, to ensure its employees are at work for their scheduled shifts. The policy read, in relevant part, "[…] employees are expected to be at their workstations on time and ready to work for their complete shifts, as scheduled. […] […] an Absence is defined as any variance between an employee's scheduled work shift and the actual hours worked. This includes an unplanned late arrival, early departure or full day out of work. […] Partial Day Absence – A late arrival, early departure, or extended absence within work shift is considered a partial day absence. […] Excessive absences and/or lateness may negatively impact an employee's performance rating, pay increases and incentive eligibility, and may result in disciplinary action up to and including termination of employment."

4. On December 11, 2024, the claimant signed an acknowledgment that he received a copy of the employer's employee handbook, including the attendance policy.

5. The claimant was aware that the employer expected him to work his scheduled shifts and remain at work for the entirety of his scheduled shifts.

6. The employer provided the claimant with a 30-minute lunch break. The claimant clocked out before leaving and upon returning from his lunch break.

7. The claimant's normal work schedule was Monday through Friday from 9:00 a.m. until 5:00 p.m. However, he also worked on Saturdays to accommodate the employer's clients' scheduling needs. The claimant's schedule was of a hybrid nature; he worked both in-person and from home remotely.

8. The claimant traveled to multiple of the employer's locations to meet with various clients. The claimant did this to accommodate the clients' needs.

9. Throughout his employment, the claimant performed his job to the best of his ability by putting in his best effort.

10. Throughout his employment, the claimant was in regular communication with the supervisor.

11. Sometime around the beginning of January 2025, the supervisor told the claimant that he was accruing too much overtime. The supervisor told the claimant to take extended lunches to avoid accruing too much overtime.

12. As a result, the claimant started taking extended lunches as directed by the supervisor.

13. Aside from being informed that he was accruing too much overtime, the claimant was never told that his attendance was an issue.

14. On February 21, 2025, the claimant took public transportation from his home in Revere to meet with a client at the employer's workplace in [Town A]. After concluding his meeting with the client, the claimant communicated with the supervisor. The supervisor told the claimant that he could either go to the employer's location in [Town B] or go back home and continue working remotely. The claimant chose to go back home and clocked out of work at 12:45 p.m.

15. On February 21, 2025, after clocking out, the claimant took public transportation back to his home in [Town C] and clocked back into work at 2:20 p.m. The claimant took an extended lunch as he was commuting home and because he regularly took extended lunches as directed by the supervisor, to avoid accruing too much overtime.

16. On February 26, 2025, the supervisor spoke with the employer's human resources (HR) manager and told him that, on February 21, 2025, he had allegedly sent a message to the claimant via the employer's instant message communications application asking why he had taken an extended lunch break on that day, and that the claimant had not replied to him.

17. The HR manager did not speak with the claimant to get his side of the story regarding the events of February 21, 2025.

18. The claimant continued working for the employer until February 28, 2025.

19. On February 28, 2025, the claimant met with the employer's manager and the employer's HR business partner (the HR partner). The claimant was then discharged from his employment effective immediately. The claimant was told that the reason for his discharge was that other employees and managers did not like him and because he had made his own schedule.

20. The HR manager was not present at the February 28, 2025, termination meeting.

21. The claimant was discharged for allegedly having taken an extended lunch without approval on February 21, 2025.

22. Had the claimant met the employer's call volume goals, he still would have been discharged from his employment due to his alleged attendance infraction of taking an extended lunch on February 21, 2025.

23. After filing for unemployment benefits, the claimant completed a questionnaire for the Department of Unemployment Assistance (DUA). In the questionnaire,

the claimant wrote, "I was working and selling insurance and was told I was making up my own schedule. […] Was told coworkers did not like me."

24. On a subsequent DUA questionnaire, the claimant denied having been involved in coaching meetings on February 3, 2025, February 6, 2025, February 8, 2025, and February 17, 2025. He also wrote, "Schedule was approved and accepted by management. Was told office managers and coworkers and clients did not like me and I was terminated. Had nothing to do with attendance or office work."

Credibility Assessment:

During the initial May 20, 2025, hearing, although the HR manager (the employer's sole witness) testified that the claimant was discharged, at least in part, due to performance concerns regarding call volume, he testified that the claimant would still have been discharged even if he had met the employer's call volume goals. As such, and where the final incident that led to the claimant's discharge was the alleged February 21, 2025, extended lunch, it is concluded that this incident is what directly resulted in the claimant separating from his employment.

During that same hearing, the HR manager testified that the supervisor informed him, on February 26, 2025, that the claimant had taken an extended lunch and failed to respond to his instant message on February 21, 2025. In support of his testimony, the HR manager provided a report prepared by the HR partner. Despite the report's detailed nature, the employer did not present any witnesses with direct and firsthand knowledge of the final incident that led to the claimant's discharge or anyone who was present during the termination meeting. The claimant, on the other hand, provided direct, specific, and detailed testimony of how he had never been spoken to regarding any attendance concerns aside from being informed that he should not be accruing too much overtime, and that the supervisor allowed him to take extra lunches in order to avoid doing so. The claimant described how he was in regular communication with the supervisor and how he had been specifically directed by him to either go home or to the employer's [Town B] location following a meeting with a client at the [Town A] location on February 21, 2025. The claimant's testimony (including that he had been told that his termination was due to employees and managers not liking him and him making his own schedule) remained consistent with his DUA fact-finding responses. As such, and where the employer neither presented any direct witnesses during the initial hearing nor participated in the remand hearing to rebut any of the claimant's testimony, it is concluded that the claimant's detailed and consistent testimony is credible and that it constitutes the substantial and credible evidence in this matter.

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 not 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).

While the employer maintains a policy requiring employees to work the entirety of their shifts as scheduled, it retains discretion over how to discipline employees who violate that policy. Consolidated Finding # 3. As the employer did not provide evidence showing that it discharged all other employees who took extended lunch breaks without approval, it has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* 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 the claimant engaged in the misconduct for which he was discharged.

Here, the employer discharged the claimant because he took an extended lunch break without authorization on February 21, 2025. Consolidated Finding # 21. As the claimant confirmed that he clocked out of work for lunch at 12:45 p.m. on that day, and clocked back in at 2:20 p.m., his testimony confirms that he engaged in the conduct for which he was discharged. Further, his decision to take an extended lunch break was self-evidently deliberate. Consolidated Findings ## 14 and 15.

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).

The claimant understood that the employer expected him to work his shift as scheduled. Consolidated Finding # 5. Following remand, however, the review examiner accepted as credible the claimant's testimony that his supervisor had permitted him to take extended lunch breaks to avoid putting in excessive overtime. *See* Consolidated Finding # 11. 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). Upon review, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

Pursuant to the review examiner's credibility assessment, the claimant believed that he had permission to take extended lunch breaks, including on February 21, 2025. Consolidated Findings ## 11, 12, 14, and 15. Accordingly, the claimant did not willfully disregard the employer's interest when he chose to take an extended lunch break on February 21, 2025.

We, therefore, conclude as a matter of law that the employer has not met its burden to show the claimant was discharged for deliberate misconduct in wilful disregard of the employer's expectations under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of March 9, 2025, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 31, 2025

Charlene A. Stawicki, Esq.
Member

Michael J. Albano
Member

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.

LSW/rh