

**The claimant was discharged for failing to complete state-mandated continued education training requirements within an established timeframe. As the claimant consistently denied that she failed to complete the training, she has presented no mitigating circumstances. Held the claimant is ineligible for benefits for deliberate misconduct in wilful disregard of the employer's interest pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
100 Cambridge Street, Suite 400  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 334-FHJF-3PP8**

### 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 was discharged from her position with the employer on January 30, 2025. She filed a claim for unemployment benefits with the DUA, effective February 2, 2025, which was denied in a determination issued on April 3, 2025. 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 May 24, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated 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 afford the employer an opportunity to testify. Only the employer 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 did not engage in misconduct because she had completed all the necessary training hours that were required for her continued employment, 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 as a full-time personal care homemaker with the employer, a non-profit organization, from June 23, 2022, through January 30, 2025, when she separated from her employment.
2. The claimant's primary language is Haitian Creole.
3. The claimant can speak and understood some English.
4. During her employment, the claimant did not request a Haitian Creole interpreter to assist in translating.
5. The claimant's direct supervisor was the executive director (employee A).
6. No written rules or policies were presented.
7. The employer maintained an expectation that employees would complete the required Executive Office of Elder Affairs (EOEA) training, which consisted of ten (10) hours of continued education classes, and a dementia/Alzheimer's and elder abuse/neglect class by December 31, 2024.
8. The purpose of the expectation was to ensure the employer was adhering to state and federal regulations due to working with specialized care residents, which included residents suffering from dementia or Alzheimer's disease.
9. The employer communicated the expectation to the claimant prior to May 14, 2024.
10. The claimant understood the expectation.
11. The continued education classes would typically be completed in-person at the employer.
12. Upon an employee completing a continued education class in person, the employee would sign an attendance sheet, and the completion of the class would be placed on the employee's continued education class tracking list.
13. If an employee completed a continued education class outside of the in-person class, the employee would need to obtain a certificate of completion to present to the employer.
14. On May 14, 2024, the claimant completed the self-administrative medication management (SMM) one (1) hour continued education training.
15. On September 24, 2024, the claimant completed the conflict resolution one (1) hour continued education training.

16. On November 20, 2024, the claimant completed the first aid one (1) hour continued education training.
17. On November 20, 2024, the claimant completed the CPR one (1) continued education training.
18. On December 16, 2024, the claimant completed a second SAMM two (2) hour continued education training.
19. On December 23, 2024, employee A sent the claimant an email indicating that she needed to complete a two (2) hour in-person training on December 23, 2024, December 30, 2024, or December 31, 2024, as well as complete the dementia/Alzheimer's and elder abuse/neglect training by December 31, 2024.
20. On December 23, 2024, the claimant responded to employee A's email indicating, "I am ready to start today, and on December 30, 2024, 1:00 p.m.-3:00 p.m., and December 31, 2024, 1:00 p.m.-3:00 p.m."
21. On December 23, 2024, the claimant completed the emergency response and falls/injuries two (2) hour continued education training.
22. Following December 23, 2024, the claimant completed eight (8) of the ten (10) required continued education hours.
23. Following December 23, 2024, the claimant still needed to complete two (2) hours of continued education training and the dementia/Alzheimer's and elder abuse/neglect class.
24. The claimant did not appear for the December 23, 2024, December 30, 2024, or December 31, 2024, 1:00 p.m.-3:00 p.m. continued education trainings.
25. Following December 23, 2024, the claimant did not inform the employer she was having difficulty completing the remaining two (2) hours of continued education training and the dementia/Alzheimer's and elder abuse/neglect class.
26. Following December 23, 2024, the claimant did not request to postpone the remaining two (2) hours of continued education training and the dementia/Alzheimer's and elder abuse/neglect class.
27. Following December 23, 2024, the claimant did not complete the remaining two (2) hours of continued education training and the dementia/Alzheimer's and elder abuse/neglect class.
28. The claimant's last physical date of employment was January 8, 2025.
29. Following January 8, 2025, the claimant went on an approved vacation.

30. On January 30, 2025, when the claimant returned from her approved vacation, the claimant was called into a meeting with employee A, and the manager of the human resources department (employee B).
31. During the meeting, the claimant did not have, or ask for, a Haitian Creole interpreter.
32. During the meeting, the claimant was informed that she was being discharged for not completing the required EOEA training.
33. The claimant responded that she did take the dementia/Alzheimer's and elder abuse/neglect class, but was unable to provide the date the class was taken or what the contents of the class were.
34. Even if the claimant took the dementia/Alzheimer's and elder abuse/neglect class, the claimant did not complete the remaining two (2) hours of continued education training.
35. Employee A then provided the claimant with a termination letter indicating in part, "This letter serves as formal notice of the termination of your employment with (employer) effective immediately, due to the incomplete fulfillment of your mandatory in-service training hours as required by the Executive Office of Elder Affairs...Per the notification you received, failure to complete the full 10-hour requirement would result in termination. As the deadline has passed and 2 hours remains incomplete, you are no longer eligible to continue your employment at (employer)."

#### Credibility Assessment:

During the original hearing, the claimant asserted that she did complete the mandatory ten (10) hours of continued education training, which included completing the dementia/Alzheimer's and elder abuse/neglect training on December 30, 2024, and the remaining two (2) hours in-person continued education training on December 31, 2024. At the remand hearing, the manager of the human resources department (employee B) credibly and consistently testified that at the time of the claimant's discharge of employment, the claimant completed eight (8) of the ten (10) required continued education hours, that she did not complete the remaining two (2) hours of continued education training and did not complete the dementia/Alzheimer's and elder abuse/neglect class. Employee B's testimony is supported by the January 30, 2025, discharge letter. Employee B further credibly testified that, upon an employee completing a continued education class in person, the employee would sign an attendance sheet, and the completion of the class would be placed on the employee's continued education class tracking list, as well as obtaining a certificate of completion if the training was completed outside of the employer. It is not reasonable or logical that, if the claimant completed the dementia/Alzheimer's and elder abuse/neglect training on December 30, 2024, and the remaining two (2) hours of in-person continued education training on December

31, 2024, as she asserted, that the claimant and employer would have no documentation confirming the completion of such training. As such, it is concluded that Employee B's testimony and supporting documentation is deemed more credible than that of the claimant's testimony.

### 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 disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the employer discharged the claimant, her qualification 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 maintained an expectation that employees would complete the required EOE training, which consisted of ten (10) hours of continued education classes, and a dementia/Alzheimer's and elder abuse/neglect class by December 31, 2024. Consolidated Finding # 7. Because the purpose of the expectation was to ensure the employer was adhering to state and federal regulations due to working with specialized care residents, which included residents suffering from dementia or Alzheimer's disease, we believe this expectation to be facially reasonable. See Consolidated Finding # 8. As the employer did not provide any evidence showing that it discharged all employees who violated its expectation under similar circumstances, it has failed to meet its burden to show that the claimant violated a reasonable and *uniformly enforced* policy. We, therefore, consider only 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 initial burden, the employer is required to show that the claimant engaged in the conduct for which she was discharged. During the remand hearing, the employer testified that it discharged the claimant for not completing the required EOEA training within the prescribed timeframe. *See Consolidated Finding # 32.* During the initial hearing, the claimant acknowledged that the employer had informed her that she was discharged for this reason, but asserted that she had, in fact, completed the mandatory ten hours of continued education training as required. After remand, however, the review examiner explained, in a detailed credibility assessment, why he found the employer's testimony to be more credible than that of the claimant.

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). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). We believe that his assessment and the resultant consolidated findings are reasonable and supported by substantial evidence.

Consolidated Findings ##14–18 and 21–22 establish that, as of December 23, 2024, the claimant had completed eight out of the ten hours of required continued education training. On December 23, 2024, the employer emailed the claimant to inform her that she still needed to complete a two (2) hour in-person training on December 23, 2024, December 30, 2024, or December 31, 2024, as well as complete the dementia/Alzheimer's and elder abuse/neglect training by December 31, 2024. *See Consolidated Finding # 19.* The claimant responded to the employer's email on the same date. *See Consolidated Finding # 20.* However, the claimant did not complete the remaining two (2) hours of continued education training and the dementia/Alzheimer's and elder abuse/neglect class. *Consolidated Finding # 27.* Although the claimant asserted during the discharge meeting that she had taken the dementia/Alzheimer's and elder abuse/neglect class, she was unable to provide the employer with the date the class was taken or what the contents of the class were. *See Consolidated Finding # 33.* Even if the claimant had taken the dementia/Alzheimer's and elder abuse/neglect class, she still had not completed the remaining two (2) hours of continued education training. *See Consolidated Finding # 34.* Thus, the claimant engaged in the misconduct for which she was discharged. As nothing in the record suggests that the claimant's conduct was inadvertent or accidental, we believe that she acted deliberately.

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). In order 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).

Here, the consolidated findings show that, prior to May 14, 2024, the employer communicated its expectation to the claimant that she complete the required EOEA training by December 31, 2024, and the claimant understood this expectation, which is evidenced by the classes she took between May 14, 2024, and December 23, 2024, towards fulfilling that requirement. *See Consolidated Findings ## 9–10, 14–18, and 21.* The claimant also responded to the employer’s email on December 23, 2024, by stating that she was “ready to start today, and on December 30, 2024, 1:00 p.m.-3:00 p.m., and December 31, 2024, 1:00 p.m.-3:00 p.m.,” which suggests she knew that she still had not fulfilled all of the EOEA training hours. *See Consolidated Finding # 20.*

As noted above, the purpose of the expectation is to ensure the employer was adhering to state and federal regulations due to working with specialized care residents, which included residents suffering from dementia or Alzheimer’s disease. *See Consolidated Finding # 8.* As we stated earlier, the employer’s expectation in this regard is facially reasonable.

The claimant has not established any mitigating circumstances. 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).

Throughout the proceedings, the claimant has maintained that she did not fail to complete the required EOEA training hours by December 31, 2024. The defense of mitigation is not available to employees who deny engaging in the behavior leading to discharge. *See Lagosh v. Comm’r of Division of Unemployment Assistance*, No. 06-P-478, 2007 WL 2428685, at \*2 (Mass. App. Ct. Aug. 22, 2007), *summary decision pursuant to rule 1:28* (given the claimant’s defense of full compliance, the review examiner properly found that mitigating factors could not be found). Without mitigating circumstances, the claimant is deemed to have acted in wilful disregard of the employer’s interest.

We, therefore, conclude as a matter of law that the employer has met its burden to show that the claimant engaged in 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 beginning February 2, 2025, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

**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](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.

JMO/rh