The claimant was discharged for insubordination for refusing to follow his supervisor's instruction to meet personally with a contractor. That the claimant might be late for another appointment did not mitigate his behavior, because the supervisor knew of the other appointment and told him to meet the contractor anyway. Held the claimant's insubordinate act was deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).

Board of Review
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Issue ID: 334-FHJK-KFHV

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 November 11, 2024. He filed a claim for unemployment benefits with the DUA, effective November 24, 2024, which was approved in a determination issued on April 9, 2025. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on June 7, 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 have the requisite state of mind to engage in deliberate misconduct in wilful disregard of the employer's interest because he called instead of meeting in person with the contractor the employer wanted him to meet with, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. Prior to filing for benefits, the claimant worked as a senior residential energy specialist for the employer, a community action agency. The claimant began working for the employer on 3/28/2022. He worked a full-time schedule, about thirty-five hours per week, and earned $30.00 per hour.

2. The claimant's supervisor was the employer's WAP Technical Manager.

3. The employer has a Standards of Conduct and Behavior, Policy 403 prohibiting insubordination and disregard of the employer's policies and procedures (Policy).

4. The purpose of the Policy is to establish workplace expectations and duties.

5. The claimant knew of the Policy, having acknowledged receipt of the employer's Standards of Conduct and Behavior on 4/7/2022.

6. Violations of the Policy "may result in disciplinary action, up to and including termination" as determined by the employer on a case-by-case basis.

7. The employer has an expectation that employees follow the directives of their supervisor.

8. The purpose of the employer's expectation is to ensure the completion of job duties as prioritized by the supervisor.

9. On 9/17/2024, the employer's senior human resources director gave the claimant a final written warning for social media postings of the employer's clients' homes in violation of the employer's confidentiality, social networking and standards of conduct and behavior policies. The senior human resources director told the claimant that future violations of the employer's policies would result in further discipline depending on the situation at hand.

10. On 9/17/2024, the claimant signed the final written warning, acknowledging receipt.

11. Since the final written warning, the claimant's job was in jeopardy.

12. On 11/19/2024, a contractor contacted the claimant's supervisor to ask questions about one of the claimant's audits (the audit).

13. On 11/19/2024 at approximately 9:30 a.m., the supervisor asked the claimant to travel from the employer's place of business to [Town A], approximately 40 minutes in each direction, to answer the contractor's questions about the audit.

14. The claimant believed that if he drove out to meet with the contractor it would result in him being late for a previously scheduled 1:00 p.m. audit appointment, about half an hour from the employer's offices.

15. On 11/19/2024, the claimant replied that he did not have the time to meet with the contractor regarding the audit due to an appointment at 1:00 p.m. and would, instead, call the contractor.

16. The supervisor perceived that the claimant raised his voice and complained about the distance to meet the contractor regarding the audit.

17. On 11/19/2024, the claimant called the contractor and answered the contractor's two questions. He believed he adequately addressed the contractor's concerns.

18. On 11/19/2024, following the conversation with the claimant, the contractor called the claimant's supervisor and stated that the contractor was unsatisfied with the claimant's response and required a review of an attic area inside the client's premises that needed to be added to the work order.

19. On 11/19/2024, the supervisor left the employer's premises to meet with the contractor.

20. On or about 11/20/2024, the supervisor brought his concerns regarding the claimant's behavior on 11/19/2024 to the attention of the employer's management team.

21. On 11/21/2024, the employer's division head, the supervisor, and the employer's assistant director of human resources met with the claimant to discuss the claimant's actions on 11/19/2024. The claimant stated that he refused the directive of the supervisor because it was too far, he needed to get lunch as required by the employer, and had another meeting at 1:00 p.m.

22. The employer's assistant director of human resources provided information from the meeting to the employer's senior human resources director who, in turn, reported the matter to the employer's management team, resulting in the employer's chief executive officer (CEO) decision to discharge the claimant.

23. On 11/21/2024, the employer placed the claimant on paid administrative leave.

24. The claimant last performed work for the employer on 11/21/2024.

25. On 11/22/2024, the employer's assistant director of human resources called and discharged the claimant for insubordination and disregard for established policies and procedures according to the employer's Policy.

26. The employer had work available at the time of the claimant's separation.

27. On 4/9/2025, the Department of Unemployment Assistance (DUA) issued a Notice of Approval to the employer. The employer appealed that determination.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is 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).

The employer maintained a policy prohibiting insubordination. Finding of Fact # 3. However, as it retains discretion as to what disciplinary action may be imposed for violation of this policy, the policy is not uniformly enforced. Finding of Fact # 6. Absent evidence the employer discharged all other similarly situated employees who were insubordinate, it has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* policy under G.L. c. 151A, § 25(e)(2).

We next consider whether the employer has shown the claimant was discharged for 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, the claimant was discharged for insubordination because he refused to follow his supervisor's directive to meet with a contractor on the morning of November 19, 2024. As the claimant conceded that he chose not to visit the contractor that morning, this confirms that he engaged in the misconduct for which he was discharged. *See* Findings of Fact ## 13 and 15. The claimant's decision to call the contractor instead of following his supervisor's directive was self-evidently deliberate. *See* Finding of Fact # 17.

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 findings show that the claimant was aware that the employer maintained a policy prohibiting insubordination. Thus, he understood that the employer expected him to follow his supervisor's directives. *See* Findings of Fact ## 3, 5, and 7. The claimant also confirmed that he understood that calling the contractor would not have been sufficient to comply with his supervisor's directive. Although not incorporated into the review examiner's findings of fact, the claimant testified that his supervisor had reiterated that the claimant was to meet with the contractor even after the claimant voiced his concerns about being unable to make his subsequent 1:00 p.m. appointment.[1] Therefore, regardless of whether the claimant believed that he could adequately address the contractor's concerns with a phone call, he understood that his refusal to meet with the contractor in accordance with his supervisor's directive was insubordinate. *See* Findings of Fact ## 14, 15, and 17.

Inasmuch as the claimant's duties required him to work with contractors on the audits for which he was responsible, the supervisor's instruction to personally meet with the contractor on the morning of November 19, 2024, was reasonable. *See* Findings of Fact ## 1, 12, and 17.

Finally, we consider whether the claimant has shown mitigating circumstances for his behavior. 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 refused to drive out to meet the contractor because he believed that it would result in him being late for another audit that had previously been scheduled at 1:00 p.m. that day. Finding of Fact # 15. However, the record shows that the 1:00 p.m. appointment did not present mitigating circumstances. His supervisor knew of the 1:00 p.m. appointment yet directed the claimant to meet in person anyway. Common sense dictates that this meant that the supervisor was allowing him to be late for the 1:00 p.m. audit. As such, the 1:00 p.m. audit did not prevent the claimant from meeting the contractor in person.

We, therefore, conclude as a matter of law that the claimant was discharged for 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 November 24, 2025, 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.

[1] The claimant's uncontested testimony in this regard, while not explicitly incorporated into the review examiner's findings of fact, is part of the unchallenged evidence introduced at the hearing and placed into the record, and it is 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 20, 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:
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