

Where the employer has failed to show that the claimant tampered with the vehicle's GPS monitoring system, yet he was fired for that conduct, the employer has not carried its burden to show that the claimant should be denied benefits under G.L. c. 151A, § 25(e)(2).

**Board of Review
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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. Benefits were denied on the grounds that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest pursuant to G.L. c. 151A, § 25(e)(2).

The claimant had filed a claim for unemployment benefits, effective November 10, 2024, which was approved in a determination issued by the agency on January 8, 2025. The employer appealed to the DUA hearings department. Following a hearing on the merits attended by both parties during the initial session but only attended by the employer during the continued session, the review examiner reversed the agency's initial determination in a decision rendered on March 1, 2025. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On August 22, 2025, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to afford the claimant an opportunity to testify. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest by tampering with a GPS monitoring system in the employer's company vehicle, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's order, and the consolidated findings of fact, we reverse the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. On May 15, 2024, the claimant started working full-time for the employer, a medical transportation company, as a driver.
2. The claimant was scheduled to work Monday through Friday. The claimant's shift time varied.
3. The claimant was paid \$17.50 per hour.
4. The claimant's supervisors included the manager, an owner of the employer's establishment, and the other two owners of the employer's establishment.
5. The employer maintains a driver policy prohibiting employees from tampering with the employer's GPS systems in the employer's business vehicles. In the policy, the employer writes [sic]: "GPS systems are not to be tampered with by unplugging from vehicles. Doing so can lead to suspension or immediate termination."
6. The employer maintains the driver policy to minimize company liability and to account for the location of their business vehicles.
7. On August 4, 2024, the claimant signed a form, titled at the top, "driver policy," listing the following information: "I understand and agree to abide by the policy. I understand that I may be disciplined or terminated for violation of the policy."
8. The claimant received the employer's driver policy.
9. In the past, the claimant was not issued any disciplinary warnings by the employer for tampering with the GPS monitoring system in the employer's business vehicles.
10. The employer receives alerts in connection with the GPS monitoring system connected to the company vehicles. The GPS monitoring system is installed under the dashboard of these vehicles.
11. The claimant and the other workers were allowed to bring the employer's business vehicles home after the completion of their work shift [sic].
12. The employer expected drivers not to use the employer's business vehicles for personal use, to minimize company liability. The claimant was aware of this expectation.
13. After the claimant completed his work shifts, the claimant regularly parked his assigned work vehicle outside of his home on [Address] in [City], MA.

14. The employer maintained a business office location in [City], MA. The claimant never went physically inside the employer's business office location, as the employer routinely communicated with the claimant by telephone.
15. The claimant sometimes retrieved the employer's business vehicles from the employer's parking lot area. The claimant sometimes would retrieve the employer's business vehicles by meeting another driver at a parking lot to exchange vehicles.
16. The claimant was not always assigned the same work vehicle.
17. In the past, the employer had retrieved business vehicles that the claimant had parked outside of his home after the claimant's work shift, for the vehicle to have maintenance performed. In the past, the employer had either brought another business vehicle to the claimant's home for the claimant to drive, or had another worker meet the claimant at the claimant's home to transport the claimant to use another vehicle.
18. The employer's business vehicles were in poor condition and regularly required vehicle repair.
19. The claimant's last date of work for the employer was on Friday, November 1, 2024. On this date, the claimant was assigned to drive a 2017 Dodge Caravan.
20. On Friday, November 1, 2024, prior to the end of the claimant's work shift, the manager instructed the claimant to leave the keys to the employer's business vehicle inside the vehicle after the claimant completed his work shift, and parked [sic] the vehicle outside of his home, as the employer had to retrieve the vehicle for maintenance.
21. On Friday, November 1, 2024, the claimant's last client of the day was the son of one of the owners of the employer's establishment. The claimant picked this client up at his college and transported the client to his home on <street name redacted> in [City], MA.
22. On Friday, November 1, 2024, the claimant dropped the family member off at their destination at 7:28 p.m. on this date to [Address] in [City], MA.
23. On Friday, November 1, 2024, after dropping the client off on [Address] in [City], MA, the claimant subsequently drove to his home address at [Address] in [City], MA and parked his vehicle in front of his home. The claimant's home address was less than one mile from the address where the claimant had dropped the client off on [Address] in [City], MA. The claimant left the keys inside the vehicle as instructed by the manager, in order [sic] for the employer to retrieve the vehicle from the claimant's home for maintenance.

24. The claimant left the vehicle parked outside of his home for the remainder of the weekend and did not use the vehicle for personal use.
25. The claimant did not tamper with, or remove, the GPS monitoring device from the vehicle. The claimant was not aware that the GPS monitoring device had become disconnected from the vehicle.
26. On Saturday, November 2, 2024, a supervisor from the employer's establishment noticed that there were not any GPS alerts connected with the business vehicle that the claimant had been operating for [sic] November 1, 2024. Upon review of the employer's GPS alerts for this vehicle, the employer's alerts noted that the GPS monitoring device had been unplugged at 7:35 p.m. on November 1, 2024.
27. On November 3, 2024, the supervisor went to the claimant's home to retrieve the employer's business vehicle.
28. The employer did not contact the claimant at all on Saturday, November 2, 2024, or Sunday, November 3, 2024. During this time, the claimant did not have any communication with the employer or conversations [sic].
29. The claimant did not witness anyone from the employer's establishment retrieving the employer's vehicle from outside his home on [Sunday], November 3, 2024. The claimant assumed that the employer had retrieved the vehicle, as the claimant did eventually notice that the vehicle was gone from the parking space outside of his home.
30. The employer never inquired with the claimant any concerns about the GPS monitoring device being disconnected from the vehicle, or the vehicle smelling like marijuana. The claimant did not smoke in the motor vehicle. The claimant does not smoke.
31. The claimant was anticipating working on Monday, November 4, 2024, for the employer, as initially scheduled. On this date, the claimant noticed that the employer had not returned the initial vehicle that the claimant was assigned to drive on Friday, November 1, 2024, that was parked outside his home, and had not provided the claimant with another vehicle to operate.
32. On Monday, November 4, 2024, the claimant initiated telephone contact with the manager to inquire about his employment. The claimant initially did not receive a response from the manager.
33. After [Monday], November 4, 2024, the claimant attempted to contact the manager for multiple weeks by telephone call, e-mail and messages. The claimant initially did not receive a response from the employer.

34. After the employer did not return the claimant's communication inquires, the claimant did not physically go to the employer's business address to inquire about his employment, as the claimant would normally communicate with the employer by telephone communication, and there were not [sic] managers present on-site at the employer's physical location.
35. The claimant filed an initial unemployment claim, effective the week beginning November 10, 2024. The claimant filed for unemployment benefits at this time, as the claimant was confused about his employment status at the employer's establishment, as the employer had not returned the claimant's communication inquiries.
36. In December 2024, the claimant had a telephone conversation with the manager. The claimant had initiated this telephone conversation with the manager. During this conversation, the manager informed the claimant that the manager was not sure if the manager was going to fire the claimant or not, and that the manager would let the claimant know. During this telephone conversation, the manager did not mention any concerns to the claimant about specific issues.
37. After the telephone conversation in December 2024, the manager did not contact the claimant again.
38. The claimant was notified that he was fired from the employer's establishment through the unemployment process with the DUA.
39. The employer discharged the claimant from work because the claimant allegedly tampered with the GPS monitoring system located within the employer's motor vehicle that was entrusted to the claimant on Friday, November 1, 2024.
40. The employer did not discharge the claimant from work because the claimant brought the company vehicle home after his work shift. The employees were permitted to bring the company vehicle home after their work shift.

Credibility Assessment:

During the continued initial hearing session held on February 26, 2025, the employer's manager contended that the claimant tampered with the GPS monitoring device. However, the claimant's testimony to the contrary is assigned more weight, where the employer provided conflicting information during the initial hearing session held on February 4, 2025, compared to the continued initial hearing session held on February 26, 2025. During the initial hearing session held on February 4, 2025, the employer's agent testified, under oath, that employees allegedly were not permitted to take company vehicles home, allegedly were required to bring the vehicle back to the employer's home destination after their work shift, and that the claimant was allegedly fired for bringing a company vehicle home after business hours. But, during the continued initial hearing session held on

February 26, 2025, the manager testified, under oath, that employees were permitted to bring vehicles home and that the claimant was discharged for allegedly tampering with the GPS monitoring device in his assigned vehicle. This inconsistent information provided by the employer during the initial hearing sessions, coupled with the employer's absence from the remand hearing session, causes the claimant's contention to the contrary, that he did not tamper with the GPS monitoring system, and overall testimony, to be assigned more weight.

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. After 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 now disagree with the review examiner's legal conclusion that the claimant is ineligible for 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).

As a threshold matter, the employer must demonstrate that the claimant engaged in the misconduct or policy violation for which he was discharged. The review examiner found that the employer discharged the claimant for allegedly tampering with the GPS monitoring system located within the employer's motor vehicle that was entrusted to the claimant on Friday, November 1, 2024. Consolidated Finding # 39.

In her hearing decision, the review examiner had credited the employer's testimony and concluded that the claimant had tampered with a GPS monitoring system located within the company vehicle he had used during his final shift. During the remand hearing, however, the claimant denied tampering with the vehicle's GPS monitoring system on November 1, 2024, or any other time. After remand, the review examiner determined that the claimant's testimony was more credible

than that of the employer. 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 record does not contain substantial evidence to support the employer's allegations that the claimant tampered with the company vehicle's GPS monitoring system, or that he engaged in any other behavior that the employer could have perceived to be misconduct or a policy violation. See Consolidated Findings ## 11, 23-25, 30, and 40. Nothing in these consolidated findings shows that the claimant engaged in the conduct as alleged. Given this record, the review examiner's assessment is reasonable in relation to the evidence presented. Accordingly, the employer has failed to show that the claimant's discharge was attributable to misconduct or a policy violation.

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interests or for a knowing violation of a uniformly enforced rule or policy, within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 10, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 20, 2026



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.

JMO/rh