

**The claimant school bus driver was discharged for repeatedly refusing to perform her afternoon route amid a payroll issue that temporarily affected her direct deposit. Held she engaged in deliberate misconduct in wilful disregard of the employer's interest pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 334-FHJR-DJM4**

### 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 her position with the employer on November 7, 2024. She filed a claim for unemployment benefits with the DUA, effective November 24, 2024, which was denied in a determination issued on December 11, 2024. 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 February 21, 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 afford the employer an opportunity to testify. Both parties attended the remand hearing. Thereafter, the review examiner issued her 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 refuse to perform her assigned route and was discharged by the employer for unknown reasons, 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 part-time school bus driver for the employer, a contractor of transportation services for students, from June 20, 2023, until becoming separated from employment on November 7, 2024.

2. The employer transports special needs students to and from school.
3. The claimant received the employer's policies when hired. The employer has a written payroll policy.
4. The employer expects employees to perform their assigned work (route). Refusal to perform the assigned work would result in termination.
5. The claimant is a special needs driver. The claimant has a 7D License, which allows her to transport students.
6. The claimant was residing in [City A], Massachusetts while working for the employer. The claimant was assigned an employer vehicle to perform the work.
7. The claimant was assigned to transport students from their homes in the [City A] area to the public school in [City B], Massachusetts. The claimant would also transport the students back to their homes at the conclusion of the school day.
8. The claimant worked approximately 30 to 37 hours per week for the employer. The claimant was paid \$19 per hour, with a \$1 per hour bonus if she had perfect attendance for the week.
9. The claimant would leave her home at 7:00 a.m., picking up the students from the [City A] area and transporting the students to two different public schools in [City B]. The claimant would conclude the morning route, returning home at or around 9:40 a.m.
10. The claimant would then leave her home in [City A] at 1:30 p.m. to travel back to [City B], to pick up the students at those schools and transport the students to their homes. The claimant would normally return to her home between 4:40 p.m. and 5:00 p.m.
11. The claimant is paid from the time of leaving her home until the time of arriving home.
12. The employer's office is located in [City B], approximately 10 minutes from one of the schools where the claimant transports the children.
13. The claimant had worked with the general manager throughout the course of her employment. The claimant and the general manager had a good working relationship. The general manager always accommodated any requests from the claimant related to her schedule when there were issues with her children, etc. The claimant would often work additional hours/routes when requested by the employer.

14. The general manager considered the claimant to be a good employee.
15. The employer payroll was issued on Friday each week. Because the claimant was a member of the credit union, her pay would be issued by direct deposit to her account on Thursday.
16. The claimant had scheduled payment of bills drawn from her account on Thursday.
17. The claimant was working for the employer on Thursday, November 7, 2024.
18. After completing the morning route, the claimant became aware that there was an issue with the scheduled payment of her bills. The claimant contacted the bank, whereupon she learned that her employer paycheck had not been direct deposited in her account as scheduled.
19. The claimant did not have enough money in her account to cover her bills for herself and her three children. The claimant was concerned about not covering her bills and the overdraft fees that would be applied to her account.
20. The claimant reached out to the employer to try to resolve the matter. The claimant contacted the employer multiple times from 9:15 a.m. to 11:00 a.m. and was informed that the individual who handled the time sheets was in training, along with the general manager. The claimant informed the dispatcher that there was an issue with her pay and asked to have the general manager call her back.
21. The individual handling the time sheets contacted the claimant, informing the claimant that there was a problem with the printer which affected payroll, and they had missed submitting the claimant's payroll for payment on Thursday. The claimant asked how they would fix it and if she could receive a paper check. The individual responded that she was unable to issue a paper check.
22. At around 11:30 a.m.-11:45 a.m., the claimant spoke with the general manager about the payroll issue. The claimant explained that she had pending scheduled payments of her bills, and the funds would not be there, and she would incur overdraft fees. The claimant asked the general manager if she could prepare a paper check to prevent that from occurring. The general manager responded, "I don't cut checks," but stated that she would work with payroll to resolve it. The general manager indicated that she could not guarantee that it would be done that day (Thursday) but would make sure that it was in the claimant's account by noon on Friday.
23. The claimant responded that she was not going to work until she was paid. The general manager informed the claimant that it was not fair for her to leave the children stranded at school. The claimant stated that she did not care. The general manager reminded the claimant that when she submitted her payroll

- late, she was always paid on time, and that it works both ways. The claimant repeated that she would not pick up the children unless she received her pay. The general manager responded that if she was not going to pick up the children, they would be parting ways. The claimant stated it was fine, and the employer could pick up their van.
24. The claimant would be required to be in [City B] by 3:00 p.m. for the afternoon route. The claimant's commute for the afternoon route from [City A] to [City B] was at least one hour, based upon the traffic. At no time did the claimant inform the general manager that she felt she would not have time to pick up a paper check, if prepared that day, and still get to the school to pick up the children on time.
  25. At the conclusion of the call, the general manager reached out to human resources to ask them to prepare a check for the claimant as soon as possible, because she needed her pay. Thereafter, at or around 1:00 p.m.-1:15 p.m., the general manager was notified that the claimant's paper check was ready.
  26. The general manager immediately reached out to the claimant via phone and told her the paycheck was at the office if she wanted to come pick it up. The general manager asked the claimant if she wanted to perform the afternoon route. The claimant responded no, just leave it the way it is. The claimant stated that she planned to go back to bartending.
  27. At no time did the claimant inform the general manager that she wanted to maintain her position and/or discuss the situation further.
  28. The claimant reported to the employer's office to pick up her paycheck. The claimant was presented with a paper check, a letter of termination, and information on unemployment insurance. The letter of termination indicates, "We regret to inform you that your employment with (employer name) is terminated, effective November 7, 2024. The reason for your termination is due to refusal to perform your PM route." There was no further information regarding the reason for the claimant's termination contained within [sic] the letter.
  29. On November 7th, the general manager reached out to various employees to try to located [sic] someone to perform the claimant's afternoon route. The claimant's route was completed by another employee, but she could not pick the children up from school until 3:30 p.m.-3:45 p.m., which was 30 to 45 minutes after their normal pick-up time.
  30. The claimant filed her claim for unemployment benefits on November 27, 2024. The effective date of the claim is November 24, 2024.

Credibility Assessment:

The claimant was upset about not receiving her paycheck as expected and having to wait for the employer to resolve the situation, along with the general manager's comment that she did not have the ability to "cut checks." The credible evidence and testimony established that because of that, the claimant refused to perform her afternoon route.

Although the claimant argued that, after being informed that a paper paycheck was ready to be picked up, she offered to perform the afternoon route, but the general manager refused to allow her to do so, her testimony is not credible. The general manager provided direct and consistent testimony that, after preparing the claimant's paycheck, the claimant was again asked if she would perform her afternoon route and she again refused, resulting in her separation from employment.

Given the claimant's long-standing employment history where admittedly the general manager had always accommodated the claimant's needs, and their unrefuted amicable working relationship, it did not make sense that the general manager would not allow the claimant to work her afternoon route if she had expressed a willingness to do so, with the general manager choosing instead to separate the claimant from employment and have to scramble to locate a replacement to pick up the children from school.

### 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, except Consolidated Finding # 8, because it is not supported by the evidence in the record. In adopting the remaining findings, we deem 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 entitled to receive benefits.

The first question we must decide is whether the claimant separated voluntarily or was discharged. The parties disputed the nature of the claimant's separation. The employer argued that the claimant voluntarily resigned from her position when she refused and then failed to perform her afternoon route on November 7, 2024. The claimant, on the other hand, maintained that she did not intend to resign, and that the employer terminated her employment for unknown reasons.

Initially, the review examiner concluded that, on November 7, 2024, the claimant was discharged for unknown reasons. *See* Remand Exhibit 3.<sup>1</sup> Based solely on the claimant's testimony at the initial hearing, the review examiner credited her testimony that she had been discharged without explanation by the general manager. The review examiner awarded benefits after analyzing the

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<sup>1</sup> Remand Exhibit 3 is the initial hearing decision, dated February 21, 2025. This exhibit 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).

claimant's separation under G.L. c. 151A, § 25(e)(2). After remand, the record supports the conclusion that the employer initiated the claimant's separation and terminated her employment on November 7, 2024. *See Consolidated Findings ## 23 and 28; see also Exhibit 1.*<sup>2</sup>

Because the employer discharged the claimant from her employment, 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).

Although Consolidated Finding # 4 indicates that an employee's refusal to perform assigned work would result in termination, the employer testified that "everyone that refuses, *usually* gets terminated."<sup>3</sup> The employer did not provide substantial evidence that all other employees who committed the same offense as the claimant were discharged. Thus, the employer has not met its burden to show a knowing violation of 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 burden, the employer must first show that the claimant engaged in the misconduct for which she was discharged. Although there were times throughout the initial and remand hearings that the claimant denied refusing to work, she conceded during the remand hearing that, on November 7, 2024, she refused to perform her regular afternoon route when speaking with the general manager. *See Consolidated Finding # 23.* In her credibility assessment, the review examiner accepted the employer's testimony that, despite the claimant having already refused to perform her route twice, the general manager asked her to perform the route once more, and the claimant refused to perform her route a third time. *See Consolidated Finding # 26.* 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

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<sup>2</sup> Exhibit 1 is the termination letter, dated November 7, 2024, which explains that the claimant was discharged for refusing to perform her afternoon route. This exhibit is also part of the unchallenged record before us.

<sup>3</sup> While not incorporated into the findings, the employer's testimony is also part of the unchallenged evidence introduced at the hearing.

‘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 the review examiner’s view of the evidence is reasonable in relation to the record.

Therefore, the record supports a conclusion that the claimant engaged in the misconduct for which she was discharged. As nothing in the record suggests that the claimant’s conduct on November 7, 2024, was inadvertent or accidental, and, where she repeatedly refused to perform her afternoon route, we believe the claimant 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 review examiner found that the claimant received the employer’s policies when hired. Consolidated Finding # 3. The review examiner also found that the employer expected employees to perform their assigned work, which includes routes. Consolidated Finding # 4. During the remand hearing, the claimant testified that she was aware of the employer’s expectation, communicated through its policy, that employees would not refuse to perform a route, and that a refusal to perform assigned routes “would result in termination.”<sup>4</sup> The claimant’s testimony confirms that she understood that refusing to perform her afternoon route was contrary to the employer’s expectations.

Although there are no findings about the purpose of this expectation, we believe it to be self-evidently reasonable, to ensure the employer’s effective business operation.

Finally, we must consider whether the record contained substantial evidence to conclude that mitigating circumstances prevented the claimant from adhering to the employer’s expectations. 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 findings demonstrate that the employer’s payroll department missed submitting the claimant’s payroll for payment on November 7, 2024, which caused an issue with the scheduled payment of her bills, because the paycheck had not been directly deposited in her account as anticipated. Consolidated Findings ## 18 and 21. As a result, the claimant was concerned that her pay would not be there to cover the scheduled payments, and that she would incur overdraft fees. *See Consolidated Finding # 22.* Both parties testified that the claimant was upset by this situation.

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<sup>4</sup> This portion of the claimant’s testimony is part of the unchallenged evidence in the record as well.

However, the findings also show that the general manager informed the claimant that she would work with payroll to resolve the issue, and, while she could not guarantee that it would be done that same day, she would make sure the funds would be in the claimant's account by noon on Friday, the next day. Consolidated Finding # 22. It is undisputed that the employer's payroll was issued on Fridays, and that the claimant's pay was deposited to her account on Thursdays only because she belonged to a credit union. Consolidated Finding # 15. Due to this arrangement, which did not directly involve the employer, the claimant had scheduled certain payments that were to be drawn from her account on Thursday. Consolidated Finding # 16.

While a delay in receiving earned pay is undoubtedly concerning, neither this issue, nor the employer's response to it, prevented the claimant from performing her duties or warranted her refusal to work her afternoon route. Although it was reasonable for the claimant to expect to receive timely pay from the employer, nothing in the record suggests that her paycheck was purposely withheld or that the employer was not working to resolve the issue. The findings show that the employer informed the claimant that she would receive her pay on Friday, which is when the employer regularly pays its employees. Despite having received this assurance from the employer, the claimant still refused to perform her afternoon route. Given the information contained in the record, we cannot conclude that the payroll issue mitigated the claimant's refusal to perform her afternoon route. The claimant alleged no other circumstances that prevented her from performing her work. Thus, the claimant 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 November 24, 2024, 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 - July 25, 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