

Despite previous warnings for the same behavior, the claimant continued to disregard the employer's medication administration procedure without explanation. She was, therefore, discharged for 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-FD2H

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 January 8, 2025. She filed a claim for unemployment benefits with the DUA, effective January 5, 2025, which was denied in a determination issued on April 1, 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 June 21, 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 obtain additional evidence about the reasons for the claimant's separation. 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 deliberate misconduct in wilful disregard of the employer's interest because she did not know she needed to consult with a supervisor before isolating residents to conduct COVID testing, 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 for the instant employer as a Licensed Practical Nurse from 2014 until her last physical day of employment on 1/1/2025.
2. The employer's business is a nursing home facility. The claimant's job duties included administering prescribed medication to residents.
3. The employer has a policy titled "Policy and Procedure for safe medication administration." The employer has a policy titled "General and Specific Procedures on Administration of Medication by Routes."
4. The employer's medication administration policies state that staff are required to ensure they are administering the prescribed correct medication at the correct times to the correct patients. Staff are required to document the administering of any medication.
5. The employer maintains multiple medication administration policies to ensure resident safety.
6. The claimant was provided with the employer's medication administration policies in writing during annual refresher trainings provided by the employer.
7. In April or May 2024, the Executive Director issued the claimant a written warning because the claimant had documented that she had provided medication to a resident, when she had not provided the medication to the resident based upon reviewing pharmacy records.
8. After being issued the warning, the Registered Nurse continued to find examples of the claimant documenting that she was providing residents with prescribed medication even though she was not administering the medication as she documented.
9. The Registered Nurse continued to verbally warn the claimant about the medication errors and the claimant would acknowledge the errors without providing any explanation for her actions.
10. On 12/30/2024, the Executive Director was informed that the claimant made medication administration errors on 12/9/2024, 12/23/2024, 12/23/2024, and 12/30/2024.
11. The Executive Director and the Registered Nurse Supervisor discovered that the claimant was documenting that she was administering medication to residents even though the medication was not prescribed by the doctors and had not been provided by the pharmacy.
12. On 1/3/2025, the Executive Director informed the claimant that she was suspended pending an investigation. [sic] Included administering prescribed medication to residents.

13. During their investigation, the employer decided that the claimant's actions were creating a liability and causing a danger to the safety of the residents.
14. On 1/8/2025, the Executive Director informed the claimant that she was terminated for failing to follow the employer's multiple medication administration policies.

[Credibility Assessment:]

The testimony of the Executive Director and the Registered Nurse Supervisor is accepted as credible in all contested area[s] since the claimant did not appear at either remand hearing thus leaving the employer without the opportunity to cross-examine the testimony produced by the claimant during the original hearing.

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 as follows.

We reject the portion of Consolidated Finding # 7 that states that the reason the claimant was issued a written warning was because she recorded providing a medication to a resident that she had not actually provided to the resident, because it is inconsistent with the evidence. For the same reason, we also reject the portion of Consolidated Finding # 10 that states that the claimant made a medication error on December 30, 2024. Finally, there also appears to be a typographical error in the portion of Consolidated Finding # 10, which states that the claimant made medication administration errors on December 9th, 23rd, and 23rd, 2024. As the evidence submitted by the employer indicates it identified medication administration errors on December 9th, 13th, and 23rd, we believe that the review examiner intended to find the errors were committed on those three days.

In adopting the remaining findings, we deem 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 her employment, her 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).

In his decision, the review examiner found that the employer discharged the claimant because she had failed to consult with a supervisor before isolating residents to conduct COVID testing. Following remand, however, the review examiner accepted as credible the employer's testimony that it discharged the claimant for failing to follow the employer's medication administration policies. Consolidated Finding # 14. 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 employer's executive director, who made the final decision to terminate the claimant, explained that he would not have terminated the claimant if the only issue was her decision to isolate the residents and conduct COVID testing.¹ His decision to discharge the claimant was a direct result of her continued failure to follow the employer's medication administration protocol. *See Consolidated Findings ## 11–14*. Inasmuch as the documentary evidence submitted by the employer repeatedly and specifically identifies the claimant's failure to follow the employer's medication administration procedure as the reason for her termination, we have accepted the review examiner's credibility assessment to credit the employer's testimony as reasonable in relation to the evidence presented.

The employer maintains several medication administration policies requiring employees to document the administration of medication and ensure the correct medication is given to residents at the correct times. *See Consolidated Findings ## 4 and 5*. However, the employer did not show it discharged all other similarly situated employees who failed to adhere to the medication documentation and administration policies. Absent such evidence, the employer 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 she was discharged.

At the initial hearing, the claimant denied ever being made aware of any concerns over her administration of medication. Following remand, however, the review examiner accepted as credible the employer's witness' testimony that the claimant had repeatedly failed to follow the employer's medication administration policies since they were introduced in March, 2024. *See*

¹ While not explicitly incorporated into the review examiner's findings, this portion of the employer's testimony as well as that referenced below are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

Consolidated Findings ## 8, 9, and 11. Although the employer confirmed that the warning it issued the claimant in April or May of 2024 was unrelated to issues with medication administration, it provided written and testimonial evidence from the claimant's supervisor and another registered nurse who were firsthand witnesses to the claimant's continued failure to follow the medication administration procedure. In light of this evidence, we also accept this portion of the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

Consistent with the review examiner's credibility assessment, the consolidated findings show that the claimant failed to follow the employer's medication administration procedures on December 9th, 13rd, and 23rd, 2024. Consolidated Findings ## 10 and 11. She, therefore, engaged in the misconduct for which she was discharged. Because nothing in the record suggests that her failure to follow the employer's specific medication administration steps was inadvertent, we can reasonably infer that her continued failure to adhere to the medication administration procedure was deliberate. *See* Consolidated Findings ## 9 and 10.

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).

In this case, the claimant received repeated written and verbal warnings for failing to follow the employer's medication administration procedure, including a written warning for documenting that she was providing residents with medication she had not administered. Consolidated Findings # 7, 8, and 9. In light of these repeated warnings and reminders about the employer's medication administration policy, we can also reasonably infer that she understood that her continued failure to comply with these policies was contrary to the employer's interests.

Finally, we consider whether the claimant presented mitigating circumstances for her 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). As the claimant did not provide any testimony addressing the employer's allegations about her failure to follow its medication administration policies, she did not show any mitigating circumstances for her actions.

We, therefore, conclude as a matter of law that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is denied benefits for the week of January 5, 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.



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**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