Where an employer discharged a grounds maintenance person for looking at a co-worker's phone while driving and causing an accident that resulted in significant property damage, held it was due to deliberate misconduct in wilful disregard of the employer's interest. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

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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. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant was discharged from his position with the employer on December 9, 2024. He filed a claim for unemployment benefits with the DUA, effective January 5, 2025, which was approved in a determination issued on February 27, 2025. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on April 5, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and, thus, was 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 claimant's appeal, we remanded the case to the review examiner to afford the claimant 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 a motor vehicle accident caused by the claimant while working for the employer was due to deliberate misconduct in wilful disregard of the employer's interest, 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 full-time as a lead grounds maintenance person for the employer, a college, from 1/9/23 through 12/9/24.

2. The claimant's position required that he drive different employer vehicles.

3. The employer maintained a policy which prohibited employees from driving recklessly.

4. The purpose of the rule was to ensure safety and to comply with their insurance accreditation policies.

5. The claimant received the policies and signed for them when he was hired.

6. The claimant knew from his own common sense that he should not drive recklessly at work.

7. The policy states that violations can lead to disciplinary action, ranging from verbal warning to immediate discharge, depending on the employee's overall record and the seriousness of the offense.

8. By early 2024, the claimant was involved in multiple accidents with his personal vehicle while not working.

9. The claimant believes the accidents were caused by faulty brakes on his vehicle.

10. The DMV [sic] required that he receive additional driver training.

11. In January 2024, the employer suspended the claimant and notified him that he had to complete the additional driver training as recommended by the DMV [sic]. He was also required to notify his employer when it was completed and provide documentation of its completion.

12. The documentation was required because the claimant's job involved driving, and the employer's automobile insurer requested the documentation to continue to insure the claimant while he was at work.

13. On 4/4/24, the claimant received discipline for failing to fulfill the state's driver training requirement.

14. The claimant later completed the training.

15. On 11/22/24, the claimant received a second step of discipline for causing an accident in the loading dock of the employer's dining commons.

16. At the time, the claimant and another vehicle were moving their vehicles to allow room for the garbage truck. The accident was caused because the claimant did not look where the other vehicle parked before he backed into it.

17. The claimant just thought the other driver would not have put his vehicle right behind him.

18. On 11/27/24, the claimant was driving the employer's dump truck with a sander attached to it. The claimant was driving the vehicle in a large lot.

19. There was only one other vehicle in the lot at the time. A Chevy Silverado truck (Chevy) was parked in the lot at the time.

20. The claimant backed the dump truck into the Chevy in the lot.

21. The claimant caused significant damage to the Chevy, including cracking the center of the tailgate and breaking the driver's side rear light.

22. The employer investigated the matter.

23. At the time of the accident, the claimant was training another employee on how to put salt down in the event of snow or ice.

24. The claimant had been training the other employee for the past month.

25. At the time the claimant backed into the Chevy, his coworker was sitting in the passenger seat of the claimant's vehicle. That employee was watching videos on his phone.

26. The claimant was also looking and laughing at the videos on his coworker's phone while he backed the truck into the other vehicle.

27. The claimant was not paying attention while he was driving.

28. The claimant told the employer that the truck slid on ice, but the director of facility and grounds inspected the area immediately after the accident and saw no ice between the path of the two vehicles.

29. The employer took photos of the scene.

30. The lot was not very icy or wet.

31. There was a small wet patch to the left of the rear of the driver's side of the Chevy in the lot. The patch was not iced over at the time of the incident. It cracked with little weight and would have cracked if the dump truck drove over it.

32. The supervisor's foot would have been wet if he stepped in the patch.

33. The supervisor saw no evidence that the 12,000-pound dump truck hit or drove through the wet patch in the lot.

34. The small patch was in an area that would not cause the claimant's vehicle to slide into the other vehicle in the lot.

35. On 12/8/24, the employer terminated the claimant for violation of their policy for [sic] driving recklessly and causing damage to the Chevy on 11/27/24.

Credibility Assessment:

The employer's witness testimony at both hearings on this matter was very credible. Although he did not see the accident occur, he came out to inspect the area immediately afterwards. His answers were detailed and consistent. His testimony that the claimant must have driven recklessly is supported by the photographs in the record. The photographs show the large lot with only one vehicle, the Chevy, parked in it. It does not depict a slippery scene near the Chevy. Additionally, the employer witness testified that the coworker who was a passenger in the claimant's vehicle admitted that the claimant was watching videos and laughing with him at the time of the collision. This hearsay testimony is more credible than the claimant's testimony because the claimant could not remember the coworker having his phone out and because it is not likely the coworker would lie about such an occurrence since he was using his phone when he was supposed to be working. It is reasonable to therefore conclude that the claimant could have avoided hitting the Chevy if he was not driving recklessly.

In the remand hearing, the claimant's testimony was not credible. He blamed the fact that he hit multiple vehicles in November 2024 on another driver parking too close to him, and on ice. The photographs of the area on 11/27/24 did not support his testimony that ice caused the collision. Had the claimant used a reasonable degree of care by not driving distracted or too close to the Chevy, the one vehicle in the lot on 11/27/24, the Chevy would not have sustained damage.

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 note that Consolidated Findings ## 10–11 erroneously referring to the Massachusetts Registry of Motor Vehicles as the "DMV." We reject the portion of Consolidated Finding # 35 indicating the claimant was terminated on December 8, 2024, because the record establishes that the employer discharged him on December 9, 2024. 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. As discussed more fully below, we agree 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).

The employer fired the claimant for violating its policy against reckless driving and causing damage to a vehicle parked in the employer's lot. *See* Consolidated Findings ## 3, 19–21, and 35. There is no dispute that, on November 27, 2024, the claimant had an accident while on duty and driving a dump truck with a sander for the employer, that there was only one other vehicle in the lot at the time, and that the claimant backed the dump truck into the vehicle in the lot, causing significant damage to it. Consolidated Findings ## 18–21.

The employer's policy states that violations can lead to disciplinary action, ranging from verbal warning to immediate discharge, depending on the employee's overall record and the seriousness of the offense. Consolidated Finding # 7. Given the discretion written into the policy, the employer has not demonstrated that the claimant knowingly violated a reasonable and *uniformly enforced* policy. Alternatively, the employer may show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

The review examiner found that, at the time the claimant backed into the only other vehicle in the employer's parking lot, his co-worker was sitting in the passenger seat of the claimant's vehicle and watching videos on his phone. Consolidated Finding # 25. Additionally, the review examiner found that the claimant was also looking and laughing at the videos on his co-worker's phone while he backed the truck into the other vehicle. Consolidated Finding # 26. During the remand hearing, the claimant vacillated between being unable to recall whether the co-worker had his phone out and denying that he and the co-worker were looking at videos on the co-worker's phone at the time of the accident. However, the review examiner accepted the employer's testimony as more credible than the testimony 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).

In this case, we believe that the review examiner's view of the evidence is reasonable in relation to the record. Given this, we accept that, on November 27, 2024, the claimant looked away from the road to look at videos on his co-worker's phone. This establishes that the claimant engaged in the misconduct of reckless driving. *See* Consolidated Finding # 3. His decision to look at videos rather than where he was driving is self-evidently an intentional gesture.

However, proving deliberate misconduct is not enough. To determine whether an employee's actions constitute 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) (citation omitted).

The claimant was aware of the employer's expectations to refrain from driving recklessly at work. *See* Consolidated Findings ## 3, 5–6, 11, and 13. Such expectations are reasonable as a matter of public safety and to minimize the employer's liability. *See* Consolidated Finding # 4. The question is whether there were mitigating factors for the claimant's conduct. 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 remand hearing, the claimant maintained that the accident occurred because the truck slipped on ice. Indeed, Consolidated Finding # 28 indicates that this is precisely what the claimant told the employer. However, Consolidated Finding # 28 also states that the director of facility and grounds inspected the area immediately after the accident and saw no ice between the path of the two vehicles. Moreover, the review examiner found that the employer had taken photographs of the parking lot on the day of the accident, and that the parking lot was not very icy or wet.[1] *See* Consolidated Findings ## 29–34. In her credibility assessment, the review examiner determined that photographs of the area on November 27, 2024, did not support the claimant's contention that ice caused the collision. We agree. The claimant did not testify to any other factors beyond his control that could have caused his reckless behavior.

We therefore, conclude as a matter of law, that the employer has met its burden to show that it discharged the claimant 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 affirmed. The claimant is denied benefits for the week beginning January 5, 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] In addition to offering first-hand testimony, the employer witness submitted several photographs of the parking lot, taken on November 27, 2024, as evidence, which the review examiner had entered into the record as Remand Exhibit 5.

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

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