

Claimant hit her manager in the back because she was frustrated that he had asked her to stay late and work by herself as a cashier the prior day. As there was no evidence the claimant had a medical condition that created mitigating circumstances, she was discharged for deliberate misconduct in wilful disregard of the employer's expectations pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 334-FHJV-4TNM

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 separated from her position with the employer on November 4, 2024. She filed a claim for unemployment benefits with the DUA, effective November 17, 2024, which was denied in a determination issued on April 17, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on August 22, 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 obtain additional evidence pertaining to the reasons for the claimant's separation. Only the claimant 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 engaged in deliberate misconduct in wilful disregard of the employing unit's interest when she struck her manager on the back, 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. In 1989, the claimant began working part-time for the employer, a grocery store, as a bagger and then as a cashier at a register. She worked 30 hours per week. She reported to a manager.
2. In middle school and high school, the claimant was in special education classes.
3. It is difficult for the claimant to focus, visualize tasks, and understand instructions. She is easily distracted and does not always pay attention to what she is doing. When she is assigned a task, she must be told about what to do multiple times. She has difficulty fully understanding the nuances of her circumstances.
4. The claimant is frequently nervous. When she gets angry, she loses her temper easily and has difficulty settling down.
5. The claimant does not have an official diagnosis that addresses her symptoms. She has an appointment to see a neuropsychologist in February of 2026 to be tested.
6. The claimant has a social worker who works with her and helps her complete administrative tasks, including paying bills and applying to jobs.
7. The employer has a policy which prohibits violence in the workplace. The purpose of this policy is to prevent employees from hurting each other.
8. The claimant received a copy of the written policy.
9. Employees who violate the policy could be disciplined, including discharged. They could also face jail time.
10. The employer has an expectation that employees do not put hands on another person. The employer has this expectation to prevent employees from hurting each other.
11. The claimant was aware of the rules about violence in the workplace. She was aware of the possible consequences.
12. On October 24, 2024, the claimant was scheduled to end work at 3:00 p.m.
13. On October 24, 2024, the claimant's manager asked her to stay an extra hour until 4:00 p.m.
14. The claimant did not want to stay an extra hour because she would be the only cashier working the check-out lines. The claimant had never worked as the only cashier in the store prior to October 24, 2024.
15. [Intentionally blank]

16. The claimant was concerned about her ability to perform her duties.
17. The claimant agreed to work until 4 p.m. and did not inform the store manager that she was not comfortable working as the only cashier working the check-out lines.
18. Between 3 p.m. and 4 p.m., the claimant was the only cashier working on the check-out lines. There were two other employees present – a bagger and someone working the self-service check out section.
19. There were many customers in the store at the time and very long lines. The claimant became anxious and overwhelmed.
20. The claimant was not relieved from her shift until 4:15 p.m.
21. At the end of her shift, the claimant was angry, nervous, and upset.
22. When the claimant drove home after her shift, she was cut off by a truck and had to stop by the side of the road because she was so anxious and upset. A police officer stopped next to her and asked if she was okay.
23. The claimant returned to work on October 25, 2024. She was still upset with her manager for asking her to work as the only cashier for over an hour. She remained nervous and angry throughout her entire shift.
24. The claimant did not see her manager during her shift.
25. At 3:00 p.m., the claimant finished her shift, turned off the light on her check-out lane, and went to empty the trash.
26. When the claimant was throwing out the trash, she saw her manager come out of the office at the front of the store.
27. The claimant lost control of her temper. She was angry and frustrated with her manager for asking her to stay late the day before.
28. The claimant yelled “get out of here” at the manager.
29. The claimant approached her manager and punched the manager in the back.
30. The manager did not say anything.
31. When the claimant hit the manager, she was aware that what she was doing was wrong.

32. After the incident occurred, the store manager met with the claimant and suspended her for a week.
33. The employer began an investigation into the incident.
34. On October 31, 2024, the claimant told the store manager, a human services representative, and her union representative what had happened.
35. On November 4, 2024, the store manager discharged the claimant over the phone for violating the employer's rules about violence in the workplace.
36. On April 17, 2025, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 25(e)(2) of the Law commencing the week beginning October 20, 2024, and until she had had 8 weeks of work and had earned an amount equivalent to or in excess of 8 times her weekly benefit amount. The claimant appealed the Notice of Disqualification.

Credibility Assessment:

The claimant attended a hearing on August 4, 2025. The employer did not attend. Only the claimant attended the remand hearing on January 8, 2026.

There was no evidence or testimony given during the remand hearing that calls into question that the claimant yelled at her manager and punched her in the back or that the claimant was aware of the employer's rules and expectations. However, the claimant did give testimony about her temperament and further information about the incident with her manager that could indicate that there were circumstances that could have prevented her from having the necessary state of mind to act in willful disregard of the employing unit's interest. She also clarified the timeline of events which led to the altercation with her manager.

The claimant was asked to submit documentation from a medical professional or social service agency to identify and explain the impact of her disability. The claimant failed to provide any such documents. However, in February of 2026, she is scheduled to undergo neuropsychological testing and her testimony regarding her history of special education class placement and social worker assignment for administrative tasks is accepted as credible. Nevertheless, without documentation, no diagnosis of a disability could be substantiated.

During the initial hearing, the claimant testified that she was asked to work an extra hour and attacked her manager on the same day – October 24, 2024. In the remand hearing, however, the claimant testified that it was on October 25, 2024, that she had the altercation with her manager. She testified that she became angry on October 24, 2024, because she was forced to work alone after her shift, that being the only cashier while the store was busy made her nervous, angry, and upset, that she continued to be nervous, angry, and upset on her drive home from work,

through the night, and during her entire next shift. The claimant's testimony that she yelled at and punched her manager at the end of her shift on October 25, 2024, is accepted as credible.

The central question is whether or not the claimant understood that her actions were wrong when she punched her manager on October 25, 2024. During both the initial hearing and the remand hearing, the claimant testified that she was aware that physically attacking her manager was wrong. In the first hearing, she stated that she should have gone to the store manager with her concerns about being asked to work beyond the end of her shift on October 24, 2025. During the remand hearing, the claimant testified that her anger and frustration with her manager for asking her to stay late and her difficulty with concentration and understanding the nuances of circumstances influenced her decision to punch her manager. The claimant's testimony, however, does not demonstrate that she did not have the state of mind necessary to act in willful disregard of the employing unit's interests. First, without a specific diagnosis of a disability, it is difficult to determine which aspects of the claimant's mental state at the time when she punched her manager were the result of a disability. For example, the claimant testified that she was angry and frustrated with her manager for asking her to stay late, which is not necessarily a symptom of a disability. Second, the claimant punched her manager approximately 24 hours after the manager asked her to work late. The claimant testified that she remained angry and upset from the time she was asked to work late all the way through her shift the next day, and that her attack on her manager occurred the first time she saw the manager since the manager asked her to work late. The claimant's action, therefore, was not a spontaneous action which took place in the moment when the manager asked her to stay late. It was also not simply a verbal utterance or an act of insubordination, but a physical attack on another person – a clear violation of the employer's workplace violence policy, which the claimant testified that she understood. As a result, it is determined that the claimant's state of mind, despite her anger and frustration, was not so compromised that she could not understand that what she was doing at the time she was doing it, was wrong.

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. Upon 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 note that Consolidated Finding # 15 is blank, however, as no material findings appear to be absent, we believe that this is simply a typographical error. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is not 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).

The employer maintains a policy prohibiting workplace violence. Consolidated Finding # 7. However, the policy states that violation of the policy *could* be discipline, and it did not show it discharged all other similarly situated employees who struck another employee. *See* Consolidated Finding # 9. 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.

In this case, the employer discharged the claimant because she struck her manager on the back on October 25, 2024. There was no dispute that she engaged in the misconduct for which she was discharged. Consolidated Findings ## 29 and 35. Further, as Consolidated Finding # 29 provides that the claimant approached her manager in order to strike him, her actions in so doing were self-evidently deliberate.

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). 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).

At both hearings, the claimant confirmed that she understood the employer's expectation that she not engage in workplace violence. Consolidated Findings ## 10 and 11. Although the claimant testified that she experiences difficulties with focus, instructions, and loses her temper easily, the review examiner issued a credibility assessment in which she concluded that the claimant did not

present substantial and credible evidence showing that she did not understand her actions were contrary to the employer's expectations at the time she struck her manager. Consolidated Findings ## 3-6, 27, and 31. 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). Upon review, we have accepted 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 claimant has failed to show that a medical condition caused her misconduct. *See* Consolidated Findings ## 3-6. Therefore, there is no evidence that her conduct in hitting her manager on October 25, 2024, was a result of circumstances beyond her control.

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 affirmed. The claimant is denied benefits for the week of October 20, 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 - March 18, 2026



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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