

**The claimant was discharged for striking a student. However, the review examiner reasonably accepted as credible the claimant's testimony that her hand inadvertently made contact with the child's head because the child was moving around when the claimant reached out to place her hand on his forehead. Held she did not have the requisite state of mind to engage in deliberate misconduct within the meaning of G.L. c. 151A, § 25(e)(2), and she is eligible for benefits.**

**Board of Review  
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**Issue ID: 352-ML2R-TDJM**

#### 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 affirm.

The claimant separated from her position with the employer on April 10, 2025. She filed a claim for unemployment benefits with the DUA, effective April 13, 2025, which was denied in a determination issued on May 9, 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 July 2, 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 pertaining to the reason for the claimant's separation from employment. 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 intend to violate the employer's policy prohibiting the use of physical force as discipline because her hand accidentally came into contact with a student's head, 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 full-time Paraprofessional for the employer, a municipality, from September 2022 until becoming separated from employment on April 10, 2025.
2. At the start of each school year, the staff is required to participate in training with the employer, one of the modules covers MGL Chapter 71, Section 37G prohibiting the use of physical force as discipline. Also prohibiting the use of restraint unless specified within their Individualized Educational Plan (IEP).
3. The claimant participated in that training at the start of the 2024-2025 school year. The claimant completed that training on September 27, 2024.
4. The employee is only allowed to use physical restraint with a student who has that criteria documented within their IEP.
5. The claimant was aware that the employer prohibited her from physically disciplining a student.
6. The claimant had no prior complaints or issues related to her treatment of the students.
7. The claimant was working in the employer's first grade classroom at a Kindergarten through 5th grade public school.
8. The claimant was assigned to work with a specific student in the classroom beginning September 2024. The student had difficulty focusing in class and staying in his seat. The student would also blurt things out during class. (The student was on an IEP. That IEP did not allow for physical restraint.)
9. Prior to March 7, 2025, the claimant had no incidents where it was alleged that she had struck a student or engaged in physical abuse.
10. The claimant was working on March 7, 2025. The school had an early release day on that day. The claimant was scheduled to work from 7:00 a.m. until the student release time (12:20 p.m.).
11. When the first-grade class went to the music room, the claimant accompanied the student to music class. While in the classroom, the student was having a hard time remaining seated [sic] he was dancing, jumping and fooling around with the other students.
12. The student was told by the claimant and another paraprofessional to be quiet.
13. The student did not respond well to directives unless the claimant was to make direct eye contact with the student. The claimant was trying to make eye contact and quietly tell the student to sit down.

14. When she could not get his attention, the claimant decided to gently place her hand on the student's head so as not to disrupt class any further.
15. When the claimant went to place her hand on the student's head, because the student was jumping and moving, her hand struck his hairline and forehead, making a "thump" type noise. The claimant then instructed the student to stop talking.
16. The student did not cry or react in any way. He did not appear to have suffered any injury.
17. The incident was viewed by other students in the classroom and the music teacher. The music teacher reported the incident to the classroom teacher. The classroom teacher then informed the Principal of what was reported to her by the music teacher.
18. Approximately 20 minutes after the incident, the student was taken to the nurses office. The nurse noted a red mark from his glasses but was unsure if it was due to his glasses being too tight. The nurse also noted a small red mark on the corner of his brow on the left side. The student told the nurse that the left side of his head hurt. The nurse utilized an ice pack to the area for 5 minutes. No further treatment was administered.
19. On March 7th, the Principal spoke to the music teacher after being informed of the incident. The music teacher indicated that while looking out at the class and asking students to sit up and show that they were ready, the student was talking. She then saw the claimant smack the student in the forehead and state "stop talking". The music teacher indicated that the student's behavior in class that day was not atypical. (The Principal knew the student's normal behavior to be acting wiggly, rocking back and forth in his seat and talking a lot.)
20. After lunch on March 7<sup>th</sup>, the claimant was called to the Principal's office, along with a union representative. The claimant was asked if she knew why she was being called into the office. The claimant indicated that she did not know. The Principal then informed the claimant that it was reported that she had put her hands on a student during music class. The claimant was notified that she was being placed on a paid administrative leave while the employer investigated.
21. On March 10, 2025, the Principal, along with the Assistant Principal, interviewed the other paraprofessional who was assigned to the classroom on March 7th. She stated that she was seated to the right of the claimant with a student in between them when she heard a "smack" and turned around to see the claimant's hand on the student's forehead.

22. On March 10<sup>th</sup>, the Principal, along with the Assistant Principal, also interviewed the classroom teacher. She confirmed that she did not see the incident and could only report what she was told by the music teacher.
23. On Wednesday March 12, 2025, the claimant met with the Principal, another staff person (also a Principal), and her union representative. The claimant was asked to explain what occurred with the student on March 7<sup>th</sup>. The claimant explained that the student was not behaving, he was shouting, getting up, and following the other students who were fooling around. The claimant stated that the student was feeding off that energy. The student was asked by the claimant and the other paraprofessional to be quiet, whereupon the student stood up and started yelling more. The claimant stated that she instinctively raised her hand to place her palm on the student's forehead and when her hand came in contact with his head it made a sound. The Principal asked the claimant what she thought at that time, whereupon the claimant responded that she knew she should not have done that when she heard her hand hit his head. The claimant acknowledged that there were better ways that she could have handled the situation. The claimant was asked if the student reacted or cried and the claimant responded no. The claimant was told that the student went to the nurse, and the nurse found a red mark on the side of his head. The claimant was asked if she struck the students' glasses and she responded no.
24. On March 12<sup>th</sup>, the claimant was informed that the employer would continue their investigation, and she would hear back from the employer.
25. From March 12, 2025, until March 20, 2025, the Principal was writing her report. After the report was completed on March 20<sup>th</sup>, it was submitted to the employer's Central Office for review.
26. The employer did not make any determination that the claimant's actions on March 7<sup>th</sup> in striking the student were intentional, but simply that the incident had occurred.
27. The employer did not reach out to speak to the claimant from the March 12<sup>th</sup> meeting until April 7<sup>th</sup> or 8<sup>th</sup>, when she was contacted to set up a meeting for April 10, 2025.
28. On April 10, 2025, the claimant met with the Principal and the Assistant Superintendent of People and Personnel Services, along with the claimant's union representative. The claimant was informed that based upon their investigation, the claimant had violated the employer policy for the handling of students and as a result she was being discharged. The claimant responded that she understood.
29. The claimant was provided with a written letter of termination dated April 10, 2025, indicating in part "I am writing to notify you that your employment as a paraprofessional for the (employer) Public Schools has been terminated,

effective April 11, 2025. The basis for this action is that after a thorough investigation, it was determined that you engaged in conduct unbecoming a paraprofessional by striking a student in the head in an attempt to correct the student's behavior." The letter cited Massachusetts General Law Chapter 71, Section 37G.

30. The March 7th, 2025, incident was reported to and investigated by the Department of Children and Families. The Department indicated that the allegation against the claimant of physical abuse of a child was not substantiated.

31. The claimant filed her claim for unemployment benefits with an effective date of April 13, 2025.

#### Credibility Assessment:

At the initial hearing the claimant testified that she did not receive employer policies. However, at the remand hearing the employer provided specific information as to the annual training and the information covered in that training related to MGL Chapter 71, Section 37G, including providing the specific date that the claimant completed that training module. After hearing the employer testimony, the claimant did not dispute that she had participated in that training.

#### 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 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 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 accordance with state law, the employer maintains a policy prohibiting the use of physical force as discipline. Consolidated Finding # 2. However, the employer did not provide evidence showing it discharged all similarly situated employees who had been reported to have struck a student. As such, the employer has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* policy under G.L. c. 151A, § 25(e)(2).

We next consider whether the employer has shown the claimant was discharged for deliberate misconduct in wilful disregard of the employer’s expectation. To meet its burden, the employer must first show that the claimant engaged in the misconduct for which she was discharged.

In this case, the employer discharged the claimant for striking a student’s head. Consolidated Findings ## 28 and 29. As it is self-evident that it is inappropriate to strike a student, we agree that the claimant engaged in the misconduct for which she was discharged. Our next inquiry is whether the claimant’s misconduct was deliberate.

Following remand, the review examiner found that the claimant’s hand inadvertently made contact with the student’s head because the student was moving around when the claimant went to place her hand on the student’s head. Consolidated Findings ## 14 and 15. In so finding, the review examiner implicitly accepted as credible the claimant’s testimony that she did not intentionally strike the child. 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 of the record, we believe the review examiner’s assessment is reasonable in relation to the evidence presented.

We form no opinion about whether the employer made the appropriate decision to end the claimant’s employment. *See Garfield v. Dir. of Division of Employment Security*, 377 Mass. 94, 95 (1979) (the issue is not whether the employer was justified in firing the claimant, but whether the Legislature intended that unemployment benefits should be denied under the circumstances). However, because the review examiner found the claimant had not deliberately struck a student, we agree with the review examiner’s conclusion that the claimant’s discharge was not for deliberate misconduct in wilful disregard of the employer’s interest.

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

The review examiner’s decision is affirmed. The claimant is entitled to receive benefits for the week of April 13, 2025, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 23, 2025**



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](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.

LSW/rh