

Claimant was hospitalized with a serious mental health issue and was unable to access her cell phone because it had been confiscated by hospital staff. Although she failed to provide the employer with appropriate notice for her absence from work the following day, mitigating circumstances negated the willfulness of her misconduct as she was unable to adhere to the employer's expectations about attendance and calling out due to circumstances beyond her control. Claimant is eligible for benefits under G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 352-ML85-FKHH

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 18, 2025. She filed a claim for unemployment benefits with the DUA, effective April 27, 2025, which was denied in a determination issued on May 19, 2025. The claimant appealed the determination to the DUA hearings department. Both parties attended the initial hearing. The hearing was continued, and only the claimant attended the continued hearing. Following the continued hearing, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on August 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 about the reasons for the claimant's separation. Both parties 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 presented mitigating circumstances for her absences because she was admitted to the hospital and took steps to inform the employer of her inability to attend work, 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 driver for the employer, a medical transportation livery service, from April 16, 2024, until April 17, 2025.
2. The claimant worked from Monday to Saturday and averaged 50 to 60 hours per week. The claimant was given a motor vehicle to use by the employer to transport the employer's clients.
3. The claimant picked up clients from their residences or from doctor's [sic] appointments and transported them back to their residences.
4. The employer had an expectation that employees would call out 24-48 hours before their next shift if they are unable to report to cover their shift. The employer's preferred contact is to send an email.
5. The claimant had "called out" to the employer in prior instances when she was unable to cover her driving shift.
6. On April 17, 2025, the claimant was admitted to the hospital in the evening after having a mental breakdown and was seriously sleep deprived. The claimant was in the hospital from April 17, 2025, through April 23, 2025. The claimant's personal belongings were removed from her possession by hospital staff, including her phone. In the evening of April 17, 2025, the claimant contacted her friend/ roommate via hospital phone and asked her to come to the hospital.
7. The hospital staff allowed claimant's roommate to access her phone so the roommate could obtain the employer's owner's contact information. The claimant's roommate sent a text message to the owner. The roommate informed the owner that the claimant was admitted to the hospital. The roommate informed the owner that the claimant was going to be in the hospital for several days and would not be able to work on April 18, 2025, and her work shifts for several days thereafter.
8. The owner sent the claimant's roommate the following text messages: "she will be suspended, tell her she will be fired, we need the car ASAP, we no longer able to keep her working, we will need our car to be delivered to our office, she will be out into the black list, she had three strikes, Pls express to [claimant] that she is possession of our vehicle and her absence could have been handled the other way, not only she didn't notify us properly, she holder the car and not allow us to cover her shifts, there for pls pass her the message that she is fired and she will need to drop the car in our office."
9. The claimant's roommate exchanged several more text messages with the owner about the owner retrieving the company's motor vehicle. The roommate obtained motor vehicle keys from the claimant's personal belongings and arranged for a successful vehicle retrieval with the owner on April 18, 2025.

10. On April 18, 2025, the employer discharged the claimant when the claimant did not report for her scheduled driving shift on April 18, 2025.

11. The claimant would have reported for work on April 18, 2025, had she not been ill and subsequently admitted to the hospital.

Credibility Assessment:

The claimant testified that she was unable to report to work on April 17, 2025, due to hospitalization for exhaustion and a mental health crisis. She stated that her roommate notified the owner/employer or [sic] her hospitalization by text message because hospital staff had taken her phone. The claimant asserted that this notification was an effort to comply with the employer's/owner's expectation of advance notice.

The employer/owner contended that the claimant was not discharged but instead voluntarily quit by failing to report to her April 18, 2025, shift without notice. This assertion is not found to be credible. A review of the text message exchange between the roommate and the employer/owner does not support the employer's/owner's claim. Rather the messages indicate that the owner discharged the claimant for failing to call out and report for her scheduled shift.

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).

The employer did not present any evidence about how employees were disciplined for violating its attendance or call-out policy. Therefore, it did not meet its burden to show a knowing violation of a reasonable and *uniformly enforced* rule or 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 failed to report to her shift as scheduled on April 18, 2025. Consolidated Findings ## 10 and 11. Although not specifically reflected in Consolidated Finding # 10, the substance of the text messages sent by the employer’s owner confirms that the employer also discharged the claimant because she failed to provide the employer with adequate notice of her absence. Consolidated Findings ## 4 and 8. As the claimant did not report to work for her shift on April 18, 2025, and as she did not contact the employer until the night of April 17, 2025, there was no dispute that she engaged in the misconduct for which she was discharged. Consolidated Findings ## 6, 7, and 11.

However, mere violation of an employer’s rule or expectation does not automatically disqualify a claimant from unemployment benefits. Torres v. Dir. of Division of Employment Security, 387 Mass 776 (1982). In determining whether a claimant should be disqualified for deliberate misconduct in wilful disregard of the employer’s interest, a critical factor is the claimant’s state of mind, taking into account her knowledge of the employer’s expectation, the reasonableness of the expectation, and whether there were any mitigating factors. Garfield v. Dir. of Division of Employment Security, 377 Mass. 94 at 97 (1979). Mitigating factors are those factors that cause the misconduct and over which a claimant may have little or no control. See Shepard v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987).

The text messages between the claimant’s roommate and the employer’s owner confirm the claimant’s assertion that she was admitted to the hospital on the evening of April 17, 2025, due to exhaustion and an acute mental health issue. See Consolidated Findings ## 6–9. The claimant was unable to contact the employer after learning that she would be held at the hospital because hospital staff had taken the claimant’s personal items, including her cell phone. Consolidated Finding # 6. Given the particular facts of this case, the claimant’s personal circumstances, over which she had no control, constituted mitigating circumstances. See Board of Review Decision 0028 1696 05 (May 23, 2019) (the claimant established mitigating circumstances for his absence and failure to call out because he was hospitalized with a serious illness and unable to follow proper attendance protocol). Therefore, in this context, the claimant’s failure report to work on April 18, 2025, or otherwise call out of her shift in a timely manner, did not constitute conduct in wilful disregard of the employer’s interest.

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant engaged in a knowing violation of a reasonable and uniformly enforced rule or policy or 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 entitled to receive benefits for the week of April 27, 2025, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 6, 2026



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

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