

As the HR manager responsible for payroll, the claimant was fired for submitting falsified timecards, in which she was paid for performing a job without the appropriate license. The Board held that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and she is disqualified under G.L. c. 151A, § 25(e)(2).

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 352-MMDN-4M2F

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 her position with the employer on August 19, 2024. She filed a claim for unemployment benefits with the DUA with an effective date of August 18, 2024. Her claim was approved in a determination issued on September 28, 2024. 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 November 29, 2024. 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 allow the claimant an opportunity to participate in the hearing. 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, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for benefits because she falsified her timecards, 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 employer, a skilled nursing facility, from September 12, 2018, through August 19, 2024, when she separated from her employment.
2. Upon hire, the claimant began employment as a human resources manager earning a salary of approximately \$59,000.00 as a non-exempt employee.
3. On approximately November 1, 2022, the claimant transitioned from a human resources manager to the regional human resources manager, earning a salary of approximately \$77,000.00 as a non-exempt employee.
4. On June 2, 2024, the claimant transitioned to a non-exempt activity director with an expected salary of approximately \$55,000.00.
5. During her employment, the claimant gained knowledge and expertise regarding employer rules, policies, and expectations as she operated as a human resources manager and regional human resources manager.
6. The claimant's most recent direct supervisor was the administrator (employee A).
7. The employer maintained a written "Code of conduct" policy.
8. The purpose of the policy was to "set forth basic standards which employees are expected to follow in performing their jobs."
9. The disciplinary actions if an employee were to violate the policy included in part, "Although appropriate actions will be determined on a case-by-case basis, such actions may include oral or written warnings, disciplinary probation, suspension, dismissal from employment, or revocation of privileges."
10. On September 11, 2018, the claimant signed an employee attestation indicating in part, "I have received and read a copy of the (employer) code of conduct."
11. The employer maintained an expectation that its employees catalogue time worked accurately and refrain from falsifying timecards.
12. The purpose of the expectation was to ensure employees were abiding by a standard of conduct using excellence and honesty.
13. The claimant was aware of the expectation through the employee code of conduct policy, as well as from being the human resources manager and regional human resources manager.
14. During her employment, the claimant would sign off on her own payroll records, which also included using pre-signed administrative payroll exception forms from employee A.

15. Salaried employees did not need to utilize administrative payroll exception forms as there are times the salaried employee could work over or under their typical scheduled hours.
16. Pre-signed administrative payroll exception forms were not legitimate for employees to utilize.
17. During her employment, the claimant would submit vacation time off to employee A, which included at times working during the vacation, whereby the claimant would not utilize vacation time for the hours worked.
18. The scheduler/payroll assistant (employee B) also assisted with payroll activities.
19. When employees would cancel previously requested and approved time off for a vacation, the employer records would not always be updated.
20. During the claimant's employment, the employer allowed employees to cash in on unused vacation time off, which would provide employees with payments in exchange for unused vacation time.
21. On January 8, 2021, the claimant received a certificate of completion for "Targeted COVID-19 training for frontline nursing home staff."
22. During the COVID-19 pandemic in 2021, the employer enacted a residential care assistant ("RCA") program, whereby an employee interested in becoming a nurse could enroll in the program for no more than 120 days, the employee would need to get a certification, and the additional pay for said individuals would be \$37.08, upon "RCA" being added to the employee timecard.
23. The claimant enrolled in the employer RCA program.
24. The waiver period for the RCA program ended December 2022.
25. Beginning January 1, 2023, the claimant along with other employees who enrolled in the RCA program were informed they had 120 days to become RCA certified.
26. During the 120 period, the claimant continued to submit pre-signed administrative payroll exception forms indicating she was working as an RCA, which would allow the claimant to obtain the extra RCA pay.
27. The claimant did not become RCA certified following 120 days from January 1, 2023.

28. Upon the RCA 120-day period ending and the claimant not becoming RCA certified, the claimant continued to submit pre-signed administrative payroll exception timesheets indicating she was working as an RCA, which would allow the claimant to obtain the extra RCA pay when she was not working as an RCA and was not RCA certified.
29. The claimant's timesheets indicating she was working as an RCA when she was not RCA certified could have caused the state of Massachusetts to fine the employer, as well as open the employer to legal ramifications if a client was injured.
30. On March 29, 2023, the claimant completed a one (1) hour "Leveraging raid upward mobility-virtual" training.
31. On September 7, 2023, the claimant completed an eight (8) hour "The RCA pandemic program" training.
32. On approximately May 13, 2024, the employer hired a new human resources manager (employee C).
33. Upon employee C's hire, the claimant continued to assist employee C with payroll, but did not relinquish full control of payroll to employee C.
34. On June 7, 2024, employee A and employee C approved a "Personnel action form" that indicated the claimant was transitioning to "activities director" and that there would be "no change" with the claimant's "new basic payrate".
35. The claimant did not approve or sign off on her own "Personnel action form".
36. Employee A and employee C did not send the "Personnel action form" to the employer for an equity check to be done, which would establish, check, and approve the claimant's "new base rate".
37. Upon employee A and employee C not sending the "Personnel action form" to the employer for an equity check to be done, the claimant continued to be paid at the regional human resources manager salary of approximately \$77,000.00 instead of the activity director salary of approximately \$55,000.00.
38. Upon the director of corporate human resources (employee D) discovering that payroll was not transitioned to employee C upon employee C's hire, employee D began to review payroll records, and discovered the claimant was receiving pay at the incorrect salary.
39. Upon discovering the claimant was being paid at the incorrect salary, employee D began to further investigate the claimant's payroll records and discovered the claimant was receiving additional RCA pay even though the claimant was not an RCA after the 120-day RCA program ended.

40. During the investigation into the claimant's payroll records, the director of talent (employee E) questioned employee A about the payroll records indicating the claimant took time off from work for a vacation, but no vacation time was utilized in the payroll system.
41. Employee A responded, "Why would she do that and not charge her time? I trusted her."
42. During the investigation, employee E questioned employee C, whereby employee C indicated she did not believe the claimant's actions to be ethical regarding putting in extra time worked when the claimant was a salaried employee.
43. Employee C informed employee E that the claimant provided employee C with a stack of pre-signed administrative payroll exception forms, and that the claimant informed employee C to use them as needed.
44. On August 15, 2024, the claimant received a text message from employee A who indicated, "Hi (claimant). I am so sorry. I was not expecting any of this and was interrogate this morning. I was very caught off guard. Please know I know you have done nothing wrong and am doing everything to make sure they know that too (heart emoji)."
45. The claimant responded, "Why do they hate me know why are they targeting me (employee A) I for anything for anyone that place come in on weekend to help come back at night I write all my extra hours on a calendar to show you I'm so upset."
46. During the employer investigation into the claimant's payroll records, it was discovered the claimant's daughter (employee F) at times reported to the claimant and the claimant's husband who ran the kitchen (employee G), as employee F worked in the kitchen and reception roles.
47. The employer investigation discovered that the claimant approved employee F's timesheets for a higher reception payrate, for the times she worked in a kitchen role.
48. During her employment, the claimant made errors in approving employee F's timesheets, when approving employee F for a higher reception payrate, for the times she worked in a kitchen role.
49. The claimant was not questioned during the employer's investigation into her payroll records.
50. In August 2024, the claimant discontinued handling payroll records.

51. Following the employer's investigation into the claimant's payroll records, the employer estimated that the claimant was incorrectly paid approximately \$20,000.00.
52. On approximately August 19, 2024, employee A and the regional director of operations (employee H) met with the claimant in person and informed her that she was being discharged for falsifying payroll records.
53. As of the date of the remand hearing (April 29, 2025), the employer has not taken legal action against the claimant.
54. The claimant was discharged for falsifying payroll records.

Credibility Assessment:

During the original hearing, Employee D and Employee E testified that when the claimant moved from Regional Human Resources Manager to Activities Director, her salary was supposed to drop from about \$77,000 to about \$55,000. Despite this alleged reduction, the claimant continued to process payroll and received compensation at the higher HR Manager rate. At the remand hearing, however, the claimant consistently and credibly maintained that her transition to Activities Director was approved without any salary change, and that she neither authorized nor set her pay rate. She introduced a June 7, 2024 "Personnel Action Form," signed by Employees A and C, which explicitly states "no change" to her "new base pay rate." When confronted with this form, Employee D admitted it had been approved in error—Employees A and C should have subjected it to an equity review before signing off on her base rate.

It is undisputed that Employee F worked both reception and kitchen shifts and was to be paid according to whichever role she worked at the time. On occasion, the claimant approved timesheets that paid Employee F the higher reception rate even when she was working in the kitchen. At the remand hearing, the claimant credibly explained that any such overpayment was inadvertent. Given the administrative complexity of tracking dual roles and rates, it is reasonable that she might mistakenly approve a reception rate instead of the correct kitchen rate. Accordingly, the claimant's explanation is deemed credible.

Employee D and Employee E also alleged at both hearings that the claimant would have approved vacation requests but continued to work—thereby not actually using accrued vacation time—only to cash out unused days at year's end. At the remand hearing, the claimant testified credibly that sometimes she worked while on approved vacation, and other times a vacation would be approved but later cancelled without the employer's database being updated. Employee A confirmed that the system occasionally failed to reflect accurate vacation dates. Given these corroborated system errors, the claimant's testimony on this point is also deemed credible.

Finally, at the earlier hearings, Employees D and E testified that after the employer's RCA program ended in December 2022 and the 120-day allowance expired, the claimant continued submitting administrative payroll exception forms to receive RCA pay, despite not obtaining RCA licensure. At remand, the claimant acknowledged knowing about the program but insisted she submitted those forms only when she was not providing direct care to clients. However, it is neither reasonable nor logical to continue seeking payment at an RCA rate without holding a valid RCA license once the program and its grace period had ended. On this issue, the employer's account is more credible than the claimant's.

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. The claimant was required to obtain a nursing assistant license, not a residential care assistant license. This is supported by the employer's testimony during the hearing. 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 that the claimant is ineligible for benefits.

Because the claimant was terminated from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in relevant 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 discharged the claimant, a human resources manager responsible for payroll, because she falsified her timecards.¹ See Consolidated Findings ## 2, 3, and 52. Specifically, the claimant reported on her timecards that she was working additional hours as a residential care assistant (RCA). See Consolidated Findings ## 22–29 and 39. During COVID-19, the employer

¹ The claimant was responsible for payroll. While her payroll responsibilities as well as the testimony referenced below were not explicitly incorporated into the review examiner's findings, they are part of the unchallenged evidence introduced at the hearing and placed in the record and 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).

permitted employees that were interested in becoming nurses to work as RCAs for 120 days, and then employees would have to obtain their nursing assistant license. *See Consolidated Finding # 22.* The program ended in December 2022, and, beginning January 1, 2023, the claimant and other employees were informed that they were no longer permitted to work as RCAs unless they obtained a license within 120 days. *See Consolidated Finding # 25.* Despite being informed of the program's rules, the claimant never obtained a nursing assistant license as required, she continued to report on her timecards that she was working as an RCA, and she received extra pay. *See Consolidated Findings ## 27 and 28.*

If we assume that this conduct violated the employer's code of conduct policy, Consolidated Finding # 9 provides that the level of discipline is to be decided on a case-by-case basis. Inasmuch as there is no evidence to show that the employer imposed the same level of discipline for all employees under similar circumstances, the employer has not met its burden to demonstrate that the claimant engaged in a knowing violation of a reasonable and *uniformly enforced* policy. Alternatively, it may meet its burden by proving deliberate misconduct in wilful disregard of the employer's interest.

The claimant testified at the hearing that she did not need a license to perform RCA work, because she was not providing direct patient care and was only performing kitchen and housekeeping duties. The claimant is arguing that she did not engage in misconduct. However, the review examiner provided in his credibility assessment that it was not reasonable or logical for her to continue working and receiving extra RCA pay after she was informed the RCA program ended. The explicit terms of the RCA program required employees to obtain a license. 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). Based upon the record before us, the review examiner's assessment was reasonable and will not be disturbed.

Consolidated Finding # 11 provides that the employer expected its employees to catalogue time worked accurately and refrain from falsifying timecards. Given that the claimant did not yet have the credentials to be an RCA, paying herself at the RCA rate was misconduct. Since there is nothing in the record to suggest this was an accident, we can infer that the claimant's continued act of falsifying her timecard submissions were deliberate.

We also consider whether the claimant's actions were done 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). 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).

Here, the record shows the claimant was aware of the employer’s expectation that she accurately report her hours worked on her timecards. The claimant had knowledge of the expectations as the human resources manager responsible for payroll, and she signed the employer’s code of conduct. *See Consolidated Findings ## 10–14 and 18.* Additionally, she was informed that the RCA waiver program ended, and she could not work and be paid as an RCA unless she obtained the proper license. *See Consolidated Findings ## 22 and 24.* The expectation is reasonable in light of the employer’s need for an accurate payroll and to comply with state rules. *See Consolidated Findings ## 8, 12, and 29.*

Next, we consider whether the claimant’s conduct was due to mitigating circumstances. 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). The absence of mitigating factors for the claimant’s misconduct indicates that the claimant acted in wilful disregard of the employer’s interest. *See Lawless v. Department of Unemployment Assistance*, No. 17-P-156, 2018 WL 1832587 (Mass. App. Ct. Apr. 18, 2018), *summary decision pursuant to rule 1:28*. Here, the claimant did not provide any evidence that her actions were outside of her control. Thus, her actions were in wilful disregard of the employer’s interests.

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 affirmed. The claimant is denied benefits for the week ending August 24, 2024, and for subsequent weeks, until 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 - July 28, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

MR/rh