Youth residential supervisor was discharged for bringing two female youth residents to his personal residence on two separate occasions. Because there is no evidence to show that the employer knew of other employees engaging in the same behavior, the claimant failed to show that the employer condoned his actions. Although the claimant characterized his actions as a "poor decision," they were not the result of a mere lapse in judgement, because the claimant was aware of the employer's boundaries policy, yet he still engaged in the conduct more than once. Given the absence of mitigating circumstances, held the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest and he is ineligible for benefits under G.L. c. 151A, § 25(e)(2).

Board of Review
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Issue ID: 352-MMF5-4PLP

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 reverse.

The claimant was discharged from his position with the employer on April 17, 2025. He reopened an existing claim for unemployment benefits with the DUA, which was effective August 18, 2024. In a determination issued on June 20, 2025, the DUA denied benefits, beginning April 13, 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 September 10, 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 afford the employer 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 the claimant is entitled to receive benefits because the employer had not shown that he was discharged for engaging in any disqualifying conduct, 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 for the employer, a human services agency, as a youth residential supervisor, from December 9, 2024, to April 8, 2025. The claimant's rate of pay was $27.00 per hour.

2. The claimant's job duties included, but were not limited to, supervising a residential facility with staff and juvenile residents. Many of the residents of the facility are under the care of the Massachusetts Department of Child and Family (DCF) Services.

3. The employer and facilities are licensed under the Massachusetts Department of Early Education and Care (EEC) regulations - Licensure 102 CMR 1.00.

4. The EEC requires that employees in residential programs who have the potential for unsupervised contact with children have a background free of [supported] allegations of abuse and neglect of a child. 102 CMR 1.05 (1)(a); (2)(a).

5. The employer maintains a written employee handbook, containing procedures for reporting suspected abuse or neglect, in accordance with M.G.L. c. 119, § 51 and [DCF] regulations 606 CMR 3.04.

6. The employer maintains a written employee handbook, containing a boundaries policy, for residential services. The policy includes, in pertinent part: "It is imperative that clients not have access to staff personal lives, as they will begin to distort their relationship to staff."

7. The purpose of the policy is to clearly establish appropriate and healthy contact in the scope of the children's treatment.

8. The policy applies to all employees.

9. On December 9, 2024, the claimant received the handbook and completed mandatory training in risking connections, mandated reporting (G.L. c. 119, § 51A), and client rights.

10. On December 13, 2024, the claimant received residential orientation training.

11. The claimant was aware of the requirement that employees with the potential for unsupervised contact working with juveniles must have a background free of a supported allegation of abuse and neglect.

12. On or about early April 2025, on two occasions, the claimant brought two different female teen residents of the program to his home residence.

13. On April 8, 2025, the claimant was informed that he was suspended without pay, pending the outcome of a DCF child neglect and abuse investigation (G.L. c. 119, § 51A report).

14. On April 17, 2025, the claimant's employment was terminated via letter, informing the claimant that the DCF supported the allegations of neglect/abuse against the claimant, and therefore his employment was terminated, effective immediately.

Credibility Assessment:

No credibility issues.

The claimant testified to "being in social services for years" and knowing that he couldn't be employed with a supported 51A report. The claimant also admitted that he brought the residents to his home and that he received the boundaries 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant was terminated from his employment, his qualification 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).

It is undisputed that the employer is subject to an EEC licensing requirement that residential program staff, who have the potential for unsupervised contact with children, have a background free of supported allegations relating to child abuse and neglect. *See* Consolidated Findings ## 4 and 11. It is also undisputed that the employer fired the claimant, a youth residential supervisor, after a DCF investigation supported the allegations of child neglect/abuse against him. *See* Consolidated Findings ## 1, and 13–14. Specifically, the claimant brought two different female program residents to his personal residence on two separate occasions in early April, 2025. Consolidated Finding # 12.

Although not in the consolidated findings, the claimant and employer both testified that the employer will always terminate an employee who becomes the subject of a supported 51A report, because employees must have a background free of a supported allegation of abuse and neglect to work for the employer. *See* Consolidated Findings ## 4 and 11. However, prior Board decisions ruled that evidence relating to a supported 51A report against a claimant is, by itself, insufficient to support disqualification from the receipt of benefits. *See* Board of Review Decision 0056 3315 96 (Oct. 22, 2021) (although 51A investigation found claimant engaged in sexual abuse and neglect, no disqualification because there was no evidence of wrongdoing); *see also* Board of Review Decision 0018 9441 45 (Dec. 13, 2016) (despite supported 51A findings of neglect, no disqualification, because at most, claimant was negligent for leaving child unattended) and Board of Review Decision 0017 5456 53 (Sept. 27, 2016) (No disqualification, where the employer discharged claimant due to supported 51A report, but no evidence of intentional wrongdoing when teenager left residential home without authorization and was missing for five hours). Taken together, these cases establish that the Board has consistently analyzed the underlying basis for a supported 51A report when reviewing a claimant's eligibility for benefits.

Here, it is undisputed that the employer has a written boundaries policy that prohibits employees from giving residential clients access to their personal lives, so that appropriate and healthy contact between staff and residents is maintained. *See* Consolidated Findings ## 6–7. As the employer did not provide any evidence that all other employees who committed the same offenses as the claimant were discharged, it has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* policy. We, therefore, consider only 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 that the claimant engaged in the misconduct for which he was discharged. As the claimant conceded that, in early April, 2025, he brought two different female teenaged residents of the employer's program to his home residence, on two separate occasions, and that this conduct violated the employer's boundaries policy, there is no question that he engaged in the misconduct for which he was discharged. *See* Consolidated Finding # 12. Because nothing in the record suggests that the claimant's conduct was inadvertent or accidental, and the findings establish that he performed the same act on two separate occasions, we can infer that his actions were deliberate.

However, deliberate misconduct, by itself, does not disqualify the claimant from receiving benefits. "Such misconduct must also be in 'wilful disregard' of the employer's interest. Deliberate misconduct in wilful disregard of the employer's interest suggests intentional conduct or inaction which the employee knew was contrary to the employer's interest." Goodridge v. Dir.

of Division of Employment Security, 375 Mass. 434, 436 (1978) (citations omitted). 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) (citation omitted).

In this case, the claimant readily acknowledged that he was aware of the employer's expectation to maintain professional boundaries with residential clients and refrain from giving them access to any aspect of his personal life, including where he lived. *See* Consolidated Findings ## 6, and 9–10. As the review examiner noted in her credibility assessment, the claimant admitted to having received boundaries training. With respect to the topic of maintaining boundaries with residential clients, the claimant specifically testified that he "had been working in human services for years, so I was aware of it and I understood it."[1]

We believe that the employer's expectation is self-evidently reasonable, as it ensures the safety and well-being of children in the employer's care. *See* Consolidated Finding # 7.

Although not noted in the consolidated findings or the review examiner's decision, the claimant testified that, while he knew he should not have taken youth residents to his home, there was nonetheless a "bad practice or culture" among employees, "because there was [sic] times where, staff would drop me off at my house with kids . . . everyone knew where I lived. . . ." With this testimony, the claimant appears to suggest that the employer might have tolerated or condoned his decision to leave the program residence and bring two female youth residents to his home in early April, 2025, but for the supported 51A report. It is true that, if an employer allows employees to bend a work rule without consequence, it is reasonable for a claimant to believe that such conduct is acceptable to the employer. *See* New England Wooden Ware Corp. v. Comm'r of Department of Employment and Training, 61 Mass. App. Ct. 532, 535 (2004) ("[f]ailure to enforce a policy uniformly, whether to the employee's benefit or detriment, still influences the employee's belief regarding the consequences of his actions."). However, there is nothing in the record, including the claimant's testimony, that shows that the employer knew that other employees were engaging in the same behavior as the claimant, and that it chose not to address it. An employer cannot condone behavior of which it was not aware. Therefore, the record supports the conclusion that the employer did not condone the act of bringing youth residents to the personal residences of its employees.

During the remand hearing, the claimant characterized his actions in early April, 2025, as a "poor decision." The Supreme Judicial Court has stated that "[w]hen a worker . . . has a good faith lapse in judgment or attention, any resulting conduct contrary to the employer's interest is unintentional; a related discharge is not the worker's intentional fault, and there is no basis under § 25(e)(2) for denying benefits." Garfield, 377 Mass. at 97.

[1] While not explicitly incorporated into the review examiner's findings, the claimant's testimony referenced in the review examiner's credibility assessment, as well has the portions of his testimony referenced below, are part of the unchallenged evidence introduced at the remand hearing and placed in the record and they 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).

In this case, we do not agree that this was merely a "poor decision" or good-faith lapse of judgment. Presumably, the employer's boundaries policy was put in place to avoid precisely this type of incident, which resulted in a supported 51A report. *See* Consolidated Findings ## 12–14. The claimant's actions exposed the employer to potential licensing challenges with the EEC, which could, in turn, affect its ability to operate. *See* Consolidated Finding # 3.

Finally, the claimant did not present any evidence of mitigating circumstances that caused him to behave this way at work. 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*.

Although the claimant testified that he brought the two female youth residents to his private home because "there was a situation where I had to go home . . . to go check on something in my house, to do something really quick [sic]," he did not elaborate further. Nothing in the record, including the claimant's testimony, shows that there were any mitigating circumstances in early April, 2025, over which the claimant had little or no control, that interfered with his ability to comply with the employer's expectation to maintain appropriate boundaries with the youth residents in his care.

We, therefore, conclude as a matter of law that the employer has met its burden to prove that the claimant engaged in 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 reversed. The claimant is denied benefits for the week beginning April 13, 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 14, 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.

JMO/rh