

**Although discharged for being charged with assault, the review examiner reasonably accepted as credible the claimant's testimony that she had not attacked the other individual. Held the employer had not met its burden to show the claimant engaged in conduct that violated an employer policy or expectation, and she was, therefore, eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 352-MMR8-RPTJ**

### 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 5, 2025. She filed a claim for unemployment benefits with the DUA, effective May 5, 2025, which was denied in a determination issued on July 3, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on September 15, 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 events that led to the claimant's separation. 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 had not engaged in deliberate misconduct in wilful disregard of the employer's interest because she had not engaged in the assault with which she was charged, 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 part-time as a direct care aide for the employer, a provider of home care service to elderly people in their home, from 5/5/2022 until 4/5/2025.
2. The claimant's immediate supervisor was the coordinator (the Coordinator).
3. The employer received funding from MassHealth. MassHealth maintained regulations prohibiting the employer from employing individuals with criminal records or with pending criminal cases.
4. The employer required employees to undergo CORI background checks and sexual offender registry checks.
5. The employer maintained an expectation that the claimant maintained a suitable CORI background check and not be charged with crimes. The employer maintained this expectation to ensure it complied with MassHealth regulations. The employer informed the claimant of this expectation when it required her to undergo a CORI check at the time she was hired.
6. On or around 3/28/2025, the claimant went to the home of her friend (Friend) who she had known for 20 years. When she arrived at the home, the Friend gave her the keys to his basement so she could clean the basement.
7. The claimant was aware there was someone that lived in the basement. The claimant was familiar with the woman that lived in the basement.
8. When the claimant went to the basement, the door would not open with the key and she saw a light she believed was a cellphone light.
9. The claimant saw the woman inside the basement and believed she was taking a video.
10. The claimant could not open the door and the woman continued to film the claimant while she attempted to enter the basement.
11. The claimant continued to enter the basement because she was going to clean it for the Friend.
12. The woman crossed the apartment, opened the outside door and grabbed a container with cigarette butts to clean it. The woman pushed the claimant. The claimant fell and her glasses fell off of her face.
13. The woman called the police.
14. When the police arrived, the claimant was inside the home with the Friend, and the woman was outside the home. The woman told the police that the claimant attacked her.

15. The claimant did not attack the woman.
16. The claimant told police officers she was attacked by the woman.
17. The claimant was not aware the woman worked for the employer.
18. The police arrested the claimant because the woman said she attacked her.
19. On or about 4/1/2025, a police officer went the employer's location to give the claimant a court summons that indicated she had been arrested for assault and battery with a deadly weapon and resisting arrest.
20. The police officer told the administrator/office manager it served her the summons at work because it could not find her home address.
21. On 4/5/2025, the claimant went to the employer's location and obtained the summons.
22. The summons indicated that the claimant's first court date was 4/7/2025.
23. On 4/5/2025, the employer discharged the claimant for having a criminal case open for allegedly assaulting her coworker.
24. On 4/7/2025, the claimant's criminal case was continued to 5/29/2025.
25. On 5/7/2025, the claimant learned the woman obtained a restraining order against her.
26. On 5/29/2025, the claimant's case was continued to 7/8/2025.
27. On 7/8/2025, the claimant's case was continued to 10/3/2025.
28. On 11/21/2025, the claimant attended court and was offered one year probation and told not to visit the Friend's home.
29. The claimant accepted the one-year probation offer because she was told when she completed the probation, the charges would be dismissed and there would be no record of them.
30. The claimant was not found guilty.
31. Prior to the remand, the claimant provided the woman's video evidence to the Department of Unemployment Assistance. The claimant received three videos from her attorney in the criminal matter.

32. In video one, the claimant can be seen in the backyard of a residence, then knocking on the door of the basement apartment.
33. In video two, the claimant can be seen knocking on a door and looking through the window of the door into the basement apartment.
34. In video three, the claimant can be seen entering the basement apartment from the inside, opening the door to the outside, grabbing a container that appeared to be full of cigarette butts, returning into the apartment and attempting to dispose of the cigarette butts.
35. In video three, it appears the claimant turned her back on the woman, then the woman got closer to the claimant. The video shows the claimant turning as the woman raised her hand in a fist and is stopped by the claimant. The video shows the woman's hand in a fist touching the claimant's jaw. The claimant was then seen holding the woman's arm after her jaw is touched. After that, the cellphone appears to be jostling.

#### Credibility Assessment:

Although the employer testified that the claimant could not remain employed because of the pending criminal case on 4/1/2025, the case was pending and no charges were made at the time. Ultimately, the claimant ended up accepting probation so that her record would clear after one year and the case would be dismissed.

Further, after viewing the videos, the claimant's testimony that the woman approached her while she emptied the cigarette butts into the trash is deemed credible. Although the claimant may have entered the woman's apartment, there is nothing but the woman's statement to the police officer that the claimant assaulted her. The videos in evidence are vague at best, if not showing that the woman approached the claimant and assaulted her, not the other way around.

Given the totality of the testimony and evidence presented over the course of the hearings, the claimant's testimony is deemed credible.

#### 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).

As a threshold matter, to meet its burden under G.L. c. 151A, § 25(e)(2), the employer must show that the claimant engaged in some misconduct which violated either an employer policy or expectation.

In this case, the employer discharged the claimant because she had been charged with assault. Consolidated Finding # 23. The claimant was charged with assault following an incident at a friend's house that occurred on or around March 28, 2025. Consolidated Findings ## 6, 14, 18, and 19. The pending criminal charges do not, by themselves, constitute misconduct. However, the claimant's decision to engage in the criminal acts that resulted in said charge could, under certain circumstances, rise to the level of deliberate misconduct in wilful disregard of the employer's interest. *See* Board of Review Decision 0032 6619 01 (May 29, 2020) (a criminal charge does not constitute misconduct unto itself, but the underlying criminal act may constitute misconduct.)

Following remand, the review examiner accepted as credible the claimant's testimony that she had not engaged in the conduct that led her to be charged with assault. *See* Consolidated Finding ## 14 and 15. 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). As the other evidence of record appears consistent with the claimant's testimony about her actions on the night of March 28, 2025, and there is no specific evidence corroborating the other woman's assertion that the claimant attacked her, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence. *See* Consolidated Findings ## 30, and 32–35.

Consistent with the consolidated findings, the employer has not met its burden to show by substantial and credible evidence that the claimant acted contrary to an employer policy or expectation on March 28, 2025. *See* Consolidated Findings # 15. We, therefore, conclude as a matter of law that the claimant's discharge was not due 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. The claimant may not be disqualified pursuant to 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 May 4, 2025, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 12, 2026**



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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