

The claimant was discharged for insubordination when he failed to write and submit an incident report before the end of his shift, as directed. As he had previously written and submitted incident reports, including during the shift in question, the employer's instruction was reasonable. Because the claimant did not credibly establish any mitigating circumstances for his failure to submit the report on time, his insubordinate act was deliberate misconduct in wilful disregard of the employer's interest and he is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

Board of Review
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Issue ID: 352-MN7D-T5P3

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 and filed a claim for unemployment benefits with the DUA, effective May 25, 2025, which was denied in a determination issued on July 15, 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 take additional evidence about the circumstances leading up to 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's response to a crisis situation mitigated his failure to write and submit a report by the end of his shift as directed, 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 security officer (sergeant) with the employer, a security company, from December 13, 2024, through approximately April 17, 2025, when he separated from his employment.
2. The claimant's direct supervisor was the lieutenant (employee A). The claimant's upper-level supervisor was the chief (employee B).
3. No written rules or policies were presented.
4. The employer expected employees to follow the chain of command when given directives from supervisors.
5. The purpose of the expectation was to ensure that directives were being followed.
6. The employer communicated the expectations to the claimant by providing the claimant with an employee handbook on December 13, 2024.
7. The claimant's typical work schedule was Sunday through Thursday, from approximately 3:30 p.m. until 12:00 a.m.
8. Security officers, including the claimant, would complete a minimum of two (2) incident reports during their assigned shifts, along with any subsequent incident reports regarding individual incidents, as needed.
9. The employer would be notified of incidents or crises, including when police and fire departments were called by security officers, or the facility where the security officers were stationed.
10. On the morning of April 15, 2025, when the claimant was not working his scheduled shift, employee A called the claimant to inform him to complete a report summary of a previous incident (incident A) from April 12, 2025, before the end of his April 15, 2025, scheduled shift.
11. On April 15, 2025, at approximately 3:30 p.m., the claimant began his scheduled shift.
12. Upon beginning his scheduled shift, the claimant did not write or submit the requested report summary regarding incident A.
13. Between approximately 7:00 p.m. - 7:30 p.m., employee B called the claimant to inform him to complete the report summary regarding incident A.
14. At 8:18 p.m., the claimant submitted an incident report regarding his current shift, that included in part, "[o]n 4/15/25 at approximately 6:35 p.m. (employer); (claimant) conducted an interior tour at [building A]; all floors,

emergency exits, along with areas of concern are clear and secure. (See photos below). All floors at [building A] are clear; there has been no complaints or disturbances thus far. All officers are present and accounted for. Nothing more to report at this time.”

15. On April 15, 2025, at 11:55 p.m., the claimant submitted a second incident report regarding his current shift, that included in part, “[o]n Tuesday, April 15, 2025, at approximately 11:20 [p.m.], (employer) (claimant) conducted an exterior patrol within [building B] and relived all buildings to conduct their tour. All was secure.”
16. There were no incidents or crises during the claimant’s April 15, 2025, shift.
17. The claimant did not indicate there were any incidents or crises during his April 15, 2025, shift when he submitted his two (2) incident reports.
18. The claimant did not write or submit the requested report summary regarding incident A during his April 15, 2025, shift.
19. On April 16, 2025, at approximately 8:30 a.m., employee A called the claimant asking if he submitted the report summary regarding incident A.
20. The claimant informed employee A that he did not complete the report summary regarding incident A because he “got caught up.”
21. On April 16, 2025, at approximately 1:21 p.m., the claimant submitted the report summary regarding incident A.
22. On approximately April 17, 2025, the claimant was called into a meeting with employee A and employee B, whereby the claimant was informed that he was being discharged from his employment due to insubordination.
23. The claimant was discharged from his employment due to not submitting a report summary regarding incident A in a timely manner, upon request.

Credibility Assessment:

During the original hearing, the claimant asserted that on April 15, 2025, at approximately 7:30 p.m., employee B requested that the claimant provide a report summary of incident A as soon as possible, but following the conversation, the claimant was involved in a crisis that included the [City] police and fire departments, which prevented him from submitting the report summary regarding incident A.

During the original hearing, the director (employee C) asserted that on the morning of April 15, 2025, employee A instructed the claimant to complete a report summary regarding incident A by the end of the claimant’s April 15, 2025,

scheduled shift, that between 7:00 p.m. - 7:30 p.m., employee B asked the claimant to submit the report summary regarding incident A and that, on approximately April 16, 2025, employee A asked the claimant if the report summary was completed, at which time the claimant indicated that it was not submitted because he got caught up.

During the remand hearing, the administrative lieutenant (employee D) credibly testified that on April 15, 2025, there were no incidents that would have prevented the claimant from completing the requested report summary regarding incident A. Furthermore, in support of employee D's testimony, the employer presented the claimant's incident reports from April 15, 2025, which make no reference to any incidents or crises during the claimant's April 15, 2025, scheduled shift. When questioned during the remand hearing regarding the claimant's incident reports making no reference to any incidents or crises, including the [City] police and fire departments being on the premises, the claimant asserted that he had his dates and incidents wrong, but on April 15, 2025, he dealt with a domestic disturbance between approximately 8:00 p.m. - 8:30 p.m., and a smoke alarm issue at approximately 8:45 p.m. However, when questioned during the remand hearing as to why the alleged domestic disturbance and smoke alarm issues were not in his two (2) submitted incident reports from his scheduled shift, the claimant asserted management was aware of the domestic disturbance issues and the sergeant ("employee E") working with him did not think it was important. Lastly, the claimant asserted that, after the alleged two (2) incidents during his scheduled shift, he did not complete the report summary regarding incident A because he was working and wanted to go over things before submitting the report. It is not reasonable or logical that two (2) incidents occurred during the claimant's April 15, 2025, scheduled shift, as he has alleged in the remand hearing, when the claimant submitted two (2) incident reports from April 15, 2025, that made no reference of any incidents during the shift. Furthermore, the claimant's assertion during the remand hearing that he could not complete the report summary regarding incident A during his scheduled shift because he was working and wanted to go over things before submitting the report is nonsensical, as the claimant's own incident reports dictate there were no incidents preventing him from completing the report over an approximate eight (8) hour shift, when the employer requested him to complete the report, knowing the claimant was working. As such, employee C and employee D's credible testimony and supporting documentation is deemed more credible than the claimant's inconsistent testimony.

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 entitled to benefits.

Because the claimant was discharged from his employment, his 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).

Because the employer did not provide any evidence that all other employees who committed the same offense 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 the claimant engaged in the misconduct for which he was discharged. The employer discharged the claimant because he failed to timely submit an incident report summary. *See* Consolidated Finding # 23. Specifically, it was because the claimant did not submit a report summary regarding an April 12, 2025, incident during his April 15, 2025, shift, as directed by his superiors. *See* Consolidated Findings ## 10, 13, and 18. During the hearing, the claimant did not dispute that he had failed to write and submit the report by the end of his April 15, 2025, shift. Therefore, the employer has shown that the claimant committed the misconduct for which he was discharged.

Also during the remand hearing, the claimant testified that he thought that it took him a “good hour and a half” to write and submit the requested report and admitted that he had enough time to write and submit the report during his April 15, 2025, shift.¹ In addition, the claimant provided only vague explanations as to why he failed to follow the employer’s directive, which included being “caught up,” and “because he was working and wanted to go over things,” and there were no incidents or crises during his shift that could have prevented him from writing and submitting the

¹ The claimant’s uncontested testimony during the employer’s cross-examination as well as the exhibits referenced below, while not explicitly incorporated into the review examiner’s findings, are part of the unchallenged evidence introduced at the 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).

report as directed.² See Consolidated Findings ## 16, 17, and 20. As nothing in the record indicates that the claimant simply forgot about the employer's deadline, did not know how to write and submit an incident report, or otherwise made a mistake, we can reasonably infer that his failure to write and submit the report by the end of his shift was a deliberate act.

However, the Supreme Judicial Court (SJC) has stated, "Deliberate misconduct alone is not enough. Such misconduct must also be 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). 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).

The claimant understood that the employer expected him to follow the chain of command when given directives from supervisors, as he had received an employee handbook on December 13, 2024. See Consolidated Findings ## 4 and 6. Although not referenced in the findings, it is undisputed that the claimant was also aware that the employer maintained a policy prohibiting insubordination within the employee handbook. Moreover, Consolidated Finding # 10 shows that, on the morning of April 15, 2025, employee A called the claimant to inform him to complete a report summary of a previous incident (incident A) from April 12, 2025, before the end of his April 15, 2025, scheduled shift. Later that same day, employee B called the claimant to inform him to complete the report summary regarding incident A. Consolidated Finding # 13. There is no indication that, after having received the same directive from two different superiors, the claimant lacked any understanding of the employer's directive. Therefore, the record establishes that the claimant understood his failure to write and submit the report by the end of his shift was contrary to the employer's expectations.

We believe that the employer's expectation that employees follow the chain of command when given directives from supervisors is facially reasonable. Because the claimant had previously submitted incident reports as part of his regular job duties, including two incident reports on April 15, 2025, we believe that the employer's directive to write and submit an incident report relating to certain events of April 12, 2025, by the end of the claimant's April 15, 2025, shift, was also reasonable. See Consolidated Findings ## 8 and 14–15.

We now consider whether the claimant established any mitigating circumstances for his behavior. 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).

As the review examiner noted in his credibility assessment, the claimant initially testified that he had been involved in a crisis involving local police and fire departments that prevented him from timely submitting the report. During the remand hearing, however, the claimant amended this testimony and asserted that, while he had his dates and incidents wrong, he still dealt with a

² This testimony, which was referenced in the review examiner's credibility assessment, is also part of the unchallenged evidence in the record.

domestic disturbance and smoke alarm issue during his April 15, 2025, shift. In rejecting this aspect of the claimant’s testimony as unreasonable and illogical, the review examiner pointed to the claimant’s failure to reference either incident in his April 15, 2025, incident reports. *See Consolidated Findings ## 14–15; see also Remand Exhibits 6-7.*³

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). We believe that this assessment is reasonable in relation to the evidence presented.

The claimant did not provide any testimonial or documentary evidence concerning any other circumstance that precluded him from writing and submitting the incident report before the end of his April 15, 2025, shift. Thus, the claimant has not presented substantial evidence to show that any other circumstances beyond his control caused him to fail to follow the employer’s directive. As such, the claimant has not shown mitigating circumstances for his insubordinate act.

We, therefore, conclude as a matter of law that the claimant was discharged for 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 May 25, 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 5, 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)**

³ Remand Exhibit 6 is the April 15, 2025, incident report submitted by the claimant at 8:18 p.m. Remand Exhibit 7 is the April 15, 2025, incident report submitted by the claimant at 11:55 p.m.

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/th