

**The claimant, a warehouse associate, was fired for leaving without complying with the employer's directive to take a reasonable suspicion drug and alcohol test. Board held that leaving the testing facility before the administration of the test due to a headache was not mitigating. Therefore, the claimant is disqualified under G.L. c. 151A, § 25(e)(2).**

**Board of Review**

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**Issue ID: 352-MN9D-9FL5**

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 his position with the employer on March 17, 2025. He filed a claim for unemployment benefits with the DUA, effective March 16, 2025, which was denied in a determination issued on July 17, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on August 23, 2025. 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 obtain additional evidence regarding the claimant's separation. Only the claimant 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 was discharged for deliberate misconduct in wilful disregard of the employer's interest when he failed to take a drug and alcohol test, 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 warehouse associate for the employer, a warehouse, from 10/5/2024 until 3/17/2025.

2. The claimant's immediate supervisor was the operations manager (the OM).
3. The employer maintained a drugs and alcohol policy that stated in pertinent part, "Employees may be required to submit to drug and/or alcohol testing whenever [the employer] has a reasonable suspicion that they are in violation of this Policy. Reasonable suspicion may arise from, among other factors, observed suspected use of drugs and/or alcohol, performance decline, attendance or behavioral changes, the employee's appearance, or the presence of an odor that suggests that the employee is using drugs and/or alcohol in violation of this Policy. Reasonable suspicion determinations may be based upon supervisor observations as well as credible reports from co-workers and third parties."
4. The policy stated, "Employees are [the employer]'s most valuable resource. For that reason, [the employer] has an interest in ensuring a safe, healthy, and efficient working environment for our employees, their co-workers, and the customers we serve. Any unpermitted or unlawful presence, or use of drugs or alcohol in the workplace presents a danger to the health and safety of everyone." And "Violations of this Policy may result in disciplinary action, up to and including termination."
5. The claimant was scheduled to work from 12 a.m. to 11:50 a.m. on 2/24/2025.
6. Around 4 a.m., the employer asked the claimant to take a drug and alcohol test at the employer's on-site location.
7. It was unknown why the employer requested the claimant submit to a drug and alcohol test.
8. After the claimant waited approximately two hours for the test to be administered, he had a headache and went home, prior to the end of his shift, without submitting to the test.
9. The claimant believed he could take the test later.
10. After he left, the employer called the claimant and suspended him.
11. The employer did not request the claimant return to submit to a drug and alcohol test.
12. It was unknown why the employer did not request the claimant return to submit to a drug and alcohol test.
13. On 3/17/2025, the employer called the claimant and discharged him for not taking the drug and alcohol test on 2/24/2025.

14. It was unknown why the employer waited until 3/17/2025 to discharge the claimant.

Credibility Assessment:

Since the employer did not appear for either hearing, they failed to provide the requested documents requested by the Board. The claimant also did not provide any of the requested documentation, stating he no longer had them. At the initial hearing, the claimant testified that he waited to take the test, but he experienced a headache and left because it was at the end of his shift. However, at the remand hearing, he testified he left several hours prior to the end of his shift without taking the drug test. Given that the record establishes that the claimant was asked to take the test at 4 a.m., the claimant testified that he waited several hours to take it, and the claimant's shift ended at 11:50 a.m., it is concluded that the claimant's testimony from the initial hearing is not credible, and that it is more likely that he left in the middle of his 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject Consolidated Findings ## 7 and 9, which are unreasonable in relation to the evidence presented. We also reject Consolidated Finding # 12 insofar as it assumes that the employer was required to reach out to the claimant to give him another opportunity to submit to a drug and alcohol test. In adopting the remaining findings, we deem 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. For the reasons discussed below, we agree that the claimant is not 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 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 on March 17, 2025, because he failed to take a drug and alcohol test. *See Consolidated Finding #13.*

The employer provided a copy of its drug and alcohol policy, which required all employees to submit to a drug and alcohol test whenever the employer has a reasonable suspicion that an employee may be under the influence while at work. *See Consolidated Finding # 3.* Because the employer maintains discretion as to the form of discipline for anyone who violates the policy, we agree that it has not met its burden to show that the claimant knowingly violated a reasonable and *uniformly enforced* policy. *See Consolidated Finding # 4.*

Alternatively, the employer may demonstrate that the claimant was discharged for deliberate misconduct in wilful disregard of the employer's interest.

The employer established and the claimant acknowledged that, on February 24, 2024, he failed to submit to a drug and alcohol test requested by the employer. *See Consolidated Findings ## 5, 6, and 8.* Therefore, he engaged in misconduct for which he was discharged. Because the claimant left the testing facility before the test could be administered and there is no suggestion that he did so by mistake, we can infer that his actions were deliberate. *See Consolidated Finding # 8.*

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). 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). 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).

Arising from the drug and alcohol policy is an expectation that employees will comply with the employer's request to take a drug and alcohol test when the employer has a reasonable suspicion that suggests an employee is under the influence of drugs or alcohol. *See Consolidated Finding # 3.* During his initial testimony, the claimant testified that he was aware of the employer's policy. Thus, the employer has shown that the claimant was aware of its alcohol and drug policy providing that he was subject to reasonable suspicion testing, and specifically, of the directive to do so on February 24, 2025. On its face, we believe that the policy is reasonable as it ensures a safe, healthy, and efficient work environment. *See Consolidated Finding # 4.* In its responses to the DUA fact-finding questionnaires, the employer alleged it had a reasonable suspicion that the claimant was under the influence of alcohol based on his behavior.<sup>1</sup> Whether or not the claimant was actually under the influence is immaterial. The fact that the claimant had a headache and felt that he could not work suggests that something was going on and indicates that the employer's expectation to take a test that morning was reasonable. *See Consolidated Finding # 8.*

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<sup>1</sup> The employer's responses to the DUA fact-finding questionnaires are Exhibits ## 3 and 5.

We further reject the claimant's assertion that he left the employer's facility because he believed that the employer would allow him to take the test later, as he provided no evidence to support that assertion. *See Consolidated Findings ## 10 and 11.* In addition, there is nothing in the record to explain why the claimant could not remain at the employer's facility even though he had a headache. *See Consolidated Finding # 8.* In fact, he provided no evidence indicating that his headache was so severe that he could not notify his supervisor before leaving, nor does he suggest any other circumstance that might have rendered him incapable of complying with the employer's directive.

We, therefore, conclude as a matter of law that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest as meant under G.L. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending March 22, 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 - December 15, 2025**



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](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.

DY/rh