

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

Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member

Issue ID: 352-MP2N-F94L

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 March 18, 2025. He filed a claim for unemployment benefits with the DUA, effective April 13, 2025, which was denied in a determination issued on July 31, 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 20, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest or knowingly violate 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 give the employer an opportunity to testify and present other evidence. Only the employer participated in 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 did not engage in deliberate misconduct in wilful disregard of the employer's interest, is supported by substantial and credible evidence and is free from error of law, where after remand, the review examiner found that the claimant did not use the employer's equipment properly.

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 land clearing company as a full-time yard associate from approximately April 29, 2024, until March 18, 2025, when he separated from the employer.
2. The claimant's direct supervisor was the yard manager (employee A).
3. The employer maintained a written "Standard[s] of conduct" policy (policy A).

4. The purpose of policy A was to “create a work environment that promotes job satisfaction, respect, responsibility, integrity, and value for all our employees, clients, customers, and other stakeholders.”
5. The employer communicated policy A to the claimant through the employee Handbook.
6. The written disciplinary consequences if policy A were to be violated included, “could result in discipline, up to and including immediate termination of employment.”
7. The employer would utilize discretion when issuing discipline when policy A was violated.
8. The employer maintained a written “Workplace violence” policy (policy B).
9. The purpose of policy B was that “we are committed to working with our employees to provide a work environment free from violence, intimidation, and other disruptive behavior.”
10. The employer communicated policy B to the claimant through the employee handbook.
11. The written disciplinary consequences if policy B were to be violated included, “discipline up to and including termination of employment.”
12. The employer would utilize discretion when issuing discipline when policy B was violated.
13. The employer maintained the expectation that employees would listen to management regarding the proper use of employer equipment.
14. The purpose of the expectation was to ensure employees acted in a professional manner.
15. The employer communicated the expectations to the claimant during the claimant’s employment.
16. During the claimant’s employment, the owner (employee B) moved the claimant to different positions upon the claimant’s co-workers’ request[s], as the claimant’s co-workers explained that [they] were unable to continue working with the claimant.
17. On July 15, 2024, employee B issued the claimant a verbal warning regarding the claimant’s rude and aggressive behavior toward the mowing supervisor (employee C).

18. On August 2, 2024, employee B issued the claimant a verbal warning regarding his lack of attendance.
19. On September 20, 2024, employee B issued the claimant a verbal warning regarding the claimant's lack of attendance.
20. On March 10, 2025, employee B issued the claimant a verbal warning regarding the claimant's lack of attendance.
21. On March 17, 2025, the claimant was instructed by employee A to operate the firewood processor.
22. The proper use of the firewood processor included sitting in a seat, putting wood gently on the machine, pulling a lever for the wood to be split, and then physically driv[ing] the materials across the employer's yard in a safe manner.
23. Instead of following the proper technique when using the firewood processor, the claimant was being aggressive with the employer's equipment, not taking care of the equipment, not taking his time with the equipment, as well as physically driving the materials at an unsafe speed.
24. At the time the claimant was utilizing the firewood processor, employee B witnessed the claimant's actions but was prevented from immediately speaking to the claimant as employee B was speaking with other employees.
25. During the claimant's shift, employee A attempted to speak to the claimant, whereby the claimant responded, "yah, yah, whatever."
26. On March 18, 2025, employee A informed employee B that on March 17, 2025, the claimant was utilizing the firewood processor in an aggressive manner.
27. After speaking with employee A, employee B met with the claimant and informed the claimant that he was being terminated from his employment due to, "his aggressiveness, disrespect, and anger, ongoing tardiness, being abusive with equipment, and because no one wanted to work with him any longer."
28. The claimant began raising his voice saying, "You are taking my job. You are a jerk. You are an asshole."
29. Upon separating from his employment, the claimant sent threatening text messages regarding employee A to another employee (employee D), that subsequently caused employee A to obtain a "harassment prevention order" against the claimant and caused the employer to obtain a "no trespass order" against the claimant.

30. The claimant was discharged on March 18, 2025, following his actions on March 17, 2025, which included not following management's directives regarding the proper use of the firewood processor, as well as physically driving the materials at an unsafe speed.

Credibility Assessment:

During the original hearing, the claimant asserted that on approximately March 18, 2025, employee B informed him that employee A no longer wanted to work with him and that he was being let go because, "We will be keeping employee A over you." The claimant further asserted that no final incident occurred prior to his discharge of employment. During the remand hearing, employee B provided credible and consistent testimony that even though the claimant was being discharged due to multiple issues and incidents during his employment, the final incident that subsequently led to the claimant's discharge occurred on March 17, 2025, when he witnessed the claimant not utilizing the firewood processor in the proper manner, as the claimant was being aggressive with the employer's equipment, not taking care of the equipment, and not taking his time with the equipment, as well as physically driving the materials at an unsafe speed. Employer B further credibly and consistently testified that during the claimant's March 17, 2025, shift when employee A attempted to speak to the claimant, the claimant responded, "yah, yah, whatever." Lastly, employee B credibly and consistently testified that during the March 18, 2025, discharge conversation, he informed the claimant that he was being discharged due to "his aggressiveness, disrespect, and anger, ongoing tardiness, being abusive with equipment, and because no one wanted to work with him any longer." It is not reasonable or logical that no final incident would have occurred prior to the March 18, 2025, discharge, as the claimant has alleged, if the claimant was discharged from his employment and was informed that employees, including employee A, no longer wanted to work with the claimant. As such, the bookkeeper's (employee E) and employee B's testimony is deemed more credible than that of the claimant's 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 original 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 reject the review examiner's original legal conclusion that the claimant is eligible for benefits.

Because the claimant was discharged from his employment, his 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 review examiner found that the employer maintained a Standards of Conduct policy intended to promote, in relevant part, responsibility and respect in the workplace. Consolidated Findings ## 3–4. Because the employer retained discretion when determining the form of discipline to impose when an employee violates the policy, we cannot conclude that the claimant violated a reasonable and *uniformly enforced* rule or policy of the employer. Consolidated Findings ## 6–7. Alternatively, we consider whether the employer has met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

As a threshold matter, the employer must demonstrate that the claimant engaged in the misconduct or policy violation for which he was discharged. In this case, the employer discharged the claimant due to “his aggressiveness, disrespect, and anger, ongoing tardiness, being abusive with equipment, and because no one wanted to work with him any longer.” Consolidated Finding # 27. The final incident, where the claimant did not follow the proper techniques when using the employer's equipment, occurred on March 17, 2025, and ultimately caused the claimant's separation on March 18th. Specifically, instead of operating the machinery gently, he did so aggressively. *See* Consolidated Findings ## 22–23, and 26–27. Inasmuch as the claimant did not properly use the employer's firewood processor on March 17th, as instructed, we agree that the claimant engaged in misconduct. We further believe that the misconduct was deliberate, as nothing in the record suggests that the claimant acted inadvertently.

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 here was aware of the employer's expectation that he was to gently operate the employer's firewood processing equipment, as employee A had specifically instructed him to do so on March 17, 2025. *See* Consolidated Findings ## 21 and 22. We believe such an instruction

to be a self-evidently reasonable measure to ensure the equipment's safe operation and avoid damaging it.

Finally, we consider whether the claimant has demonstrated any 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). Since nothing in the record indicates there were circumstances which prevented the claimant from following employee A's instructions on March 17th, the claimant has not shown mitigating circumstances for his behavior.

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. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. 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 - January 6, 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.

SVL/rh

The claimant engaged in deliberate misconduct in wilful disregard of the employer's interest, as he failed to use the employer's equipment properly and did not provide a mitigating reason for his behavior. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).