

The claimant food service worker was discharged for being in possession of seven grams (about a quarter of an ounce) of marijuana. Although this violated the employer's policy prohibiting possession of marijuana at work, the claimant may not be disqualified from receiving unemployment benefits pursuant to G.L. c. 94C, § 32L.

**Board of Review
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Issue ID: 352-MP3F-F35T

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 reverse.

The claimant was discharged from his position with the employer on May 6, 2025. He reopened an existing claim for unemployment benefits with the DUA, which was effective July 7, 2024. In a determination issued on August 1, 2025, the DUA denied benefits beginning May 4, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 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). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest by having marijuana in his possession at work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. On April 7, 2023, the claimant began working for the employer, a food service contractor.
2. Most recently, the claimant was a full-time (40+ hours per week) cook, working for the employer inside a college campus in Massachusetts.

3. The claimant's direct supervisors were the employer's general manager, and the employer's executive chef.
4. The employer maintains their work rules in a handbook that was issued to the claimant when he was hired.
5. Inside the handbook is a list of "Very serious offenses which may result in immediate discharge." Included in this list is "Possession and/or sale (unless authorized as part of job duties), use, distribution, or being under the influence of alcoholic beverages on client or company premises, or during working hours." and "Possession, use, sale, distribution, or being under the influence of illegal drugs or other controlled substances on client or company premises, or during work hours."
6. The employer expected that employees would not be in possession of marijuana while at work.
7. The claimant was aware of the no-cannabis rule at work because he had previously been in a meeting where that rule was discussed. In the meeting, "the boss" stated that if an employee was caught in possession of cannabis, they would be discharged.
8. The employer's general manager's office at the college campus is close to some bathrooms.
9. On April 15, 2025, the general manager used the bathroom next to his office. After the general manager used the bathroom, the claimant used the same bathroom next. At this point, the claimant was clocked out for the day, and he headed home after using the bathroom. After the claimant left the bathroom, the general manager smelt a "strong" "pungent" marijuana smell.
10. Before the claimant headed to the bathroom, another employee saw him picking some "plastic store bags" from his locker. He took the bags with him to the bathroom.
11. On April 16, 2025, the general manager, the claimant, and the union steward had a meeting. In the meeting, the general manager stated that he had smelled a marijuana smell after the claimant used the bathroom the previous day, and that he was concerned that the claimant was using marijuana at work.
12. In the meeting, the claimant denied smoking in the bathroom. He stated that he had "a seventh" on him on April 15 and April 16, 2025. He explained that "a seventh" was seven grams of marijuana. He explained that the strong smell was because the marijuana was very good quality.

13. On April 16, 2025, the employer placed the claimant on an unpaid investigatory suspension.
14. On May 6, 2025, the employer discharged the claimant for being in possession of marijuana at work, in violation of the employer's policies and expectations.
15. The claimant applied for unemployment insurance (UI) benefits effective July 6, 2025, with the Massachusetts Department of Unemployment Assistance (DUA).
16. In a DUA questionnaire to the claimant, some of the DUA's questions and the claimant's responses are as follows:
- **Were you discharged for violating a rule or policy?** Yes
 - **What was the rule or policy the employer said you violated?** The rule was no cannabis at work
 - **What did you do to violate this policy?** I smelled like cannabis
 - **Were you aware of the rule or policy?** Yes
 - **How did you know about this rule or policy?** We had a meeting about the rule
 - **Did you violate this rule or policy?** Yes
 - **Did you know you might be discharged for breaking this rule or policy?** Yes
 - **How did you know?** I knew i was going to be discharged because in the meeting we had the boss said if we was caught with cannabis or anything we was going to be terminated
 - **Were there any circumstances that excuse your conduct?** I was already clocked out of work when this issue occurred, i was leaving out the building.
 - **Additional information List any other information you want us to consider about this issue.** I feel like i was being stereotyped
17. The DUA disqualified the claimant from receiving UI benefits. The claimant appealed this disqualification.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is ineligible 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 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 findings show that the general manager smelled marijuana in the bathroom after the claimant had used it and was concerned that the claimant used marijuana at work. *See Findings of Fact ## 9 and 11.* During the April 16, 2025, meeting with the general manager and union steward, the claimant admitted to having seven grams of marijuana on him on April 15 and April 16, 2025. *See Findings of Fact ## 11–12.* The employer subsequently discharged the claimant specifically for being in possession of marijuana at work. *See Finding of Fact # 14.*

Although not noted in the review examiner's decision, G.L. c. 94C, § 32L, provides, in pertinent part, as follows:

Except as specifically provided in section 24I of chapter 90, chapter 94G and chapter 387 of the acts of 2008, neither the Commonwealth nor any of its political subdivisions or their respective agencies, authorities or instrumentalities may impose any form of penalty, sanction or disqualification on an offender for possessing 2 ounces or less of marihuana. By way of illustration rather than limitation, possession of 2 ounces or less of marihuana shall not provide a basis to deny an offender student financial aid, public housing or any form of public financial assistance including *unemployment benefits*. . . .

(Emphasis added.)

We form no opinion about whether the employer was justified in discharging the claimant. The question before us is whether the claimant is eligible to receive unemployment benefits based on the circumstances of his separation. In this case, the claimant was terminated for being in possession of seven grams (approximately a quarter of an ounce) of marijuana. Since this is less than two ounces, the Legislature has determined, pursuant to G.L. c. 94C, § 32L, that the claimant cannot be disqualified from receiving unemployment benefits, even if such possession violated the employer's policy.

We, therefore, conclude as a matter of law that the claimant is not disqualified from receiving unemployment benefits under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 4, 2025, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 30, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
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**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.

REB/rh