

The review examiner accepted as credible the claimant's testimony that she was trying her best to meet the employer's expectation of the number of calls answered in a day. As she was discharged because she unable to meet those standards, likely due to her own and her daughter's health issues, she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

**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-N3N5-9F8D

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 separated from her position with the employer on May 14, 2025. She filed a claim for unemployment benefits with the DUA, effective May 11, 2025, which was approved in a determination issued on September 15, 2025. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on December 19, 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 about the reason for 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 was discharged for deliberate misconduct in wilful disregard of the employer's interest because she was regularly away from her work computer and, as a result, did not meet the employer's performance expectations, 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 call center representative for the employer, a dermatology practice, between 10/15/2024 and 5/14/2025, when she separated.

2. The claimant's immediate supervisor was the business operations manager (manager).
3. The employer expected employees to answer eighty (80) calls per day.
4. The purpose of this expectation was to ensure that the practice's daily calls were answered and distributed evenly amongst staff.
5. The employer communicated this expectation to the claimant during onboarding and training.
6. On some days during her employment, the claimant answered eighty (80) calls per day.
7. The claimant has ADHD and is "very forgetful." The claimant is not prescribed medication for her ADHD. The claimant informed the manager of her ADHD.
8. The employer has a call answering system. When an employee finishes one call, they must manually change their status to "ready" to accept a new call.
9. Constantly throughout the claimant's employment, she forgot to change her status to "ready" to accept a new call once a prior call ended, which reduced the number of calls she was answering in a day.
10. The claimant was not intentionally avoiding answering calls.
11. The claimant's daughter has chronic ear infections. The claimant informed the manager of her daughter's ear issues. The daughter had ear surgery in February 2025.
12. The claimant used paid time off (PTO) in mid-January, mid-February, and late February for appointments for her daughter.
13. On 2/28/2025, the team lead and the manager met with the claimant and provided her a performance improvement plan (PIP) because the claimant was making twenty (20) calls fewer per day than her peers. The PIP goal was to increase the claimant's call count by ten (10) calls per day.
14. The claimant had prior employment where a new call would automatically connect a certain amount of time after a prior call ended. The claimant asked the manager about whether the employer's call answering system could do this because the claimant was forgetting to manually change her status. The system could not be adjusted in this way.
15. The claimant placed notes around her computer to remind her to change her status to "ready."

16. By 3/7/2025, the claimant made some progress.
17. By April 2025, the claimant was making up to fifteen (15) calls fewer per day than her peers.
18. On 4/1/2025, the claimant's younger brother died, and the claimant's mental health declined. The claimant informed the manager of this.
19. On 5/7/2025, the manager met with the claimant. The chief operating officer was not in this meeting. The claimant was making ten (10) to fifteen (15) calls fewer per day than her peers and needed to improve more. The employer required the claimant to answer ten (10) more calls per day and if she did not do so, she would face discipline up to and including termination. In the meeting, the claimant expressed a wanting and willingness to improve.
20. The employer tracks the status of employees working remotely. In the week after 5/7/2025, the claimant frequently had an inactive status from forgetting to manually change her status to "ready."
21. On 5/12/2025 or 5/13/2025, the claimant had a bathroom break that exceeded ten (10) minutes because she had an upset stomach and forgot to manually change her status.
22. In the week after 5/7/2025, the claimant was not expecting any discipline from the employer based on how she was doing her work because she was trying her best.
23. In the week after 5/7/2025, the claimant was not answering ten (10) more calls per day. The claimant was still answering fewer calls than her peers.
24. The claimant's failure to answer eighty (80) calls per day caused an increased workload on her peers and increased call waiting or response times for patients.
25. The claimant performed her job to the best of her personal ability on any given day.
26. On 5/14/2025, the manager called the claimant and terminated her employment for poor performance because she was not answering more calls per day after 5/7/2025.
27. The employer offers leaves of absence. The claimant did not request a leave of absence because she did not know a leave of absence was available.

Credibility Assessment:

During the original hearing, the COO maintained that the claimant did not inform the employer of any ear issues or ear surgery relating to her daughter. This is not credible considering the claimant's detailed testimony regarding her communication with the manager, corroborated by the text message communication between herself and the manager. The manager was not presented as a witness in this case and the claimant's testimony about her conversations and communication with the manager is deemed credible.

The claimant's testimony during the remand hearing about her own ADHD and forgetfulness to change her status to "ready" was credible given that it was direct testimony that was detailed and specific in nature. The claimant's testimony about her ADHD was corroborated by medical documentation. The claimant offered direct testimony of her own efforts to address this by placing reminder notes around her computer and asking the manager if the employer's call answering system could be changed to automatically connect a new call. The claimant was forthcoming about her brother's death and the subsequent decline in her mental health. The claimant's direct testimony during the remand hearing that she was not intentionally avoiding answering calls, that she was performing her job to the best of her personal ability, and that in the week after 5/7/2025, she was not expecting any discipline because she was trying her best is credible. In totality, the claimant's testimony was forthcoming, persuasive, and believable.

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 reject the review examiner's legal conclusion that the claimant is not 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).

The employer maintains a rule requiring employees to meet its performance expectations in terms of number of calls answered per day. *See Consolidated Findings ## 3 and 5*. However, it did not show that it discharged all other similarly situated employees who were unable to meet its performance expectations. Absent such evidence, the employer has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* rule or policy.

We next consider 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 she was discharged. In this case, the employer discharged the claimant due to poor job performance. Specifically, it discharged the claimant because she was not meeting the employer’s expectation that she answer at least eighty calls per day. *Consolidated Findings ## 3, 13, 23, and 26*. As there was no dispute that the claimant was not answering the same number of calls as her co-workers, we do not question the employer’s decision to terminate the claimant’s employment. The only question before us is whether the claimant was eligible for unemployment benefits pursuant to G.L. c. 151A, § 25(e)(2).

The Supreme Judicial Court has stated, “[when] a worker is ill equipped for h[er] job . . . , any resulting conduct contrary to the employer’s interest is unintentional; a related discharge is not the worker’s intentional fault, and there is no basis under § 25(e)(2) for denying benefits.” Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979). In this case, the review examiner accepted as credible the claimant’s testimony that she did not intentionally underperform in her job. *See Consolidated Findings ## 10, 22, and 25*. 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).

Upon review, we have accepted the review examiner’s credibility assessment as being supported by a reasonable view of the evidence. Given the review examiner’s credibility assessment and corresponding findings, it is evident that the claimant was merely ill-equipped to perform her job up to the employer’s standards, and, thus, losing her job was not her fault.

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest or knowingly violated a reasonable and uniformly enforced policy within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week of May 11, 2025, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 20, 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.

LSW/rh