

**The claimant left work early without notifying management staff, as required by the employer's policy. Held he was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(2), due to deliberate misconduct in wilful disregard of the employer's interest.**

**Board of Review  
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**Issue ID: 352-N457-94HN**

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 we affirm.

The claimant was discharged from his position with the employer on July 11, 2025. He filed a claim for unemployment benefits with the DUA, effective July 20, 2025, which was denied in a determination issued on September 29, 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 January 5, 2026. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant knowingly violated a reasonable and uniformly enforced rule or policy of the employer 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 knowingly violated a reasonable and uniformly enforced rule or policy of the employer by leaving his shift early without notifying the employer, 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. The claimant worked full-time as a cleaner at a hospital for an environmental services company (employer) from on or about 3/13/2023 until his discharge date, 7/11/2025.
2. The claimant worked forty hours per week with a rotating weekend schedule. Every other week the claimant has two weekdays off.

3. The claimant had a supervisor and reported directly to the employer's operations manager.
4. The claimant has health issues that have caused him to miss work for appointments.
5. The claimant's mother suffers from dementia and is in a nursing home. The claimant is her representative and attends her medical appointments.
6. The claimant exhausted his paid-time-off (PTO) benefit approximately halfway through the year on or about 6/5/2025.
7. The employer has a progressive discipline policy that treats attendance policy violations as minor infractions that do not subject the violator to immediate dismissal but when committed repeatedly can result in dismissal.
8. The employer progressive discipline policy has a point accrual system in place for attendance issues with points accruing on a rolling annual basis. The accumulation of eight (8) points gives rise to an attendance notification. Accumulating ten (10) points results in a written warning. At twelve (12) points accumulated, a final written warning is issued, and any additional points accumulated thereafter within a single year results in termination.
9. The employer has an attendance policy that requires employees to report absences to the manager on duty or through the call out number at least two hours prior to the start of a scheduled shift without exception.
10. The employer's attendance policy notes that leaving early within the first seven hours of a shift will be counted as an absence and that leaving early within the last hour of a shift will result in a "leave early" point accrual.
11. The employer's attendance policy notes that leaving work prior to the end of a shift without proper notice to a manager will be viewed as shift abandonment and may result in disciplinary action and possible termination of employment.
12. The claimant was aware of the employer's progressive discipline policy and attendance policy from the time that he was hired on or about 3/13/2023, when he received and acknowledged receipt of the employer's policies during orientation training.
13. The employer's attendance policy has a reasonable and legitimate business purpose of assuring [sic] adequate staffing to maintain clean rooms that are properly prepared to accommodate hospital patients.
14. On 10/20/2024, the employer documented a verbal warning or attendance notification made to the claimant for accumulating attendance violations totaling eight (8) points.

15. The claimant called out again on 10/20/2024 and two (2) points were added for the attendance violation which resulted in an accumulated total of ten (10) points and the issuance of a written warning on 10/24/2024.
16. The claimant was absent from 6/17/2025 through 6/18/2025 after exhausting his PTO from the start of the new year and two (2) points were added to his accumulated points which resulted in an accumulated total of twelve (12) points and the issuance of a last and final warning being issued on 6/20/2025.
17. The final warning notified the claimant that further attendance violations could lead to further disciplinary action and termination.
18. A final incident occurred on 7/9/2025, when the claimant left work early without informing his supervisor or the operations manager prior to his departure.
19. On 7/11/2025, the claimant was terminated for repeated attendance violations, including the final incident that occurred after the claimant received a last and final warning concerning attendance, which noted that the claimant left work early without notifying the employer prior to his departure.
20. The claimant later explained that he left to find his mother who he believed to be missing from a scheduled appointment that the claimant was planning to attend after his scheduled shift ended.
21. The claimant did not provide his supervisor or the operations manager with an explanation for his early departure prior to his termination.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. While we believe that the review examiner's findings of fact support the conclusion that the claimant is subject to disqualification pursuant to G.L. c. 151A, § 25(e)(2), we do so on other grounds, as outlined below.

Because the claimant was discharged from 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 claimant left his shift without notifying supervisory staff, the employer discharged him on July 11, 2025. *See* Findings of Fact #19.

We disagree that the employer met its burden to show the claimant knowingly violated a reasonable and *uniformly enforced* policy. The employer failed to present evidence demonstrating that it discharged other employees for engaging in similar behavior. In addition, the employer's attendance policy itself provides that leaving work prior to the end of a shift without proper notice to a manager may result in disciplinary action and possible termination of employment. *See* Finding of Fact # 11. Thus, the employer retains discretion when determining what type of discipline is imposed for this type of infraction.

Alternatively, the claimant is disqualified from receiving benefits if the employer shows he engaged in deliberate misconduct in wilful disregard of the employer's interest.

In this case, the employer maintains an attendance policy that states that leaving work prior to the end of a shift without proper notice to a manager will be viewed as shift abandonment and may result in disciplinary action and possible termination of employment. *See* Finding of Fact # 11. On July 9, 2025, the claimant left work early without informing his supervisor or the operations manager prior to his departure. Finding of Fact #18. Thus, he engaged in the misconduct for which he was fired. There is nothing in the record to demonstrate that the claimant's conduct was inadvertent, accidental, or that he had merely forgotten to notify the employer about his early shift departure. From this lack of information, we can infer that the claimant acted deliberately.

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) (citation omitted).

There is no question that the employer had a requirement that all employees must notify management if they need to leave work early. *See* Finding of Fact ## 11. We agree with the review examiner that the employer's rule to notify management was reasonable to ensure adequate staffing levels. *See* Finding of Fact #13. The claimant was aware of the attendance policy because he received and acknowledged the policy during his orientation training and had received prior warnings for attendance policy violations. *See* Findings of Fact ## 12, and 14–16. In the final

warning, the employer notified the claimant that further attendance violations could lead to further disciplinary action and termination. *See* Finding of Fact # 17.

Finally, the claimant did not present any evidence of mitigating circumstances that caused his failure to notify management about his need to leave work early on July 9, 2025. 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). The absence of mitigating factors for the claimant's misconduct indicates that the claimant acted in wilful disregard of the employer's interest. *See* Lawless v. Department of Unemployment Assistance, No. 17-P-156, 2018 WL 1832587 (Mass. App. Ct. Apr. 18, 2018), *summary decision pursuant to rule 1:28*.

Although the claimant argued that his mother was missing from a scheduled medical appointment, which mitigates his early departure, he did not explain how that issue prevented him from communicating with his supervisor or operations manager about the situation. *See* Findings of Fact ## 20–21. Nothing in the record shows that there were any circumstances on July 9, 2025, over which the claimant had little or no control that interfered with his ability to comply with the employer's expectation to notify his supervisor that he needed to leave before the end of his scheduled shift.

We, therefore, conclude as a matter of law that the employer has met its burden to show that the claimant engaged in 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 affirmed. The claimant is denied benefits for the week beginning July 20, 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 - March 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](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.

JMO/rh