

Although the employer proved that by possessing of a bag of marijuana edibles while performing his work duties, 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 claimant may not be denied unemployment benefits pursuant to G.L. c. 94C, § 32L.

**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-N3MH-9T6K
Claimant ID: 15033047**

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 23, 2025. He filed a claim for unemployment benefits with the DUA, effective June 29, 2025, which was denied in a determination issued on September 12, 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 November 6, 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, he 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 because the claimant possessed a bag of marijuana edibles while working on May 6, 2025, he engaged in deliberate misconduct in wilful disregard of the employer's interest and was ineligible for benefits, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked as a part-time barista for the employer, a coffee retail company, between 12/22/2014 and 5/23/2025, when he separated.

2. The claimant's immediate supervisor was the store manager. The claimant's upper-level manager was the district manager.
3. The employer maintains a drug and alcohol policy (policy) prohibiting the "use, solicitation, sale, manufacture, possession, or illegal distribution of alcohol, illegal drugs, drug paraphernalia or controlled substances on company premises, while conducting company business or during working time."
4. The policy stated, in part, "Even in states where marijuana has been legalized, this policy prohibits the use, sale, possession and distribution of marijuana in any form, including edibles, on company premises or when working. Whether or not legalized, [employees] are prohibited from working while impaired by marijuana use."
5. Per the policy, "Corrective action, including separation from employment, will be taken against any partner who violates this policy." The employer reserved the right to deal with each case in its discretion.
6. The claimant received policy on 8/9/2022, when he acknowledged receiving it in the employee handbook.
7. The employer expected employees not to use or possess marijuana in any form, including edibles, on company premises or when working. The purpose of this expectation is to ensure the safety of their employees and customers.
8. The employer communicated this expectation to the claimant during his employment through the policy.
9. On 5/19/2019, the claimant was struck by a car and obtained injuries. In November 2021, the claimant was prescribed "cannabinoid medication." The claimant used and possessed marijuana edibles as part of his "cannabinoid medication."
10. The claimant carried marijuana edibles with him in his pocket when he was at the employer's workplace.
11. On or about 5/6/2025, the claimant had marijuana edibles in his possession while he was at the employer's premises during his shift.
12. The claimant knew the marijuana edibles were in his pocket while he was at the employer.
13. On 5/6/2025, another barista (barista A) found a bag of marijuana edibles next to one of the cash registers at the employer. Barista A reported what she found to the store manager.

14. The store manager filed a report with the employer's human resources department (HR).
15. On 5/7/2025, the claimant sent the store manager a text message informing him that the marijuana edibles that barista A found on 5/6/2025 were his.
16. On 5/14/2025, the claimant showed the store manager his medication card related to his prescription for "cannabinoid medication."
17. On 5/23/2025, the store manager discharged the claimant from employment for possessing marijuana edibles in the workplace.

[Credibility Assessment:]¹

The employer expected the claimant not to use or possess marijuana in any form, including edibles, on company premises or when working. This expectation was reasonable to ensure the safety of employees and customers. While the claimant denied being aware of the expectation, the claimant acknowledged he received the policy upon hire and the district manager testified that the claimant acknowledged receiving the handbook that contained the policy on 8/9/2022. As such, it is concluded that the claimant was aware of this expectation given his receipt of the policy that contained the expectation. . . .

The claimant's testimony was inconsistent throughout his testimony. Additionally, the claimant's testimony was dishonest due to his mother providing him with information that led to him changing his testimony, despite being instructed to refrain from such actions. (The claimant's mother was asked to leave the room twice during the hearing due to her inability to follow the instructions of this Examiner about remaining quiet throughout the hearing and not providing the claimant with information during his testimony. It is unknown if she left the room). Based on the above, this Examiner does not find the claimant's testimony credible.

The claimant initially contended that the edibles were not his and that he informed the store manager they were his because that is what he thought the store manager wanted to hear. The claimant then acknowledged the marijuana edibles were his, but he did not know they were in his pocket while he was at work, and he did not know how they got placed by the register. However, the claimant further testified that he kept the marijuana edibles in his pocket while he was at work to "help [him] get through the day." Given that the claimant's testimony was inconsistent and not credible, he failed to offer any substantial and credible evidence to mitigate his intent. . . .

Ruling of the Board

¹ We have copied and pasted here the portion of the review examiner's decision that includes his credibility assessment.

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. 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 ineligible for benefits.

Because the claimant was discharged, his eligibility for benefits must be analyzed pursuant to 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).

In light of the evidence and review examiner's credibility assessment, we agree that the employer met its burden to prove that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest by having a bag of marijuana edibles in his possession while working on May 6, 2025.

However, in rendering a decision as to the claimant's eligibility for unemployment benefits, we must also consider G.L. c. 94C, § 32L, which 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.)

Because the Legislature has determined that an employee may not be denied unemployment benefits based solely on possession of small amounts of marijuana, the claimant may not be disqualified pursuant to G.L. c. 151A, § 25(e)(2). We express no opinion about whether the

employer was justified in discharging the claimant. The only question before us is whether the claimant is eligible to receive unemployment benefits.

We, therefore, conclude as a matter of law that, even though the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest under G.L. c. 151A, § 25(e)(2), G.L. c. 94C, § 32L, provides that he may not be disqualified from receiving benefits.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 5, 2025, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 26, 2026



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.

AB/rh