

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Katherine Gorecki,

Petitioner,

v.

Docket No.: DET-23-0206

Department of Unemployment Assistance,

Date: **MAR 20 2024**

Respondent.

Appearance for Petitioner:

Katherine Gorecki, *pro se*

Appearance for Respondent:

John P. Cronin, Esq.

Administrative Magistrate:

John G. Wheatley

SUMMARY OF DECISION

The petitioner is a former employee of the Department of Unemployment Assistance (DUA) who was discharged for reporting, for payroll purposes, that they completed full days of work as a telecommuter on multiple days on which they performed little or no work. DUA determined that the petitioner is disqualified from receiving unemployment benefits because they were discharged as a result of a knowing violation of a reasonable and uniformly enforced work rule or policy. After hearing, DUA's determination is affirmed because it is established by substantial and credible evidence that the petitioner is ineligible for unemployment benefits under G. L. c. 151A, § 25(e)(2).

DECISION

The petitioner appeals DUA's determination that the petitioner is ineligible for unemployment benefits. DUA referred this appeal to the Division of Administrative Law Appeals (DALA) because it relates to the petitioner's work as a DUA employee. I held an evidentiary hearing on May 31, 2023, via Webex, which was recorded. I admitted twenty-five exhibits into evidence during the hearing and heard testimony from three witnesses: (1) Selvanayaki Mayilsamy, a compliance officer for the Office of Internal Audit, Control and Security who investigated issues relating to the petitioner's work performance; (2) Stephanie Ross, the Director of Labor Relations for the Executive Office of Labor and Workforce Development; and (3) the petitioner, Katherine (Kasia) Gorecki. The parties presented their closing arguments orally at the end of the hearing in lieu of submitting post-hearing briefs.

FINDINGS OF FACT

Based on the testimony and documentary evidence presented, I make the following findings of fact:

1. The petitioner was employed by DUA as a "limited duration" employee from April 2021 to the end of January 2023. Their position title was "Job Service Representative I." (Gorecki Testimony; Exhibits 16, 17, 18, 19.)
2. On November 14, 2022, the petitioner was transferred to the Program Integrity Unit of DUA, where the petitioner was trained how to work on waiver issues relating to DUA's recoupment of unemployment benefits through DUA's UI Online system. This work involved reviewing a claimant's documentation and financial information in UI Online and then deciding whether to waive the claimant's repayment obligation or, conversely, deny granting a waiver. (Gorecki Testimony; Exhibits 1, 5.)

3. On January 6, 2023, one of the petitioner's supervisors in the Program Integrity Unit, Laureen House, requested an investigation from the Office of Labor Relations due to concerns about the petitioner's lack of productivity. (Exhibit 1; Ross Testimony.)
4. The request was referred to the Office of Internal Audit, Control and Security, where it was assigned to compliance officer Selvanayaki Mayilsamy for investigation. (Mayilsamy Testimony; Ross Testimony; Exhibit 5.)
5. Mayilsamy conducted an audit of the petitioner's work, which included interviewing Program Integrity management, reviewing the petitioner's time reports obtained from human resources, analyzing system reports that track the petitioner's online work activity (i.e., reports generated by UI Online, Amazon Web Services, and PowerBI), and interviewing the petitioner. (Mayilsamy Testimony.)
6. DUA uses a program called "PowerBI" to track the productivity of employees responsible for adjudicating claims/issues. A report from PowerBI indicates that the petitioner resolved eight waiver issues from November 14 to December 1, 2022, but did not resolve any claims or issues from December 2, 2022, to January 6, 2023. (Mayilsamy Testimony; Exhibit 2.)
7. During each workday, the petitioner was required to report their start time, end time, work activity, and breaks through Amazon Web Services (AWS). From November 14, 2022, through January 10, 2023, the petitioner logged into AWS at the start of each day (36 days total), updated their work status throughout the day, reported doing adjudication work daily, and logged off at the end of the day. (Mayilsamy Testimony; Exhibit 3.)

8. The petitioner knew that she was required to log into DUA's UI Online system daily to work on waiver assignments. (Gorecki Testimony. See also Ross Testimony & Exhibit 5 (regarding DUA's expectations).)
9. A "Transaction Tracking Report" generated through UI Online recorded work activity on only five days during November 2022, one day in December 2022, and zero days in January 2023 as of January 10th. Similarly, a separate report reveals that the petitioner logged into UI Online on only seven days during that time (six days in November and one day in December). (Mayilsamy Testimony; Exhibits 4, 6.)
10. The petitioner reported performing full days (i.e., 7.5 hours) of "telework" for payroll purposes on four days in November, sixteen days in December, and six days in January 2023 (as of January 10) but did not log into UI Online to work on assignments on any of those days (26 days total). (Exhibits 4, 6, 8, 9, 10, 11; Mayilsamy Testimony.)
11. Based on the compliance officer's calculations, the petitioner had 244 "unaccounted hours" between November 14, 2022, and January 10, 2023, which represents the difference between the total number of hours the petitioner submitted to payroll and the total number of working hours confirmed either through UI Online or from meeting attendance (excluding holidays, sick time, and vacation time). (Mayilsamy Testimony; Exhibits 11, 12, 15.)
12. On January 12, 2023, the petitioner attended a meeting with Program Integrity Unit management—Mollie MacKenzie, Wendy Filosi, and Joshua Nussey—regarding the petitioner's productivity. During the meeting, the petitioner reported having difficulty working due to anxiety. Prior to that meeting, the petitioner did not raise any problems

doing work because of anxiety, nor did the petitioner request any time off or leave of absence to address mental health concerns. (Gorecki Testimony; Exhibit 12.)

13. The petitioner's work activity increased dramatically following that meeting. Over the next five workdays, the UI Online system recorded twenty-one pages of work activity for the petitioner, as compared to only three pages of activity during the prior two months (i.e., from November 14 to January 10). (Exhibits 6, 7.)
14. The compliance officer detailed her findings in a written "Report of Investigation" dated January 23, 2023. (Exhibit 15.)
15. The Director of Labor Relations for the Commonwealth's Executive Office of Labor and Workforce Development, Stephanie Ross, reviewed the report and, based on the compliance officer's findings, considered it to reflect a serious case of fraudulent time reporting by an employee. (Ross Testimony.)
16. Ms. Ross notified the petitioner that a hearing would be held on January 26, 2023, to consider whether there was just cause for termination of the petitioner's employment based on the investigator's findings. (Exhibit 16.)
17. At the pre-disciplinary hearing, the petitioner admitted that they did not perform their work duties during the period in question. (Ross Testimony; Exhibit 13.)
18. Ms. Ross reviewed similar cases involving employee time reporting to see what disciplinary action had been taken. In every case reviewed, the employee was terminated. The petitioner's case involved a greater amount of unaccounted time than any of the similar cases she reviewed. (Ross Testimony.)
19. On January 31, 2023, the petitioner's employment at DUA was terminated due to conduct deemed in violation of the employee Code of Conduct under the applicable collective

bargaining agreement, specifically sections 4C and 4D. (Exhibit 17; Ross Testimony.

See also Exhibits 13, 23.)

20. Sections 4C and 4D of the Code of Conduct provide:

C. Conformance to Policies, Procedures and Directives

Employees shall comply with all of the policies and operating procedures of the agency/department in which they work. This requirement includes, but is not limited to, all agency/departmental policies and procedures. Employees shall respond forthrightly and promptly to the work-related directives of their supervisors.

D. Conduct, Attitude and Demeanor

Employees are expected to conduct themselves in their official relations with the public and with their fellow employees in a manner which will enhance public respect for, and confidence in, the employee and in the Commonwealth as a whole. They must not only perform their duties in a wholly impartial manner, but must avoid any conduct which gives the reasonable basis for the impression of acting otherwise.

Specifically, all employees shall avoid any action which may result in or create the reasonable basis for the impression of:

- (a) using public office for private gain;
- (b) giving preferential treatment to any citizen;
- (c) making work-related decisions contrary to agency/departmental policy;
- (d) using one's official position to harass or intimidate any person or entity outside the course of official duties.

21. The petitioner reviewed the Code of Conduct when hired by DUA in April 2021 and was aware of the rules therein. (Exhibits 14, 18.)

22. At the time of termination, the petitioner had over seventy-eight hours of available sick time and over nine hours of vacation time. (Exhibits 24, 25.)

23. In February 2023, the petitioner applied for unemployment benefits. (Exhibit 22.)

24. On March 10, 2023, DUA determined that the petitioner is disqualified from receiving unemployment benefits because they were discharged as a result of a "knowing violation

of a reasonable and uniformly enforced work rule or policy regarding code of conduct.”

(Exhibit 20.)

25. On March 20, 2023, the petitioner timely appealed DUA’s determination. (Exhibit 21.)

ANALYSIS

Unemployment benefits are available to qualifying individuals under G. L. c. 151A. An otherwise eligible person is disqualified from receiving benefits, however, if the termination of employment is “attributable 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.” G. L. c. 151A, § 25(e)(2). To constitute a “knowing violation,” an employee must possess “a conscious intent both (a) to commit some action or behavior, and thereby (b) to violate the employer’s rule or policy.” *Shriver Nursing Servs., Inc. v. Commissioner of the Div. of Unemployment Assistance*, 82 Mass. App. Ct. 367, 372 (2012). The employer bears the burden of proving the elements required for disqualification. G. L. c. 151A, § 25(e)(2); *Shriver Nursing Servs., Inc.*, 82 Mass. App. Ct. at 370.

The petitioner’s conduct was clearly contrary to DUA’s policies, procedures, and expectations of its employees. The petitioner’s primary job responsibilities in the Program Integrity Unit required the petitioner to log into UI Online daily. The petitioner’s sole work assignments were the adjudication of waiver issues through UI Online, which provided access to the claimants’ information and documentation that the petitioner needed to evaluate in order to determine whether DUA should grant a waiver. Yet, for many days and even weeks at a time, the petitioner did not perform any work in that system at all or even log into the system at any point during her workday. The petitioner does not dispute this lack of work activity, which is

plainly in contravention of DUA's directives and procedures for employees who are responsible for adjudicating claims in the Program Integrity Unit.

The petitioner's failure to abide by DUA's requirements and procedures for completing their work assignments was not due to incompetence or inadequate instructions. Rather, the petitioner knew the required procedure for completing daily work assignments but intentionally disregarded those requirements to the point of doing no work at all for days at a time. There is no question that the petitioner knew that their conduct violated DUA's policies and procedures and therefore violated section 4C of the Code of Conduct.¹

Gorecki contends that they could not log into UI Online or complete work tasks due to suffering from severe anxiety. I do not credit Gorecki's testimony on this issue. Gorecki did not raise any issues with anxiety prior to the January 12, 2023 meeting, when management confronted Gorecki about their lack of productivity. And after that meeting, Gorecki's productivity increased significantly. Gorecki also did not present any documentation to substantiate any anxiety related diagnosis or issues.

¹ I note that DUA would also have been justified in denying unemployment compensation due to "deliberate misconduct in willful disregard of the employing unit's interest," pursuant to G. L. c. 151A, § 25(e)(2). "It is no great pronouncement of workplace standards to observe that employers have a right to expect that employees will work the hours they are required to work, do the work they are hired to do, and honestly report their activity during the workday." *Meehan v. Department of Unemployment Assistance*, DET-20-0380, 2022 WL 16921462, at *10 (DALA 2022).

ORDER

For the reasons stated above, the Department of Unemployment Assistance's determination of disqualification is affirmed. The petitioner may appeal this decision to the board of review within thirty (30) days as provided in G. L. c. 151A, § 40.

Division of Administrative Law Appeals

/s/ John G. Wheatley

John G. Wheatley
Administrative Magistrate