COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW
Government Center
19 Staniford Street
Boston, MA 02114

Tel. 626-6400
Office Hours:
8:45 a.m. to 5:00 p.m.

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number:
BR78408-CTRM

CLAIMANT APPELLANT:
[redacted]

S.S. #[redacted]
Office # 5

EMPLOYING UNIT:
[redacted]
Chicopee, MA 01014

EMP. #[redacted]

On March 2, 2000, the Springfield Division of the District Court remanded this case, Civil Action No9920CV0675 to the Board of Review. On June 21, 2000 in Boston, Massachusetts, the Board reviewed the written record and transcripts and recordings of the testimony presented at the hearings held on September 16, 1999 and May 23, 2000. .

On November 4, 1999, the Board, in accordance with the provisions of section 40 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law), dismissed the claimant's appeal finding that it was filed beyond the statutory period. The claimant exercised his right of appeal to the courts under Section 42 of the same law.

The District Court reversed the Board of Review's dismissal of a request for review and remanded the case to the Board for consideration pursuant to the provisions of G.L.c.151A, §41.

The case was received at the Board from the court on March 8, 2000. . The case was remanded by the Board to the Deputy Director on April 7, 2000 for the taking of additional evidence. The Deputy Director returned the case to the Board on May 31, 2000.

The Board has reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The claimant's appeal is from the Deputy Director's decision which concluded:

> In accordance with section 25(e)(2) of the Law, the burden of proof is upon the employer to establish by substantial and credible evidence that the claimant's discharge was attributable to deliberate misconduct in willful 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.
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> Both parties attended the hearing. While some conflicting testimony was provided regarding events, the employer's testimony regarding the actual event of termination was found to credible as presented.

The claimant was terminated for deliberate refusal to follow directions of the company president after even being warned that he would be terminated for such. While the claimant did not agree with the direction given to him, the employer has the right to have warnings issued in their own interest. Refusing to follow a direct order which did not violate any Law, is found by this review examiner to be deliberate misconduct, especially after being warned that doing so would result in lost [sic] of employment. Additionally, the claimant was aware that insubordination, or refusal to comply with instructions was a violation of company standards of conduct and subject to discipline up to termination. Therefore, the claimant is subject to disqualification within the meaning of Section 25(e)(2) of the Law.

The claimant is disqualified from receiving benefits for the week ending 8/7/99 and until he has had 8 weeks of work and in each week has earned an amount equal to or in excess of his weekly benefit rate.

Section 25(e)(2) of Chapter 151A of the General Laws is pertinent and provides as follows:

Section 25. No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—

(e) For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount 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 . . .

The Deputy Director's representative held a hearing on September 16, 1999. Both parties appeared. On April 7, 2000, the Board remanded the case to the Deputy Director to take additional evidence and to make consolidated findings of fact. At the remand hearing held on May 23, 2000, both parties appeared. Whereupon, the Deputy Director made the following consolidated findings of fact:

1. The claimant worked as a quality assurance manager for the employer, a printing company, from 6/17/98 until he separated from the employer.

2. The claimant was discharged on 7/29/99 in that he refused to do what he was directed to do by the company president.

3. The claimant had been told to issue a written reprimand to one of his workers, an internal process inspector (IPI), as the president had determined that the employee was at least partially at fault for some rejected product. The IPI had signed off on the inspection of the sub-surface multi-color printing of a product when the printing in fact was faulty in that the colors (gold, brown, and white) had bled through to the good side. The bleeding of the colors was not readily noticeable without checking the good side of the product. The IPI had not checked the good side as it was covered by opaque paper that was to be removed in the next process step and replaced with a clear covering. On double-sided printing jobs, inspectors always checked both sides prior to signing off on the inspection. The president felt the inspector should have done so on this job also, especially as the normal viewing side of the product was the good side not checked resulting in further delay and waste.

4. The claimant did not agree with the president. He refused to issue the warning based on his own investigation and his feelings that it was not morally right for him to discipline the IPI. The IPI had not been instructed in any procedure to use when inspecting the sub-surface printing and the claimant felt that any discipline of his quality assurance inspectors could result in loss of respect for their work by other employees. This type of work accounted for less than 10 % of the company's business. The claimant did not know if the inspector had viewed the sample piece or had access to it at the time of his inspection. The sample piece was later determined to be in the production manager's office with other sample pieces.

5. The claimant was informed that regardless of his feelings, he had to issue the documented verbal warning or be terminated. He refused and was told by the president of the company that he was terminated.

6. The president called the vice-president of the company into the meeting with the claimant and again informed the claimant that he had to issue the warning or be terminated. The claimant refused again as he felt it was not right and was terminated.

7. The president had asked the claimant and others to conduct an investigation of [sic] regarding the rejected product, with the report due to him by that morning. The claimant had indicated prior that he felt his worker was not at fault in that he appeared to follow his procedures but did not provide the president with a further investigative report. The president had received other reports timely and had made his decision. He was not willing to discuss the issue further. Any employee not agreeing with a warning, had the right to grieve it to a company panel.

8. The employer has a policy that "Insubordination or refusal to comply with instructions" can result in disciplinary action including termination. The claimant was aware of the policy, having signed for it on 6/17/98.

9. The documented verbal warning to the IPI employee would not result in termination of the employee nor was it illegal to warn an employee in the manner directed by the president of the company.

10. The claimant was aware that insubordination, or refusal to comply with instructions was a violation of company standards of conduct and subject to discipline up to termination. He understood the company president when told that he would be terminated if he did not follow the president's instructions to issue the documented verbal warning to the IPI and did not do so.

11. The claimant was not aware when the sample of the product was placed in the production manager's office or who did so. He did not know if the IPI had access to the sample the day of the printing. He was aware that it was a three color printing but indicated only the white was inspected while all colors were signed off on the inspection by the IPI.

    Credibility finding: While some conflicting testimony was provided regarding events, the employer's testimony regarding the actual events of termination was found to [sic] credible as presented. The claimant's testimony was not found to be as logical and credible. He admitted in cross examination that he did not know if the sample was not available to the IPI on the day the job was printed, or when it was placed in the production manager's office; knew that the IPI could grieve the warning to a panel; and claimed that the inspector should not be faulted for signing off on three colors while only inspecting one. Further, he claimed to have submitted a written report to the president and others but the timing, information, dates, and denial of the president regarding getting it, were found to be more reasonable.

After full review and consideration, the Board adopts the consolidated findings of fact made by the Deputy Director as being supported by substantial evidence. The Board concludes as follows:

The president, on July 29, 1999, set forth a clear expectation to the claimant, a quality assurance manager, that he issue a warning to a subordinate, an internal process inspector (IPI). The employer requested the claimant to issue the warning since the president had deemed that the IPI was at least partially at fault for a deficient printing product. The president had felt the IPI should have checked both sides of the printing product prior to signing off on the inspection.

Since it has been established the employer had sufficient grounds for concluding the IPI had failed to ensure that both sides of the printing product were within acceptable quality assurance standards, the expectation of the employer that the claimant issue the warning was reasonable.

The Board recognizes that the claimant disagreed with the president's assessment and felt based on his own investigation it was not morally right for him to discipline the IPI. Although the claimant felt there was a lack of proper instruction given to the IPI in inspecting sub surface double sided printing jobs as was the case in this instance and although he felt the IPI's could lose respect from other employees, the fact remains a sub standard product passed the IPI's inspection. Additionally, the request by the President to issue the warning cannot be deemed overly harsh. The employee was not to be discharged. Rather, he was to be apprised of the deficient product he passed in his inspection.The employer had the inherent right to ensure that errors are not duplicated and that the employee follow in the future inspection guidelines. Although the claimant may very well have disagreed with the president's assessment of the facts, the claimant, as a quality assurance manager, nevertheless, still had the responsibility to issue the warning to his subordinate to ensure that future inspections of the same type of product be handled in the correct manner.

The Board concludes no mitigating or extenuating factors existed to warrant the claimant's recalcitrant stance in not disciplining the IPI. If, in fact, the claimant felt the employee in question was not culpable for the deficient inspection, that employee after receiving the warning would have been afforded the opportunity to grieve the warning to a company panel. Thus, the validity of the warning would have been subject to further scrutiny and the claimant's concerns on the rightfulness of the warning could have been explored further.

The findings further reflect that the employer made it unequivocally clear to the claimant that his failure to issue the warning would result in his discharge. Although the claimant understood that his services would be terminated if he refused to issue the warning, the claimant, nevertheless, made the decision to not issue the warning and, thus, was fully aware of the consequences of his action.

The employer has prevailed in establishing that the claimant's discharge was attributable to deliberate misconduct in wilful disregard of the employing unit's interest within the meaning of section 25(e)(2) of the Law, cited above.

The Board affirms the Deputy Director's decision. Benefits are denied.

BOSTON, MASSACHUSETTS
DATE OF MAILING - JUL 07 2000

Francis J. Holloway, Chairman

Thomas E. Gorman, Member

Kevin P. Foley, Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY - AUG 07 2000

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