

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Renee Binjour,
Claimant,

No. DET-22-339

v.

Dated: June 14, 2023

Department of Unemployment Assistance,
Respondent.

Appearance for Petitioner:

Renee Binjour (pro se)
Norton, MA 02766

Appearance for Respondent:

John P. Cronin, Esq.
Boston, MA 02114

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The respondent state agency required its employees to become vaccinated against COVID-19, subject to exemptions based on medical or religious reasons. The claimant refused to become vaccinated. A preponderance of the evidence establishes that her refusal was the result of a sincerely held religious belief. Consequently, the agency's termination of the claimant's employment was not attributable to her violation of a "reasonable" employment policy within the meaning of G.L. c. 151A, § 25(e)(2). The claimant is therefore entitled to unemployment benefits.

DECISION

Petitioner Renee Binjour was terminated from her position with the Department of Unemployment Assistance. She applied for unemployment benefits. In its capacity as the agency responsible for such benefits, the department denied Ms. Binjour's application. The department referred Ms. Binjour's ensuing appeal to DALA. *See* G.L. c. 151A, § 39(b). An evidentiary hearing took place by WebEx on May 12, 2023. Ms. Binjour testified, as did Executive Office of Labor and Workforce Development (EOLWD) employees Stephanie Ross

and Dennis Johnson. I admitted into evidence exhibits marked 1-18. The record closed upon the submission of hearing briefs.

Findings of Fact

I find the following facts.

1. Ms. Binjour was born in Haiti and grew up in Massachusetts. She holds a bachelor's degree from Suffolk University and a master's degree from Liberty University. She lives in Dorchester and is a member of a local Baptist church. (Binjour.¹)
2. Ms. Binjour began working for the department in late 2019. Her job title was "Job Service Representative." The entity that formally employed Ms. Binjour was EOLWD, the secretariat that includes the department. (Ross; Binjour; Exhibit 1.)
3. The COVID-19 pandemic dramatically increased the department's caseload. Ms. Binjour and other "seasonal" employees were recategorized as "temporary" employees. They also were assigned to telework from home. Such employees signed individual agreements acknowledging the terms of the applicable telework policy. (Ross; Binjour; Exhibits 8, 9.)
4. The telework policy provided that any employee could be recalled to in-person work on short notice. That provision was enforced from time to time: employees, including Job Service Representatives, were brought back into the office for various stretches because of malfunctioning laptops, internet outages, etc. (Ross; Exhibits 8, 9.)
5. In August 2021, the Governor issued Executive Order No. 595, which announced the Commonwealth's general policy of requiring executive department employees to be

¹ Citations by name refer to the testimony, which has not been transcribed.

vaccinated against COVID-19. The Human Resources Division then issued an operative policy requiring all employees to submit attestations of vaccination. The policy stated, in section IV.6:

Employees may be approved for exemption from . . . COVID-19 vaccination under the following circumstances:

- a. Employees who verify and document that the vaccine is medically contraindicated . . .
- b. Employees who object to vaccination due to a sincerely held religious belief . . .

With respect to both categories of exceptions, the policy provided that continued employment would depend on the employees' ability "to perform their essential job functions with a reasonable accommodation." (Exhibits 2, 3.)

6. Ms. Binjour received emails explaining the vaccination policy's requirements.

She requested a religious exemption, stating as follows in her application form:

I have been a Christian my entire adult life [T]aking the COVID-19 vaccine . . . would conflict with my religious beliefs and conscience. In particular, the Bible teaches that every sincere believer in God is indwelled by the Holy Spirit, who guides and informs a believer through every life decision. Further, the Bible states in 1 Cor 6:19-20 that the body of the believer is the temple of the Holy Spirit and as such requires reflection, time in prayer and searching of the scriptures to ascertain God's will before injecting any substance into the body. . . .

(Exhibit 4.) The verses Ms. Binjour cited run as follows: "Or do you not know that your body is a temple of the Holy Spirit who is in you, whom you have from God, and that you are not your own? For you have been bought with a price: therefore glorify God in your body."

1 *Corinthians* 6:19-20 (New American Standard).

7. EOLWD diversity officer Mr. Johnson met with Ms. Binjour by videoconference. At the meeting, Ms. Binjour quoted biblical passages, echoing the rationale that she had presented in her application form. In response to Mr. Johnson's questioning, Ms. Binjour also disclosed additional opinions about the COVID-19 vaccines: that their side effects are unknown,

that they may cause birth defects, and that they were tested and developed using cells from aborted fetuses. When Mr. Johnson said to Ms. Binjour that fetal cells are not used in the production of certain vaccines, she did not demur. (Johnson; Binjour; Exhibit 18.)

8. A preponderance of the evidence supports the conclusion that Ms. Binjour declined to become vaccinated as a result of a sincerely held religious belief. She presented that belief with reasonable clarity and force in her written application form. She knew that Mr. Johnson possessed that form. I credit her testimony that the additional opinions she voiced to Mr. Johnson were not the reasons that drove her decision to remain unvaccinated. I do not ascribe significance to the fact that Ms. Binjour did not obtain guidance from her pastor with respect to whether she should become vaccinated. (Binjour; Exhibit 4. *See infra* p. 7.)

9. The department denied Ms. Binjour's request for a religious exemption, explaining that a "direct link between a sincerely held religious belief and . . . a contradiction with [the] Governor's Executive Order[] could not be ascertained." Ms. Binjour was then afforded a course of progressive discipline. She was suspended for five days, suspended again for ten days, and then terminated. (Ross; Johnson; Binjour; Exhibits 4-6.)

10. Ms. Binjour applied for unemployment benefits. In its capacity as adjudicative agency, the department denied the application. The department's decision explained that Ms. Binjour had been discharged because of "a knowing violation of a reasonable and uniformly enforced policy" and because of "deliberate misconduct in willful disregard of the employing unit's interest." (Exhibit 14.)

11. All told, EOLWD entertained scores of requests for medical and religious exemptions. Whenever an exemption was granted, EOLWD fashioned an accommodation and continued to employ the employee. EOLWD terminated every employee whose exemption

request was denied. In an effort to foster uniformity among the approaches of the agency's diversity officers, EOLWD conducted training sessions for those officers and subjected their decisions to a review process. (Ross; Johnson.)

12. In late 2022, the Commonwealth reinstated certain non-EOLWD employees who previously had been terminated for failure to become vaccinated. Those individuals originally had received exemptions from the vaccination requirement; but at the time, the Commonwealth was unable to offer accommodations that would permit them to continue working. They were reinstated when such accommodations became feasible. (Ross; Exhibits 16, 17.)

Analysis

“The general purpose of the unemployment statute is to afford benefits to [individuals] who are out of work and unable to secure work through no fault of their own.” *Connolly v. Director of Div. of Unemployment Assistance*, 460 Mass. 24, 25 (2011). The statute must be “construed liberally in aid of its purpose, which . . . is to lighten the burden which now falls on the unemployed worker and his family.” G.L. c. 151A, § 74. *See Emerson v. Director of Div. of Emp. Sec.*, 393 Mass. 351, 352 (1984).

One situation in which an employee loses eligibility for benefits is when his or her separation from employment was “attributable to . . . a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.” G.L. c. 151A, § 25(e)(2). This rule is an “exception[] or defense[] to an eligible employee’s right to benefits, and the burdens of production and persuasion rest with the employer.” *Still v. Commissioner of Emp. & Training*, 423 Mass. 805, 809 (1996).

As written, the vaccination policy at issue here was “reasonable.” In essence, it compelled employees to take the COVID-19 vaccine, subject to exemptions based on medical or religious reasons. Such a policy tends to promote the health and welfare of the employer’s staff

and constituents. See *Boston Firefighters Union, Loc. 718, Int'l Ass'n of Fire Fighters, AFL-CIO v. City of Boston*, 491 Mass. 556, 564 (2023). An employer may reasonably extend such a policy to remote workers who, though teleworking today, may be back in the office tomorrow. See *Roman v. DUA*, No. DET-22-336, 2022 WL 17185546, at *4 (DALA Nov. 17, 2022).

The “reasonable policy” rule seeks to identify individuals who are out of work, but not “through no fault of their own.” *Connolly*, 460 Mass. at 25. An employee’s violation of an employment policy signifies “fault” by the employee only if the policy was reasonable not only on paper, but also as implemented in the employee’s circumstances. See *Still*, 423 Mass. at 808 n.3, 815 n.11. Cf. *New England Wooden Ware Corp. v. Commissioner of Dep’t of Emp. & Training*, 61 Mass. App. Ct. 532, 534-36 (2004) (uniformity of a policy’s enforcement is examined both “on its face” and “in practice”). At the very least, that is the department’s interpretation of § 25(e)(2), a “statute within which it operates.” *Gupta v. Deputy Dir. of Div. of Emp. & Training*, 62 Mass. App. Ct. 579, 583 (2004). See *DUA Adjudication Handbook*, ch. 8, § 1(c)(2)(a) (2020).

When a policy imposes consequences only on employees who lack sincere religious objections to vaccination,² the circumstances pertinent to the reasonableness of the policy’s implementation focus on the specific employee’s true beliefs and motives. Any evaluations of those beliefs and motives by the employer’s staff are not preclusive, and command no particular

² The department does not suggest that its policy left it with broad discretion to decline exemptions in cases of demonstrated medical contraindications or sincerely held religious objections. Indeed, a policy authorizing such discretion might not have been reasonable even on its face, irrespective of specific circumstances. See *Fallon Comm. Health Plan, Inc. v. Jefferson*, No. 2262CV0731, at *3 (Worcester Dist. Oct. 5, 2022).

deference.³ It is therefore not surprising that, “[i]n . . . religious exemption cases, the [Board of Review’s] analysis [has] rested on whether the employee’s belief was sincere.” *Jenkins v. DUA*, No. DET-23-17, at * 8 (DALA May 4, 2023) (collecting cases). The department reports that the District Courts have endorsed the Board of Review’s approach. In any event, hearing officers are expected to obey the holdings of pertinent appellate tribunals. *See generally Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993).

The lynchpin of this appeal is therefore the finding of fact that Ms. Binjour refrained from becoming vaccinated as a result of a sincerely held religious belief. *See supra* p. 4. To be sure, nothing in the record suggests that Ms. Binjour’s pastor, the Baptist churches, or other religious institutions have directed their followers to refuse the vaccine. But these facts are immaterial. “In order for a belief to be . . . protected . . . it is not necessary that it be shared by an organized sect or church.” *Pielech v. Massasoit Greyhound, Inc.*, 423 Mass. 534, 540 (1996). Religious beliefs are entitled to no less protection when they “differ from the established dogma of a religion or are not accepted as dogma by any religion.” *Sagar v. Sagar*, 57 Mass. App. Ct. 71, 74 n.3 (2003). *See Frazee v. Illinois Dep’t of Emp. Sec.*, 489 U.S. 829, 832-34 (1989).

The department contends that there must be a “connection” between the pertinent religious belief and the employee’s refusal to become vaccinated. In this case, it may be difficult to see a compelling link between the tenet that the body is a “temple of the Holy Spirit” and the conclusion that believers must forgo vaccines that, according to scientists, are critical to the

³ *But see Fallon Comm. Health Plan, supra*, at *3 (discussing a DUA interoffice memorandum stating that, “[i]f an employer’s vaccine policy permitted [exemption] requests and a claimant’s request . . . was denied, adjudicators should not second guess the employer’s decision”); *Dorcy v. DUA*, No. DET-22-335 (DALA May 4, 2023) (refraining from reassessing the religious beliefs of an employee who did not receive a religious exemption).

health of the general public. But the requisite connection between belief and action is not required to satisfy an objective standard of rationality. “No matter how misguided or even ridiculous [an individual’s] beliefs may appear to be to the court, or to the overwhelming majority of the people . . . the courts can examine only . . . whether they are sincerely held.”

Dalli v. Board of Ed., 358 Mass. 753, 758 (1971). See *Pielech*, 423 Mass. at 542. What matters is whether the employee sincerely believes that his or her religious principles require him or her to act in a certain way.

Given that Ms. Binjour refused to become vaccinated as a result of a sincerely held religious belief, the department’s applicable policy was not “reasonable” as enforced against her. By extension, Ms. Binjour also committed no “deliberate misconduct.” G.L. c. 151A, § 25(e)(2). The department’s grounds for denying unemployment benefits to Ms. Binjour were therefore erroneous.

Conclusion and Order

Ms. Binjour is entitled to receive unemployment assistance benefits in connection with the period of unemployment that followed her termination by the department. The department’s contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate