

Once the employer denied the claimant's request for a religious exemption to its mandatory COVID-19 vaccination policy, the claimant refused to get the vaccine and was fired. Because her refusal was driven by a sincerely held religious belief, the Board held that this was not done in wilful disregard of the employer's policy. Those same beliefs rendered her incapable of complying with the policy. Therefore, she may not be denied benefits under G.L. c. 151A, § 25(e)(2), due to deliberate misconduct in wilful disregard of the employer's policy or because of a knowing violation of a reasonable and uniformly enforced policy.

**Board of Review
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Introduction and Procedural History of this Appeal

The claimant appeals a decision by an administrative magistrate at the Division of Administrative Law Appeals (DALA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was discharged from her position with the employer on October 20, 2021. She filed a claim for unemployment benefits with the DUA, effective October 17, 2021, which was denied in a determination issued on November 6, 2021. The claimant appealed the determination to the Department of Unemployment Assistance (DUA), which assigned the appeal hearing to DALA.¹ Following a hearing on the merits attended by both parties, the administrative magistrate affirmed the DUA's initial determination and denied benefits in a decision rendered on May 4, 2023. We accepted the claimant's application for review.

Benefits were denied after the magistrate determined that the claimant knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, she was disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the magistrate's decision, and the claimant's appeal, we remanded the case to the magistrate to take additional evidence relevant to the claimant's state of mind when she chose not to comply with the employer's policy. Both parties attended the remand hearing. Thereafter, the magistrate issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the magistrate's decision, which concluded that the claimant's refusal to comply with the employer's mandatory COVID-19 vaccination policy on religious grounds disqualified the claimant from receiving benefits because it was a knowing

¹ As a procedural policy, any first level appeals involving unemployment benefit eligibility for former DUA employees are referred to DALA for a fair hearing before an impartial hearing officer, as permitted under G.L. c. 151A, § 39(b). Pursuant to G.L. c. 151A, § 40, any appeals of such hearing decisions, the second level appeal, must be filed with the Board of Review.

violation of a reasonable and uniformly enforced policy, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On August 19, 2021, Massachusetts Governor Charles D. Baker issued Executive Order 595. Its title was "Implementing a Requirement for COVID-19 Vaccination for the Commonwealth's Executive Department Employees." (Ex. 4)

2. Executive Order 595's recital clauses stated in part:

WHEREAS, vaccination is the most effective tool for combating the 2019 novel Coronavirus ("COVID-19") and the executive department of the Commonwealth, as the largest employer in the State, can lead in promoting policies to ensure the health and safety of all Massachusetts workers and residents;

WHEREAS, widespread vaccination is the only means the Commonwealth has over the long-term to ensure protection from COVID-19 in all its variations and to end the many negative consequences COVID-19 produces in our daily lives;
....

WHEREAS, the COVID-19 vaccine is a proven measure at preventing hospitalization and severe disease;

WHEREAS, achieving full vaccination among the executive department workforce is necessary to ensure that the executive department can provide the full measure of public services due to the residents of the Commonwealth.

(Ex. 4)

3. Executive Order 595 stated in part:

It is the policy of the Commonwealth that all executive department employees shall be required to demonstrate that they have received COVID-19 vaccination and maintain full COVID-19 vaccination as a condition of continuing employment.

(Ex. 4)

4. Executive Order 595 directed the Human Resources Division (HRD) to "issue a written policy" that would include the following, among other things:

1. a requirement that all executive department employees demonstrate no later than October 17, 2021 to their employing agency, bureau, department, office, or division that they have received COVID-19 vaccination and, going forward, that they demonstrate they are maintaining full COVID-19 vaccination;

2. a procedure to allow limited exemptions from the vaccination requirement where a reasonable accommodation can be reached for any employee who is unable to receive COVID-19 vaccination due to medical disability or who is unwilling to receive COVID-19 vaccination due to a sincerely held religious belief.

(Ex. 4)

5. On September 10, 2021, Jeff McCue of HRD, the Chief Human Resources Officer, emailed all executive department employees in part as follows:

Next week, you will receive an email from me with more detailed instructions and a link to begin the self-attestation process. There will be two options for successfully completing the attestation form, if

1. You received full COVID-19 vaccinations, you will commit to receiving booster vaccinations, and you authorize a match against Massachusetts Immunization Information System (MIIS) to verify vaccination status; **or**

2. You received an agency-approved medical or religious exemption for COVID-19 vaccine from your Diversity Officer or ADA Coordinator.

For those employees seeking a medical or religious exemption, HRD's Office of Diversity and Equal Opportunity (ODEO) has worked with Secretariat and Agency representatives to finalize a process that can be [found here](#).²

If you believe you qualify for an exemption, please review the procedure document³ and complete the appropriate request form linked below....

The links included "Religious Exemption Form."⁴ The email continued in part:

To allow time for processing, requests for an exemption should be submitted by **October 8, 2021** to your agency's Diversity Officer or ADA Coordinator.

For an exemption to be approved, the employee must be able to perform their essential job functions with a reasonable accommodation.

² Footnote 1 in the consolidated findings states, "Presumably, this represented a link."

³ Footnote 2 in the consolidated findings states, "It is not clear what this is."

⁴ Footnote 3 in the consolidated findings states, "Presumably, this is the COVID-19 Vaccination Religious Exemption Request Form, which the claimant submitted. (Ex. 10)."

(Ex. 5)

6. From April 26 to October 20, 2021, [Claimant] worked for DUA as a Junior Service Representative I – Adjudication. (Ex. 1). She answered telephone calls and determined callers' eligibility for unemployment benefits. ([Claimant] testimony)
7. [Claimant] worked entirely at home ([Claimant] testimony), but could have been called in to DUA's office for various reasons. ([Supervisor] testimony)
8. During [Claimant]'s entire employment with DUA, she was a probationary employee. That is, under the union contract, she was in her first nine months, and did not have full union protection. As a probationary employee, DUA could discharge [Claimant] without imposing progressive discipline, such as a five-day suspension and then a ten-day suspension for violating a policy. ([Supervisor] testimony)
9. On September 16, 2021, [Claimant] filled in a COVID-19 Vaccination Religious Exemption Request Form. The form asked [Claimant] to describe the religious principle that guide your objection to immunization. Indicate how your sincerely held religious belief conflicts with the COVID-19 vaccine mandate.

(Ex. 10)

10. [Claimant] answered:

The religious principle that guides my objection to immunization is founded on the pro-life position that all life is sacred to God. While I know that actual fetal tissues are not in the vaccines, it is my understanding that the Johnson & Johnson vaccine required the use of PER-C6 fetal cell line in order to produce their vaccine. In addition, both Pfizer and Moderna used fetal cell lines for testing their vaccines after it was already produced. I cannot in good conscience allow myself to have a vaccine that would use actual fetal tissue as an ingredient or one that uses fetal cell lines in the development, production or testing, as that violates my conscience and faith in God regarding the sanctity of life.

(Ex. 10)

11. With her request for a religious exemption, [Claimant] submitted a document from her pastor. The document is two-and-a-half single-spaced pages from a group or church called the Faith Christian Fellowship. (Ex. 10)
12. The first page extensively quoted the Christian Bible, and discussed pregnancy and fetuses growing in mothers' wombs. The page ended with a quotation with this excerpt: "[Y]our body is the temple of the Holy Ghost." (Ex. 6)

13. The second page contained this quotation:

Our position and belief is that abortion is a sin against God because it is the taking of an innocent life. Further, not only do we find the abortion itself to be abhorrent, but also that cells or parts of an aborted baby are used for medical research. While it is true that actual cells from an aborted baby are not direct ingredients of the Covid-19 vaccines, so called “fetal cell lines” derived from actual abortions are used in the testing of the Modern[a] and Pfizer vaccines and are required in the manufacturing process for the Johnson & Johnson shot. We reject the use of any fetal tissue being used in any phase of medical research and that we should not be injected with such pharmaceuticals. It is our sincerely held religious belief that to receive these vaccines would violate the aforementioned command to glorify God in body and spirit.

(Ex. 6).⁵

14. At the bottom of the second page, continuing to its end, the document discussed the biblical account of the midwives disobeying the Pharaoh’s “unrighteous decree” to slay Israelite boys as they were born. (Ex. 6)

15. On October 4, 2021, DUA denied [Claimant]’s request for a religious exemption. It stated:

After careful consideration of your statement and our discussion, the direct link between a sincerely held religious belief and all three COVID-19 vaccines, and a contradiction with the Governor’s Executive Order, could not be ascertained.

(Ex. 11)

16. On October 20, 2021, DUA terminated [Claimant] effective immediately. (Ex. 14)

17. On or about October 20, 2021,⁶ [Claimant] applied for unemployment benefits. (Ex. 1)

18. When asked, “Do you believe that you disobeyed (violated) that rule?,” [Claimant] answered yes. (Ex. 1)

19. When asked why she disobeyed the vaccine rule, [Claimant] stated, “I disobeyed the rule because I have sincerely held religious beliefs, and I don’t believe in taking the vaccination.” (Ex. 1)

⁵ Footnote 4 in the consolidated findings states, “The original footnote reads: I have not researched whether these assertions about the three vaccines are factual because I am not examining the sincerity of [Claimant]’s religious beliefs or DUA’s denial of her request for a religious exemption.”

⁶ Footnote 5 in the consolidated findings states, “The date on the application is August 2, 2022, which I assume is incorrect.”

20. On October 21, 2021, DUA filled out the employer questionnaire. (Ex. 2)
21. When asked, “Was the claimant fired (discharged) for something s/he did or did not do?,” DUA checked the Yes box. (Ex. 2)
22. When asked, “What proof do you (the employer) have (if any) that s/he did that **on purpose**?,” DUA wrote, “Failure to adhere to Executive Order 595, Covid vaccine mandate.” (Ex. 2)
23. When asked, “What reason(s) did the claimant give for what s/he did?,” DUA wrote, “None.” (Ex. 2). This was not correct.
24. When asked, “If you (the employer) were **harm**ed by what s/he did, explain how;,” DUA wrote, “N/A.” (Ex. 2)
25. When asked, “How did the claimant know that what s/he did would harm you (the employer)?,” DUA wrote, “N/A.” (Ex. 2)
26. On November 6, 2021, DUA sent a Notice of Disqualification to [Claimant]. It wrote:
- Your discharge is attributable to deliberate misconduct in willful disregard of the employing unit’s interest.
- You were terminated within your probationary period because of a knowing violation of a reasonable and uniformly enforced policy regarding vaccination requirements.
- (Ex. 7)
27. On November 6, 2021, [Claimant] timely appealed. (Ex. 8)
28. DUA referred [Claimant]’s appeal to the Division of Administrative Law Appeals for a hearing.
29. DUA’s policy, implementing the Governor’s executive order, was reasonable. Massachusetts was in a public health crisis, as was the rest of the world. Requiring Commonwealth employees to become vaccinated against COVID-19 was a reasonable policy to respond to the public health crisis; the policy allowed DUA to keep its employees healthy and able to serve constituents. ([Supervisor] testimony) *See also Diane Geryk v. DUA*, DET-22-0185, 2022 WL 16921480 (Aug. 4, 2021) (finding that DUA’s policy was reasonable); *[Name A] v. Department of Unemployment Assistance*, DET-22-336 (DALA Nov. 17, 2022) (same).

30. DUA uniformly enforced the policy. Every employee whose religious or medical exemption DUA approved, DUA reasonably accommodated; every such employee continued working at DUA. Every employee to whom DUA denied an exemption and became vaccinated continued working at DUA. Every employee to whom DUA denied an exemption and refused vaccination was discharged. ([Supervisor] testimony)

31. On October 25, 2022, MassLive, an online publication, reported:

At least some Massachusetts state employees who were fired after refusing to be vaccinated against COVID-19 under Gov. Charlie Baker's sweeping executive order, are being offered their jobs back.

(Ex. 19)

32. The news that appeared in MassLive and other publications was about one state agency that had previously granted exemptions to employees but could not accommodate them. The agency terminated them. The agency then became able to accommodate those employees and invited them to return to work. ([Supervisor] testimony)

33. In 2014, [Claimant] became a Christian. ([Claimant] testimony)

34. She attends church services on Sundays and prayer meetings on Wednesdays. ([Claimant] testimony)

35. [Claimant] believes the content of the document from her church (Ex. 6), which she called a letter. ([Claimant] testimony)

36. [Claimant]'s pastor wrote the letter, after she spoke with him about DUA's requiring her to receive a COVID-19 vaccine. ([Claimant] testimony)

37. [Claimant] believes that her body is not her own, that it belongs to God, and that if she puts anything in her body, such as a vaccine, doing so goes against God's wishes and her beliefs. This belief derives from the Christian Bible, I Corinthians 19-20.⁷ ([Claimant] testimony)

38. More specifically, [Claimant] will not put anything into her body that alters her genetic makeup, which she believes any vaccine would do. ([Claimant] testimony)

39. When asked how she knew that vaccines would alter her genetic makeup, [Claimant] said that aborted fetal cells were used to produce and test the COVID-19 vaccine, which contravenes the sanctity of life, and anything that

⁷ Footnote 6 in the consolidated findings states, "I have not examined this source."

alters her genetic makeup contravenes her Christian beliefs, the Bible, and God's word. ([Claimant] testimony)

40. [Claimant] objects to receiving any vaccines, even those that were not developed or tested with fetal cells. ([Claimant] testimony)
41. If [Claimant] became convinced that vaccines did not alter her genetic makeup, she still would not get vaccinated because of her religious beliefs. ([Claimant] testimony)
42. If [Claimant] became convinced that vaccines did not use aborted fetal cells at any stage, she still would not get vaccinated because of her religious beliefs. ([Claimant] testimony)
43. [Claimant] did not refuse to take the COVID-19 vaccine for political reasons. ([Claimant] testimony)
44. [Claimant] has not been vaccinated since 2004, when she had one vaccine, which her college required. She has not had the flu vaccine.
45. Because of her objection to putting anything in her body, she would not get tattooed. ([Claimant] testimony)
46. [Claimant] does not take non-vaccine medications, even aspirin, and has not done so since she was in high school. She does not take antibiotics and would not do so if she had an infection. ([Claimant] testimony)
47. Before 2014, her doctor prescribed medications that she did not take. ([Claimant] testimony)

Credibility finding:

I have no reason to doubt the sincerity of [Claimant]'s religious beliefs. She did not backtrack, or demonstrate doubt, confusion, hesitation, or sincerity as she testified. Her face, which I observed on Webex, did not show anything to me that I interpreted as lack of candor or lack of belief in what she testified to.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the administrative magistrate to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the magistrate's original conclusion is free from error of law. After such review, the Board adopts the magistrate's consolidated findings of fact except as follows. The portions of Consolidated Findings ## 29 and 30, which state that the employer's policy was reasonable and uniformly enforced, respectively, are mixed questions of fact and law, which at this point in the proceedings, are to be decided by the Board. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463–464 (1979) ("Application of

law to fact has long been a matter entrusted to the informed judgment of the board of review.”). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, based upon the consolidated findings after remand, we disagree with the magistrate’s legal conclusion that the claimant is ineligible for benefits.

Since the claimant was discharged from employment, her eligibility for benefits is properly analyzed under 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).

The employer discharged the claimant because she failed to comply with its mandatory COVID-19 vaccination policy. Specifically, after the employer denied her request for a religious exemption, she refused to get the COVID-19 vaccine. *See Consolidated Findings ## 15 and 16.* First, we consider whether the employer has shown that this was deliberate misconduct in wilful disregard of the employer’s interest. Inasmuch as the claimant acknowledged that her refusal to get the vaccine violated the policy, there is no dispute that she engaged in misconduct. *See Consolidated Finding # 18.* Moreover, we can reasonably infer that her action was deliberate, as her statement to DUA shows a conscious decision to do so based upon her religious beliefs. *See Consolidated Finding # 19.*

However, showing deliberate misconduct is not enough. Such misconduct must also be done in wilful disregard of the employer’s interest. Goodridge v. Dir. of Division of Employment Security, 375 Mass. 434, 436 (1978) (citations omitted). 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). 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).

There is no question that the claimant was aware of the employer’s expectation that she comply with its mandatory COVID-19 vaccination policy, as she submitted the religious exemption request with the required supporting documentation by the deadline. *See Consolidated Finding*

9. We agree that the policy was reasonable as a health and safety measure for its workforce to prevent hospitalizations, avoid the severe effects from the COVID-19 virus, and enable them to continue to serve the public during a public health emergency. *See Consolidated Findings ## 2 and 29.* The question is whether the claimant has demonstrated mitigating circumstances for her refusal to comply.

The claimant maintains that she refused to get the COVID-19 vaccine due to her sincerely held religious beliefs. Specifically, she referred to a bible passage providing that her body is a temple that belongs to God. *See Consolidated Findings ## 12, 35, and 37.*⁸ The record reveals that the claimant had been averse to taking vaccinations and medications long before she became a Christian in 2014, as she has not been vaccinated for anything since 2004, has not taken prescribed medications, or even over-the-counter medication such as aspirin since she was in high school. *See Consolidated Findings ## 33, 44, 46, and 47.* Nonetheless, she asserts that, upon becoming a Christian, she has embraced the religious basis for refusing to put vaccines and medications into her body. *See Consolidated Findings ## 36 and 37.*

We remanded this case in order for the magistrate to allow questioning and further claimant testimony as to the sincerity of her asserted religious basis for refusing to comply with the employer's COVID-19 vaccination requirement. His credibility assessment reveals that he found her asserted beliefs to be sincerely held. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by 'substantial evidence.'" *Lycurgus v. Dir. of Division of Employment Security*, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Based upon the record before us, we believe that his assessment is reasonable in relation to the evidence presented.

In light of this credibility assessment and the ensuing Consolidated Findings ## 37, 38, and 40–43, the claimant has shown that, once the employer denied her exemption request, her continued refusal to comply with its mandatory vaccination policy was not done in wilful disregard of the employer's interest, but due to mitigating circumstances. Her religious convictions did not allow her to get the vaccine.

Alternatively, we consider whether the employer has demonstrated that the claimant knowingly violated a reasonable and uniformly enforced policy within the meaning of G.L. c. 151A, § 25(e)(2). As stated, her refusal to get the COVID-19 vaccine violated the employer's policy, and the claimant does not dispute that she did so knowingly. Inasmuch as the employer discharged all employees who were denied an approved exemption and who still refused to get a vaccine, we agree that the policy was uniformly enforced. *See Consolidated Finding # 30.* However, the claimant may not be disqualified for a knowing violation of a reasonable and uniformly enforced

⁸ While not explicitly incorporated into the review examiner's findings, this part of the claimant's testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training*, 64 Mass. App. Ct. 370, 371 (2005).

policy, because the record now shows her sincerely held religious beliefs about the sanctity of her body as belonging to God and that, for this reason, she may not be vaccinated. In short, her religious belief rendered her incapable of complying with the policy.

We, therefore, conclude as a matter of law that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest or knowingly violate a reasonable and uniformly enforced policy pursuant to G.L. c. 151A, § 25(e)(2).

The magistrate's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 17, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**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