

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. The fact-finder declined to credit the claimant's testimony that her refusal was driven by a sincerely held religious belief. Held the credibility assessment was unreasonable in relation to the evidence presented, and that the claimant established mitigating circumstances or an inability to comply with the employer's policy and expectation. Held she was not discharged for deliberate misconduct in wilful disregard of the employer's interest, or for a knowing violation of a reasonable and uniformly enforced policy, pursuant to G.L. c. 151A, § 25(e)(2). The claimant was eligible for benefits.

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Issue ID: 0073 9906 53

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 November 18, 2021. She filed a claim for unemployment benefits with the DUA, effective November 14, 2021, which was denied in a determination issued on December 23, 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 review examiner 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 and credibility assessment. 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

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.

religious grounds disqualified the claimant from receiving benefits because it was a knowing 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 review examiner'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. 5)

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. 5)

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. 5)

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. 5)

5. On September 10, 2021, [Human Resources Officer] 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:

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 [Claimant] submitted. (Ex. 16)”

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.

(Ex. 6)

6. [Claimant] was a Customer Service Representative with DUA. (Ex. 2)
7. On October 7, 2021, [Claimant] signed the COVID-19 Vaccination Religious Exemption Request Form. (Ex. 16)

The form read in part:

Please complete this form and submit it to [Employee A]....

The Diversity Officer will engage in an interactive process with you to determine whether you are eligible for an exemption/accommodation and if so, will determine what reasonable accommodation can be provided that will enable you to perform the essential functions of your position. A request for accommodation will not be granted if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace and/or to you, the employee, or if it creates an undue hardship.

(Ex. 16)

8. The form continued:

To obtain a religious exemption, please describe the religious principles that guide your objection to immunization. Indicate how [your] sincerely held belief conflicts with the COVID-19 vaccine mandate....

(Ex. 16) (emphasis omitted)

9. [Claimant] wrote:

My Faith in the Lord Jesus Christ and the word He gave me over my life in 2019.⁵

I am a strong Christian that [is] led by the Holy Spirit to grow in the Faith every day. My religious principles that guide me is to Trust in God's Word and believe it. In 2015, my body was experienc[ing] multiple sorts of symptoms [and] illnesses until 2019. In 2019, I received a miraculous healing and my physician

⁵ Footnote 4 in the consolidated findings states, "Presumably, this incomplete sentence answers the request to 'describe the religious principles that guide your objection to immunization.'"

at that time witness[ed] the healing and understood the reasons why my body could not tolerate all those treatments and medicine and I was getting worse [until that time]. Then, I was tak[en] off all medications and [told?] not to take flu vaccine and alike. I did share to my physician [that] my faith heals me and [he] told me he could not add it to my medical record. According to my faith and the word of God [that instructs me] to protect my body according to 1 Corinthians 6, I cannot transgress God's word over my body. I do believe in God's Word and Miracle and not to take anything that would conflict with my faith. I have not done anything to my body since 2019 and the Covid-19 vaccine will contradict my faith and God's word over my life.

Since my issue is religion because God heals me and [I] cannot disobey His Word and as well as medical⁶ because they witnessed it and they know my body cannot tolerate medicine.⁷ However, my now physician is not available and other physicians would not give out [a] medical exemption to [a] non-patient. Therefore, I stand firm in my faith and the word of God over my life and the Church knows it.

(Ex. 16)

10. On October 15, 2021 – after the deadline for applying for an exemption – HRD issued Covid 19 Vaccination Verification Policy for Executive Department Agencies.” (The record does not reveal why the policy was issued after the deadline.) The policy read in part:

6. Employees *may* be approved for exemption from the requirement to provide documentation confirming 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, provided that any such employee is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the agency.

....

9. Employees who fail to comply with this policy and are not otherwise subject to paragraph 6 ...will be subject to progressive discipline, up to and including termination.

⁶ Footnote 5 in the consolidated findings states, “Although [Claimant] testified that she applied for a medical exemption on September 22 or 27, 2021, (her testimony is unclear), [Claimant] did not submit and the record does not contain an application for, rejection of, or discussion of a medical exemption. [Employee B] testified that she is unaware that [Claimant] applied for a medical exemption.”

⁷ Footnote 6 in the consolidated findings states, “It is unknown to whom “they” refers. DUA?”

(Ex. 6) (emphasis added)

11. DUA personnel met with applicants about their exemptions. ([Employee B] testimony)
12. On October 23, 2021, [Claimant] emailed to DUA the following message, although it is not clear to whom at DUA she sent it:

To All,

My name is name is [Claimant].

I have been working in DUA since 2015.

I am in compliance with the Governor Executive Order 595, by provided all the documents that required either get a vaccine or an exemption. I understand that this decision cannot be appealed, however, I do believe it can be redetermined.

The religious form states that “Indicate how your sincerely held religious belief conflicts with the COVID-19 vaccine mandate” the key words for me is “religious belief conflicts”.

According to the great constitution of the United States of America, this country that hold and respect religion belief and faith, I believe the conversation was not fair. Taking any vaccine will violate my right to serve God according to my Faith.

On Wednesday 20th 2021, I had a conversation with Dennis [Johnson] to amplify how the mandate of a vaccine will transgress the word of God, my faith, my belief. I explained my journey and how my faith come to this point. The mandate to take vaccine is putting me in the position to disobey the word of Word.⁸ The vaccine will violate my faith, my belief and my religious right [to] serve God as God’s please. The conflict lies that the vaccine will put me in a position of shame, cast out and mentally wipe[d] out. I submitted the support my church, my teacher that emphasizes on Faith and hearing the word of God. Then I see I did not get the approbation.

I like my job. I would like to continue to work at home as long as it allows me. I would like the decision to be redetermined. I have a family to protect and serve. I [am] open for another conversation; I would do whatever it takes as long as it does not violate my right to serve God.

Thank you all for the consideration

Sincerely,

⁸ Footnote 7 in the consolidated findings states, “[Claimant] presumably meant “the word of God.””

[Claimant]
Servant of God

(Ex. 18)⁹

13. On October 25, 2021, [Employee A] electronically signed DUA's COVID-19 Vaccination Religious Exemption – Response Form. It stated:

We have engaged in the interactive process and completed our review of your religious exemption request on Oct. 20, 2021 on Microsoft teams.¹⁰

(Ex. 17)

14. After “Exemption/Accommodation Granted?” the “No” box had a X in it. (Ex. 17)

15. After “If an exemption is not granted, explain why,” [Employee A] wrote:

We have concluded our review of your request for a religious exemption from the Governor's EO #595 mandate. During our conversation, you spoke of your religious principles that guide you but not how they conflict with taking the vaccination. In addition, during the interactive process¹¹ you explained that your objection is rooted in medical concerns[.] [H]owever[,] after careful consideration, I cannot determine a conflict with your sincerely held religious beliefs. Therefore, your request for an exemption is denied.

The response from [sic] continued:

Per the policy of the Commonwealth's Human Resources Division implementing Executive Order #595, EOLWD's [Executive Office of Labor

⁹ Footnote 8 in the consolidated findings states, “[Claimant] contended during the hearing that Exhibit 10, as introduced by DUA, was incomplete. After I spent a lot of time trying to get her to specify how it was incomplete and what document(s) would complete it to her satisfaction, [Claimant] agreed that her forwarding of Exhibit 18 to DUA represented a completion of the email thread in Exhibit 10. On November 4, 2021, [Claimant] apparently forwarded her October 23, 2021 “To All” email (Ex. 18) to [Employee A] and three other people at DUA, not including [Employee B], with the subject line, “Reconsideration- Vaccination Exemption Request.” [Employee B] did see the message around the time of the hearing in November 2021 that DUA held before terminating [Claimant] ([Employee B] testimony).”

¹⁰ Footnote 9 in the consolidated findings states, “‘We’ and the ‘interactive process’ apparently refer to [Claimant] and DUA personnel engaging in an interactive process, as mentioned later in the response form. ‘[O]ur review’ apparently refers to DUA’s review. The reference to Microsoft Teams is that apparently DUA personnel used Microsoft Teams, a communication platform, for the interactive process.”

¹¹ Footnote 10 in the consolidated findings states, “The ‘interactive process’ and ‘our conversation’ may have been the same thing.”

and Workforce Development's] decision on your exemption request cannot be appealed.¹²

(Ex. 17)

16. The COVID-19 Vaccination Religious Exemption – Response Form did not notify [Claimant] of any right to appeal the denial of her request for a religious exemption. (Ex. 17)

17. No right to appeal the denial of executive department employees' requests for a religious exemption is known to exist.

18. Also on October 25, 2021, [Employee B] sent [Claimant] an email with high importance. It required [Claimant] to "complete the checkbox form provided below" by October 27, 2021, at 5:00 p.m. The checkbox form had three options:

___ I will not comply with Executive Order 595

___ I have received the first Moderna shot on ___ and the second is scheduled on ___.

___ I received my J&J vaccine on ___.

(Ex. 10)

19. [Claimant] checked none of the boxes that were provided her, but instead created a new option: "_X_ I AM in comply with Executive Order 595." (Ex. 10; [Employee B] testimony)¹³

20. On the same day, [Claimant] sent another email to [Employee B] stating, "I AM in comply with Executive Order 595 – I submitted my Religious Exemption." (Ex. 10)

21. On the same day [Employee B] emailed [Claimant] in part:

Your religious exemption was denied.

As such, the only way to comply with the mandate is to become vaccinated.

(Ex. 10)

¹² Footnote 11 in the consolidated findings states, "This sentence is not precisely correct. The policy does not provide an appeal procedure but the policy does not state that an applicant for an exemption cannot appeal DUA's denial. I confirmed this with DUA's lawyer, who, on March 13, 2023 emailed that the policy, 'by conspicuous omission, implicitly prohibits appeals of those requests.'"

¹³ Footnote 12 in the consolidated findings states, "At the hearing, [Claimant] repeatedly testified that she had complied with Executive Order 595 and the policy that implemented it. She did not specify whether she meant that by applying for a religious exemption, she had complied with the executive order and policy, whether or not she received an exemption; she had complied with the executive order and policy because she was entitled to an exemption; or some other reason."

22. On the same day [Claimant] emailed [Employee B]: “I emailed my position last Saturday [Oct. 23] on the email I received Friday [Oct. 22] and I am waiting ...for a respon[se].” (Ex. 10) (The October 22, 2021, email to [Claimant] is not in evidence but is apparently not significant. Her October 23, 2021, response is Exhibit 18.)
23. Also on October 27, 2021, DUA notified [Claimant] that it was suspending her for five days for failing to comply with the vaccine mandate. (Ex. 11)
24. On November 4, 2021, DUA notified [Claimant] that it was suspending her for an additional ten days for failing to comply with the vaccine mandate. (Ex. 15)
25. The two suspensions were part of progressive discipline. (Ex. 6; [Employee B] testimony)
26. Also on November 4, 2021, [Claimant] apparently forwarded her October 23, 2021, “To All” email, which asked DUA to reconsider its denial of her request for a religious exemption, to [Employee A] and three other people at DUA. (Ex. 18)
27. On November 18, 2021, DUA discharged [Claimant] (Exs. 2, 12)
28. DUA discharged [Claimant] for “[f]ailure to adhere to Executive Order 595, Covid Vaccine Mandate.” (Ex. 4, p. 2)
29. On August 9, 2022, [Claimant] applied for unemployment benefits. (Ex. 2)
30. When asked, “Were you fired (discharged) for disobeying (violating) a company rule or policy?,” [Claimant] answered no. (Ex. 2) Her answer was incorrect.
31. When asked, “Do you believe that you disobeyed (violated) that rule?,” [Claimant] answered no. (Ex. 2)
32. On August 9, 2022, DUA sent [Claimant] a second form. (Ex. 3)
33. In the form DUA stated in part:

Your employer [that is, DUA] states you were discharged or failing to adhere to their vaccination policy. Do you agree with the above statement?

(Ex. 3)
34. [Claimant] answered:

No, I did not agree.¹⁴ According to their policy, I followed all requirements and procedures in due time. My employer chose on their own merit¹⁵ not to accept my exemption[,], which is the second part of their policy. The policy gives two options but my employer did not follow their own policy¹⁶ and imposed one option on me.¹⁷ Not fair.

(Ex. 3)

35. To evaluate [Claimant]’s claim, DUA also asked itself as an employer to provide information. A DUA Human Resources analyst filled in the form. (Ex. 4)

36. When asked, “Was the claimant fired (discharged) for something s/he *did* or *did not* do?,” DUA answered yes. (Ex. 4)

37. When asked “What proof do you (the employer) have (if any) that s/he did that **on purpose?**,” DUA answered, “Did not complete the Covid attestation document.” (Ex. 4)

38. When asked, “What reason(s) did the claimant give for what s/he did?,” DUA answered, “Refused to become vaccinated against Covid.” (Ex. 4)¹⁸

39. On December 23, 2021, DUA sent [Claimant] a Notice of Disqualification. It stated;

You were discharged because of a knowing violation of a uniformly enforced company rule or policy.

You were discharged because of a knowing violation of a reasonable and uniformly enforced work rule or policy regarding vaccination requirements.

(Ex. 7) It cited G.L. c. 151A, § 25(e).¹⁹

¹⁴ Footnote 13 in the consolidated findings states, “[Claimant]’s use of the past tense – ‘I did not agree’ – makes it unclear whether she did not agree with DUA’s discharging her or with DUA’s characterization of how it came to fire her.”

¹⁵ Footnote 14 in the consolidated findings states, “It is unclear what [Claimant] meant by ‘on their own merit.’ DUA chose not to grant her an exemption on the merits?”

¹⁶ Footnote 15 in the consolidated findings states, “It is unclear what how DUA did not follow its policy, according to [Claimant]”

¹⁷ Footnote 16 in the consolidated findings states, “It is unclear how DUA imposed one option on [Claimant] and which option she meant. The option to get vaccinated? The option to apply for a religious exemption, as opposed to also applying for a medical exemption?”

¹⁸ Footnote 17 in the consolidated findings states, “This is not the complete reason that [Claimant] did not become vaccinated. As discussed, she did not become vaccinated because she claimed that a vaccination would violate her religious belief.”

¹⁹ Footnote 18 in the consolidated findings states, “The statute bars an employee from receiving unemployment benefits if the employee was “discharge[d]” for “deliberate misconduct in wilful disregard” of the employer’s interest, or for “a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.” G.L. c. 151A, § 25(e). The Notice of Disqualification in effect specified that the first reason was not at issue.”

40. The Notice of Disqualification has a section with the heading, “How to Request a Hearing on this Determination.” (Ex. 7) “[T]his determination” refers to the determination that [Claimant] was not eligible to receive unemployment benefits, not the determination that she was not eligible for a religious exemption to the vaccination mandate.
41. On December 31, 2021, [Claimant] timely appealed. (Ex. 8)
42. After “Reason for Appeal,” [Claimant] left the form blank. (Ex. 8) That is, [Claimant] did not specify that she was appealing DUA’s denial of her request for a religious exemption.
43. On January 3, 2020, DUA received [Claimant]’s timely appeal. (Ex. 9)
44. DUA referred [Claimant]’s appeal to the Division of Administrative Law Appeals for a hearing.
45. 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. ([Employee B] testimony) *See also [Name A] v. DUA*, DET-22-0185, 2022 WL 16921480 (Aug. 4, 2021) (finding that DUA’s policy was reasonable); *[Name B] v. Department of Unemployment Assistance*, DET-22-336 (DALA Nov. 17, 2022) (same).
46. 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. ([Employee B] testimony)

Remand Hearing, Its Aftermath, and Credibility Finding:

At least three related factors made the remand hearing and this credibility finding more difficult than it should have been. The first factor was [Claimant]’s continued insistence on doing things her way. See Factual Finding #19 in which [Claimant], in effect, declined to answer DUA’s form and created her own version of it to answer in her favor. More on this factor later.

The second factor was [Claimant]’s unwillingness or inability to recognize that (1) she was appearing in an administrative law hearing (2) that I was presiding over (3) whose topic was the remand order about her credibility and the sincerity of her

religious beliefs. [Claimant] did not appreciate being asked about her religious beliefs and medical history.

The third factor was the imprecision of [Claimant]'s testimony. She gave disjointed, incomplete, indecisive, and contradictory answers. I told her twice at the hearing that I was having trouble understanding her testimony. I said that I wanted to tell her so *during the hearing*, rather than in this remand decision, so that she could testify to her benefit while the hearing was still underway. At the end of the hearing, she said that she felt I had disliked her answers. I said that I did not like or dislike her answers.

As best as I can assemble from [Claimant]'s disjointed, incomplete, indecisive, and contradictory answers, her testimony is as follows. These are not factual findings.

[Claimant] has been a Christian since 1997, when she was baptized. Her father is a pastor. She is active in the Haitian Baptist community.

In approximately 2015, she began experiencing sneezing, coughing, facial swelling, and nasal congestion. Her condition went undiagnosed.

In approximately April 2019, she and her doctor decided that she would not take medication for her undiagnosed condition. She may have been on more than one medication, but she does not remember the name of it or names of them.

In August or September 2019, possibly after her church's members prayed for her, she healed miraculously; her symptoms disappeared.

[Claimant] used to receive a flu vaccine, but has not done so since 2015 or 2016. When she received a flu vaccine, her tooth broke and she took herbal medicine for her broken tooth. She has not had a vaccine since 2019.

[Claimant] has a medical checkup annually. She wears dark glasses and implied that she does so as part of her medical care. She occasionally takes vitamins and iron, but no prescribed medicines.

In January 2023 (and possibly other times), [Claimant] had surgery for what she called "feminine issues." She declined to be more specific. When I confirmed that she would not be more specific, she said, "No. It's a medical record." I assumed that she was referring me to her medical records and I asked if she could submit her records. She agreed and said that she would ask both [Hospital A] and [Health Center] that afternoon for her medical records. I told her that on or before September 16, 2024, she should mail to me either her medical records or an explanation why she could not get them. I said I did not want to hold another hearing on why I did not have her records. I said that if I did not have her medical records, I would tell the Board of Review that I cannot determine whether she has sincerely held religious beliefs against receiving the COVID-19 vaccine. More on her medical records later.

[Claimant] also said that she did not know off the top of her head whether she had had any other medical procedures. She said that she would have to review her medical records.

When I asked why she did not get a vaccine, [Claimant] said that she is a Christian. She said that she was acting according to her deep faith.

[Claimant] testified that neither her pastor nor anyone else in her church advised her on getting vaccinated. Every church member decided on whether to receive the COVID-19 vaccine according to the member's individual faith.

[Claimant] said that in 2021, she prayed and God spoke to her, possibly in a dream. (These may have been separate occurrences: God spoke to [Claimant], and God appeared to her.) God told her and her family not to take the vaccine. She did not get vaccinated because it would transgress the word of God.

I do not accept her testimony about God speaking to her or about a dream as credible for three reasons. One, this testimony occurred approximately 40 minutes into a hearing that lasted approximately one hour. It occurred after I had repeatedly asked her why she had not received the COVID-19 vaccine, after I gave her the opportunity to say anything more about her religious beliefs, and during questions by DUA's lawyer.

Two, [Claimant] did not mention God speaking to her or a dream about God in her submissions to DUA. See Factual Findings 9 and 12.

Three, it is conceivable that [Claimant] both decided to stop receiving vaccinations in 2019 and that God told her in 2021 not to receive the COVID-19 vaccine. However, she did not acknowledge that she had two reasons not to receive the vaccine, and she spent most of the hearing discussing the first reason (that she decided to stop receiving vaccinations in 2019).

Let me be clear. I am not making a credibility finding on [Claimant]'s testimony that God talked to her or appeared in a dream. I am making a credibility finding that it was unlikely that that was the reason that [Claimant] did not receive the COVID-19 vaccine.

DUA had previously accommodated her religious life. In 2019, she wanted vacation time to go to Haiti and help build a church. However, that trip was during the summer, a blackout time when DUA employees without enough seniority were not entitled to take vacation. DUA approved her request to take vacation then. On another occasion, when she wanted to attend a religious revival, DUA allowed her to leave work early and make up the time. [Claimant]'s point, I think, was that DUA knew that she was religious and had accommodated her religious belief and therefore should have granted her a religious exemption from the COVID-19 vaccine.

At the end of the hearing, when I discussed with the parties whether they wanted to make an oral closing argument then or submit a post-hearing brief later, DUA's lawyer said that it would be premature to opine on the sincerity of [Claimant]'s religious beliefs until he saw her medical records. He soon refined DUA's position and said that he was willing to rest on the record, without submitting a post-hearing brief, once [Claimant]'s medical records arrived. When I asked [Claimant] what she wanted to do, referring to an oral closing argument or a post-hearing brief, she answered that she wanted a fair trial, clearly implying that she did not believe that I had given her a fair hearing.

[Claimant]'s medical records never arrived. On September 17, 2024, I emailed [Claimant]:

DALA has received a bill from GRM Document Management for your records at [Health Center]. The bill is for \$149.49. DALA will not be paying this bill.

I did not tell you to get your medical records and that DALA would pay for any charges. You did not ask DALA whether the bill should be sent to it and whether DALA would pay. No one authorized you to give DALA's address to GRM Document Management with the implication that DALA would pay.

Will you be getting your records to DALA, as I asked? If so, when? Should I proceed with my remand decision? I cannot commit to what I will write in my remand decision, but I anticipate writing that your medical records will help or would have helped determine the issue of the sincerity of your religious beliefs, I don't have your medical records, and you arranged for a bill to be sent to DALA.

By not communicating with me about the bill for her medical records, [Claimant] continued to do things her way. Furthermore, she did not respond to my email. I now try to answer the Board of Review's questions, which appear in bold below.

1. Kindly ask the claimant to explain what was her religious belief, practice, or observance in September, 2021 that caused her not to get a COVID-19 vaccine? Please be specific.

When I asked [Claimant] this question, she responded that she was a Christian. She also seemed to answer that because prayer had miraculously healed her medical condition in 2019, she eschewed vaccinations and prescription medicines.

2. Has the claimant received other vaccines besides the COVID-19 vaccine, such as the annual flu vaccine?

[Claimant] testified that she has received the flu vaccine. Her medical records, which she did not provide, would demonstrate whether she has received other vaccines.

- a. **If so, when did she receive vaccines, and against what was she vaccinated? Please be specific.**

[Claimant] testified that she last received a flu vaccine in 2015 or 2016.

- b. **If the claimant stopped receiving vaccines after having received them previously, when and why did she stop receiving them? Please be specific.**

[Claimant] appeared to testify that she stopped receiving vaccines in 2019 after prayer miraculously healed her medical condition.

- c. **If the claimant has not received vaccines previously, why not?**

Not applicable.

3. **The Magistrate may ask any further questions he deems necessary to determine whether the claimant held a sincere religious belief that precluded becoming vaccinated against COVID-19 in September, 2021.**

4. **The Magistrate is asked to render a credibility assessment as to whether the claimant's asserted religious objection to the COVID-19 vaccine in September, 2021, was sincerely held at the time.**

[Claimant] testified that her religious objection to the COVID-19 vaccine was because she was a Christian. I have no reason to doubt that [Claimant] sincerely held beliefs as a Christian in 2021. However, she did not provide enough details for me to determine whether she sincerely believed that she should not receive a COVID-19 vaccine because of her Christian faith.

- a. **If so, did the claimant decline to get the mandated COVID-19 vaccine in September and October, 2021, because of this sincerely held religious belief?**

[Claimant] appeared to testify that she stopped receiving vaccines in 2019 after prayer miraculously healed her medical condition. To determine (1) whether she had stopped receiving all vaccines; (2) stopped taking all prescription medicines; and (3) the extent that she had refused or accepted other medical care – all of which would elucidate her belief in the power of prayer, and thus the sincerity of her religious beliefs related to the COVID-19 vaccine – I asked her for her medical records. Because she did not provide her medical records and because her answers to my questions about the sincerity of her religious beliefs were not entirely responsive, I cannot assess the sincerity of her religious beliefs related to the COVID-19 vaccine.

b. If not, did the claimant have a different personal or political reason for not getting the COVID-19 vaccine at the time?

Not that I know of with the information that I have.

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. There appears to be an error in Consolidated Finding # 29, which states that the claimant applied for unemployment benefits on August 9, 2022. Consistent with the record, and the information contained in DUA's record keeping system, UI Online, we believe that the magistrate intended to find that the claimant filed for unemployment benefits on November 19, 2021. With respect to Consolidated Findings ## 30 and 31, the magistrate is referring to the claimant's responses to a fact-finding questionnaire sent to her by DUA, on November 19, 2021. The magistrate's reference to Exhibit 3 in Consolidated Findings 31–34 refers to the claimant's responses to an additional fact-finding questionnaire sent to her by DUA on December 16, 2021. The portions of Consolidated Findings ## 45 and 46 that 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 ## 19 and 20.*

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 refused to acknowledge that her refusal to get the vaccine violated the policy, there is no dispute that she refused to get vaccinated despite several requests, including two suspensions. *See Consolidated Finding ## 23–25.* She therefore engaged in misconduct. Moreover, we can reasonably infer that her action was deliberate, as her statement to the DUA shows a conscious decision to do so based upon her religious beliefs. *See Consolidated Findings ## 19 and 20.*

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 ## 7–9.* 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.* 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 states that she is a strong Christian, and her religious principles guide her to believe and trust in God's word. She recounted an illness she had in 2015 to which she was placed on numerous medications. Her symptoms continued to get worse over the years, and, according to her testimony, her employer even provided her with accommodations of an air purifier for her work area.²⁰ She testified that, after being taken off all medication, praying to God and having her church community pray for her she was miraculously healed in 2019. *Id.* She further states that the COVID-19 vaccine would contradict her faith and God's word over her life. *See Consolidated Finding # 9.* The record reveals that the claimant had been averse to taking vaccinations since 2015 or 2016 and had not taken any prescription medications since 2019. *Id.*

²⁰ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the magistrate. *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).

After receiving the magistrate's original findings, we remanded this case in order for the magistrate to allow further questioning and testimony and to render a credibility assessment as to whether the claimant's asserted religious objection to the COVID-19 vaccine in September, 2021, was sincerely held at the time. After remand, the magistrate's credibility assessment reveals that he has "no reason to doubt that [the claimant] sincerely held beliefs as a Christian in 2021." However, he stated that she did not provide enough details for him to determine whether she sincerely believed that she should not receive a COVID-19 vaccine because of her Christian faith. *See* response to remand question # 4. We disagree.

Credibility 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 the magistrate's assessment is inconsistent and not reasonable in relation to the evidence presented.

According to the claimant's testimony, as reported in the consolidated findings and credibility assessment, the claimant was baptized into the Haitian Baptist community in 1997. Her father is a pastor at her church, and she has remained quite active in the religious community. Her employer was aware of the claimant's religious beliefs after being hired and had provided her with two prior religious accommodations; one to travel to Haiti to help with building a church and the other to attend a religious revival. The claimant testified to her belief that self-prayer and community prayer brought about a miraculous healing to her health in 2019. As a result, she has refrained from all prescription medications and vaccines since.

It appears that the magistrate's credibility assessment relied heavily on his request and the claimant's alleged refusal to provide her medical records dating from 2015 to 2024 from two separate facilities. We do know, however, from the magistrate's credibility assessment that the claimant attempted to obtain these records and have them forwarded to the magistrate's office because the magistrate cites to receiving a bill, not from the claimant, but from GRM Document Management for all records associated with [Health Center]. Without having further information on the claimant's interaction with the treating facility and the process to obtain these records, as well as her ability or inability to afford these records, we believe that she should not be deemed to lack credibility in this regard.

Further, the magistrate appeared to discredit the claimant's testimony for failing to provide specific information on a January 2023 procedure she had relating to "feminine issues." While the magistrate could understandably be trying to verify or possibly refute the claimant's testimony, we believe that this is well beyond the scope of a reasonable inquiry into claimant's credibility. We also believe that it was unreasonable to interpret her testimony to mean that she held a religious objection to ever undergoing urgent medical treatment.

In our view, the record before us shows that the claimant remained consistent in her testimony regarding her religious beliefs as it related to vaccinations and the daily use of prescription medications. 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 # 46.* However, the claimant may not be disqualified for a knowing violation of a reasonable and uniformly enforced policy, because the record now shows her sincerely held religious beliefs that taking the COVID-19 vaccine would contradict her faith and God's word over her life. *See Consolidated Finding # 9.* 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 - April 25, 2025



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. declines to sign the majority opinion

**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.

CAS/rh