

**The claimant was discharged by her employer hospital for refusing to comply with the employer’s mandatory COVID-19 vaccination policy. The Board awarded benefits under G.L. c. 151A, § 25(e)(2), as she demonstrated mitigating circumstances of a sincerely held religious belief which prevented her from complying with the policy.**

**Board of Review  
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**Issue ID: 0074 1834 40**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) 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 9, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 11, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on November 3, 2022. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest, and, thus, she was disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we remanded the case to the review examiner to obtain additional information about the claimant’s reason for not complying with the employer’s policy. Both parties attended the remand hearing. Thereafter, the review examiner 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 review examiner’s decision, which concluded that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest because she did not present credible evidence that a sincere religious belief caused her to refuse to comply with the employer’s mandatory COVID-19 vaccination 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. The claimant worked as a medical records abstractor for the employer, a hospital from July 1, 1998 until August 20, 2021, her last physical day of work. The claimant was discharged on November 9, 2021.
2. The claimant was a full-time salary employee earning \$58,000 annually.
3. The claimant received a flu vaccine in 2019 and 2020.
4. On August 10, 2021, the employer announced a COVID-19 vaccine requirement for all hospital personnel [sic] must be fully vaccinated by October 15, 2021 in order to provide patient and staff safety and to limit the spread of COVID-19. The claimant worked in the hospital's medical records department.
5. The claimant received an email on August 10, 2021 from the employer that employees must be vaccinated, or they need to submit a medical and religious exemption.
6. The claimant requested a religious exemption on or about September 2, 2021 (the claimant submitted a written letter to the employer's religious exemption committee) from [COVID]-19 vaccination.
7. The employer, on or around September 2, 2021, requested that the claimant provide additional information, the information was due on September 7, 2021 regarding her request for a religious exemption.
8. On September 2, 2021, via an email, the employer asked: "[you] stated that your religious beliefs prevent you from being vaccinated, yet in prior years you have attested to receiving the flu vaccine. Please explain why your religion did not prevent you from receiving vaccines in the past and now will not allow for Covid-19 and/or flu vaccination. Please provide any supporting documentation that you believe will be relevant to further consideration of your request, including evidence that you have a history of religious exemption to other vaccines."
9. The claimant provided the additional information on or around September 9, 2021. The additional information provided by the claimant in her written reply [sic]: "[although] I have gotten the flu vaccine in the past this is nothing like the flu vaccine. The side effects that I've seen that people have had with this vaccine are far more dangerous then the one from the flu shot. My fear is that I could have an allergic reaction that could be deadly since I am allergic to certain things."
10. The claimant further stated in her letter: "I believe in and follow God and the principles laid out in His Word, and I have a deeply held belief that the Covid vaccine violates them. I believe my body is a temple for the Holy Spirit."

11. The employer denied the claimant's request for religious exemption on September 12, 2021, and the claimant was notified the same day via email by the human resource department.
12. The email from human [resources] further stated; "we want to remind you of important upcoming deadlines to meet the (both doses of Pfizer or Moderna or a single dose of Johnson & Johnson) fully vaccinated status by October 15, 2021, the first dose of Moderna by September 16, 2021, the first dose of Pfizer is September 23, 2021."
13. On October 21, 2021, the claimant was placed on unpaid administrative leave.
14. The claimant was informed that she had two weeks to receive at least one vaccine dose. The claimant was told that if she failed to receive at least one dose of the COVID-19 vaccine by November 5, 2021, she would be terminated.
15. The claimant chose not to receive the COVID-19 vaccine because it would violate her religious belief that [COVID]-19 vaccines use cell lines originating from aborted children in their manufacturing or testing.
16. The claimant did receive the flu shot in 2021, as she has received prior flu shots in 2019 and 2020.
17. The claimant received the flu shot because the flu vaccine does have not [sic] traces of being created with aborted fetal cells. It is the claimant's understanding that the flu vaccine components do not derive from aborted fetal stem cells.
18. The claimant's primary faith is Pentecostal. The claimant's belief if she took the [COVID]-19 vaccine; [sic] "would be cooperating with and complicit in abortion the ending of an innocent human life and such would constitute a sin against God and a violation of his Commandments, for which I would be held morally accountable by God."
19. On November 9, 2021, the claimant was discharged by the employer for her failure to receive the COVID-19 vaccine.
20. The employer only allowed unvaccinated employees on the worksite that had an approved medical or religious exemption.

#### Credibility Assessment:

In the original hearing (September 20, 2022) the claimant did not submit her September 2, 2021 exemption letter, nor did she submit her additional information letter as requested by the religious exemption committee (either September 9, 2021 [or] September 22, 2021). Also, the employer did not submit the emails (dated September 2, 2021) that they sent to the claimant. In the remand hearing, the

employer did not object or refute the claimant's testimony as to her underlying reason for her refusal to take the [COVID]-19 vaccine.

The claimant credibly testified that she submitted several letters in her request to the employer's religious exemption committee for a religious exemption. However, the timeline of when the letters were submitted differ per the testimony of the claimant and employer. For instance, the employer stated it sent claimant a request (September 2, 2021) for further information after reviewing her original religious exemption request. The claimant submitted a letter dated September 2, 2021. The claimant testified that she submitted her original exemption letter on September 2, 2021, the same day the religious exemption committee asked for additional information. It was unclear if the claimant had submitted a religious exemption letter prior to her September 2, 2021 letter---neither party could confirm if claimant sent in a letter prior to September 2, 2021. The employer testified that it sent an email on September 2, 2021 asking for additional information that was due on September 7, 2021. The employer further testified that it received claimant's response on September 9, 2021. The claimant submitted a letter at the remand hearing dated September 22, 2021 that was her additional response to the employer's questions. The claimant was asked if the information in her September 22, 2021 letter contained the same information as her September 9, 2021 response--the claimant was uncertain. The claimant was asked if she submitted three letters (September 2, 2021, September 9, 2021 and September 22, 2021). The claimant was not certain if she did submit two or three letters to the religious exemption committee.

The employer religious exemption committee, in its September 2, 2021 request for additional information, posed [sic] following questions to claimant: “[y]ou stated that your religious beliefs prevent you from being vaccinated, yet in prior years you have attested to receiving the flu vaccine. Please explain why your religion did not prevent you from receiving vaccines in the past and now will not allow for Covid-19 and/or flu vaccination. Please provide any supporting documentation that you believe will be relevant to further consideration of your request, including evidence that you have a history of religious exemption to other vaccines.” The claimant then responded to the employer on or about September 9, 2021: “am objecting to the Covid vaccination because I believe in and follow God and the principles laid out in His Word, and I have a deeply held belief that the Covid vaccine violates them. I believe my body is a temple for the Holy Spirit.” She further stated: “[a]lthough I have gotten the flu vaccine in the past this is nothing like the flu vaccine. The side effects that I've seen that people have had with this vaccine are far more dangerous then the one from the flu shot. My fear is that I could have an allergic reaction that could be deadly since I am allergic to certain things.” It appears that [sic] claimant did not address the exemption committee questions to their satisfaction---her religious exemption request was denied by the committee on September 12, 2021. In the remand hearing, the claimant testified credibly that she did get the flu shot in 2021. The claimant further testified that she did not have the same objection to the flu vaccine as opposed to the [COVID]-19 vaccine because the flu vaccine was not derived from aborted fetal cells. In reviewing the claimant

written appeal statements after the original hearing on September 20, 2022 and her remand testimony, the claimant stated more clearly her actual reason for not taking the [COVID]-19 vaccine. The claimant further testified her objection to taking the [COVID]-19 vaccine was because she believed the manufacture of the [COVID]-19 vaccine derived from aborted fetal cells. Whereas, the flu vaccine per claimant's understanding did not derive from aborted fetal stem cells [sic]. In the remand hearing, at times, the claimant had trouble clearly articulating her reason why she refused to take the [COVID]-19 vaccine, and clearly explain [sic] her reasoning for receiving a flu vaccine but not a [COVID]-19 vaccine. However, in totality of the claimant's testimony in the remand hearing and her submitted written documents (September 2, 2021 letter, her written & online appeal to the written decision), [the] claimant has consistently stated her objection to the [COVID]-19 vaccine. In addition, the claimant further credibly testified and explained why she took the flu vaccines the last three years and not the [COVID]-19 vaccine. In sum, the claimant provided her actual reason for not taking the [COVID]-19 vaccine and provided her faith-based reasons that she would be complicit in abortion because of her belief that the [COVID]-19 vaccine components derive from aborted fetal stem cells.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. Even though the last physical day stated in Consolidated Finding # 1, August 20, 2021, was based upon the employer's testimony, we believe that this was an error, as it is inconsistent with the claimant's testimony and Consolidated Finding # 13, which states that the claimant was not placed on administrative leave until October 21, 2021. Additionally, we decline to accept the quoted statements in Consolidated Findings ## 9 and 10, as well as paragraph three in the credibility assessment, as attributed to a claimant letter dated September 9, 2021, as neither party produced this September 9<sup>th</sup> letter. Rather, the statements appear in Remand Exhibit 6, a September 22, 2021, letter.<sup>1</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that, in all other respects, the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, based on the record after remand, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Where a claimant is discharged from employment, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in pertinent 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

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<sup>1</sup> The contents of Remand Exhibit 6, a letter from the claimant to the employer's religious exemption committee, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

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] 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).

In this case, the employer discharged the claimant because she failed to get a COVID-19 booster shot or an approved exemption. *See* Finding of Fact # 19. This was misconduct in the sense that her refusal to do so violated the employer's COVID-19 vaccination policy. *See* Consolidated Finding # 4. Moreover, Consolidated Finding # 15 makes clear that the claimant's refusal to comply was a deliberate act.

Because the record does not contain substantial evidence as to whether the employer had discharged all employees under similar circumstances, we cannot conclude that the claimant engaged in a knowing violation of a *uniformly enforced* policy. Alternatively, the employer may meet its burden by showing that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

The Supreme Judicial Court has stated, "[d]eliberate misconduct alone is not enough. Such misconduct must also be 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).

There is no question that the claimant knew the employer expected her get a COVID-19 vaccine, as she submitted a request to be exempted from the requirement. *See* Consolidated Finding # 6. Further, Consolidated Findings ## 11–14 provide that, after the employer denied her exemption request, she was notified via email of the vaccination deadlines, then placed on unpaid administrative leave and informed that she would be terminated if she did not get at least one dose by November 5, 2021. We believe that the policy was a reasonable health and safety measure for patients and staff, as it was geared to limiting the spread of COVID-19. *See* Consolidated Finding # 4. The issue is whether there were mitigating factors for the claimant's behavior.

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). The absence of mitigating factors for the claimant's misconduct indicates that the claimant acted in wilful disregard of the employer's interest. *See* Lawless v. Department of

Unemployment Assistance, No. 17-P-156, 2018 WL 1832587 (Mass. App. Ct. Apr. 18, 2018), *summary decision pursuant to rule 1:28*.

Here, the review examiner found that the claimant did not get the mandated COVID-19 vaccine because she believed that the vaccines used cell lines originating from abortions in their manufacture or testing. Consolidated Finding # 15. He found that it was her religious belief that abortion was the ending of innocent life, a sin against God, and if she took the COVID-19 vaccine, she would be complicit in abortion. See Consolidated Finding # 18. Although she had recently gotten the flu vaccine, the review examiner accepted as credible her explanation that she did so because the claimant understood that the flu vaccine was not derived from aborted fetal stem cells. See Consolidated Findings ## 16 and 17.

As we read the credibility assessment, the review examiner has determined that these beliefs were sincerely held, and that they prevented the claimant from complying with the employer's COVID-19 vaccination requirement. As such, the claimant has met her burden to show mitigating circumstances for her misconduct.

We, therefore, conclude as a matter of law that the claimant did not knowingly violate a reasonable and uniformly enforced policy nor engage in deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 7, 2021, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 20, 2023**



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](http://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