

The claimant was discharged because he failed to comply with the employer's COVID-19 vaccination policy after the employer denied his request for a religious exemption. Held that the record contains sufficient findings that the claimant had sincerely held religious beliefs that prevented him from getting the vaccine. Thus, the claimant presented mitigating circumstances for his failure to comply with the employer's policy and he may not be disqualified from receiving benefits pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 0074 2961 03

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from his position with the employer on December 31, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 6, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on November 3, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not 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 employer's appeal, we remanded the case to the review examiner to obtain subsidiary findings of fact regarding the reason the claimant declined to comply with the employer's COVID-19 vaccination policy. 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 was entitled to benefits because he had followed the employer's COVID-19 vaccination policy by applying for a religious exemption, 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 full time as a customer success specialist for the employer, a company that develops, maintains, and supports software, from approximately 8/15/1999 to 11/30/2021.
2. The claimant has not received any vaccinations during his adult life.
3. The claimant does not take any medications.
4. Sometime in October of 2021, the employer communicated a COVID-19 vaccination policy to its employees.
5. The policy set forth that all employees of the employer must be vaccinated against the COVID-19 virus by 1/1/2022.
6. The purpose of the employer's COVID-19 policy was to protect the employees and their family members.
7. All employees of the employer were required to either show proof of having at least one shot by 12/1/2021 or have obtained an approved exemption by 12/1/2021, or they would be placed on unpaid leave on 12/1/2021.
8. The employer's COVID-19 vaccination policy allowed for exemptions for medical reasons or sincerely held religious beliefs.
9. The claimant submitted a timely request for a religious exemption to the employer's COVID-19 vaccination policy.
10. The claimant is Catholic. The claimant believes that cell lines from aborted fetuses were used in the development of the COVID-19 vaccination. The claimant believes that as a practicing Catholic, the vaccine is against his religious beliefs because his beliefs instruct that abortion is murder.
11. The employer did not question the sincerity of the claimant's religious beliefs.
12. All employees who requested an exemption for religious reasons were denied and all of those employees were discharged from their employment with the employer.
13. The employer rejected all requests for accommodations because the employees were required to work in-person. The employer felt it was an undue hardship for employees to work completely remotely from home.
14. The employer did not offer any alternative to taking the COVID-19 vaccination.
15. The claimant was placed on unpaid leave by the employer on 12/1/2021 for failing to get the COVID-19 vaccination.

16. The claimant was discharged from his employment with the employer on 12/31/2021 for failing to receive the COVID-19 vaccination in accordance with the employer's policy.

Credibility Assessment:

The claimant credibly testified in the hearing regarding his religious convictions and beliefs. The claimant credibly testified in the hearing that he is a devout Catholic and that his religion instructs that abortion is murder. In the hearing, the claimant credibly testified that he believes that the COVID-19 vaccination was derived from cell lines of aborted fetuses. Therefore, as a practicing Catholic, the claimant credibly testified in the hearing that taking the COVID-19 vaccination was contrary to his religious beliefs. Indeed, the employer did not question the sincerity of the claimant's religious beliefs. The claimant credibly testified in the hearing that his religious beliefs preclude him from getting the COVID-19 vaccine.

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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. While the consolidated findings of fact support the conclusion that the claimant is entitled to benefits, we conclude that it is because the claimant articulated mitigating circumstances for his decision not to comply with the employer's COVID-19 vaccination policy.

Because the claimant was discharged from his employment, his 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 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).

As an initial matter, there is insufficient evidence in the record for us to conclude that the employer's policy, which the claimant violated, was uniformly enforced. Therefore, the employer has not met its burden to show a knowing violation of a reasonable and *uniformly enforced* policy.

As such, we consider only whether the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

There was no dispute that the employer introduced a mandatory COVID-19 vaccination policy requiring all employees get vaccinated by January 1, 2022. Consolidated Findings ## 4 and 5. There was also no dispute that the claimant was discharged because he chose not to get vaccinated by that deadline. Consolidated Findings ## 10 and 16. However, the employer's decision to discharge the claimant is not a matter at issue in this case.

The only question before the Board is whether the claimant is entitled to unemployment benefits under G.L. c. 151A, § 25(e)(2). The purpose of the unemployment statute is to provide temporary relief to persons who are out of work and unable to secure work through no fault of their own. Connolly v. Dir. of Division of Unemployment Assistance, 460 Mass. 24 (2011) (further citations omitted). Accordingly, the dispositive issue in this case is whether, in engaging in the misconduct in question, the claimant acted deliberately and in wilful disregard of the employer's interest.

“Deliberate misconduct in wilful disregard of the employer's interest suggests intentional conduct or inaction which the employee knew was contrary to the employer's interest.” Goodridge v. Dir. of Division of Employment Security, 375 Mass. 434, 436 (1978) (citations omitted). This analysis turns on an examination of the claimant's state of mind at the time of the misconduct. 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).

As the purpose of the employer's vaccination policy was to protect employees and their families from exposure to COVID-19, we conclude that the employer's policy was reasonable. *See* Consolidated Finding # 6. The claimant was aware of the employer's policy and understood that it expected him to receive the COVID-19 vaccine by January 1, 2022. Consolidated Findings ## 4, 9, 13–15. Since there is no indication that he missed the vaccination deadline inadvertently, it is evident that his decision not to get the COVID-19 vaccine was deliberate.

The claimant maintained that he declined to get vaccinated because it was contrary to his religious beliefs. Consolidated Finding # 10. Therefore, in considering whether the claimant engaged in deliberate misconduct, we must examine whether his religious beliefs constituted mitigating circumstances for his failure to comply with the employer's COVID-19 vaccination policy. 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).

After a thorough assessment of the evidence in the record, the review examiner accepted as credible the sincerity of the claimant's religious beliefs regarding abortion and anything associated with abortion. 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). Upon review of the record, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

The claimant requested a religious exemption from the employer's COVID-19 vaccination policy because his religious objection to abortion prevents him from getting these vaccines, which he understands were developed using aborted fetal cell lines. *See* Consolidated Finding # 7. In deference to statutory guidance instructing that the law be construed liberally in favor of the unemployed individual, and in the absence of any evidence detracting from the claimant's religious objection to the use of fetal cell lines in the development of the COVID-19 vaccines, we believe the claimant has met his burden to show he had mitigating circumstances for his conduct. *See* G.L. c. 151A, § 74. He was not acting in wilful disregard of the employer's interest, but pursuant to his sincerely held religious belief.

We, therefore, conclude as a matter of law that the claimant was not discharged for 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 affirmed. The claimant is entitled to receive benefits for the week beginning January 2, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 24, 2023



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

LSW/rh