

**The claimant was discharged because she failed to comply with the employer's COVID-19 vaccination policy after the employer denied her request for a religious exemption. Held that the record contains sufficient findings that the claimant had sincerely held religious beliefs that prevented her from getting the vaccine. Thus, the claimant presented mitigating circumstances for her failure to comply with the employer's policy and she 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 5320 24**

### 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 her position with the employer on December 2, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 12, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner reversed the agency's initial determination and awarded benefits in a decision rendered on April 28, 2022. We accepted the claimant'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 claimant's appeal, we remanded the case to the review examiner to review the record and make 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 her decision to decline the COVID-19 vaccine was not contrary to the employer's expectations as she had been working remotely since the onset of the COVID-19 public health emergency, 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 July 22, 2019, the claimant began working for the employer, a hospital.
2. The claimant worked full-time as a financial clearance specialist.
3. The claimant worked fully remote during the COVID-19 pandemic.
4. Around September 15, 2021, the employer announced its plan to implement a mandatory COVID-19 vaccination policy for all staff.
5. The employer required the claimant to be fully vaccinated (two doses of Pfizer or Moderna, or single dose of Johnson & Johnson) by December 1, 2021.
6. The employer allows accommodations for employees who qualify for medical or religious exemptions.
7. The claimant can perform all her work remotely.
8. The employer required the claimant to comply with the COVID-19 vaccine policy even if she did not have to work on-site/in-person.
9. The claimant did not receive a COVID-19 vaccine.
10. On October 8, 2021, the claimant applied for a religious exemption to the employer's COVID-19 vaccine policy. She asserted that she cannot be vaccinated against the [COVID]-19 vaccine based on her faith in the Bible and her claim the COVID-19 vaccines contain neurotoxins, hazardous substances, attenuated viruses, animal parts, foreign DNA albumen from human blood carcinogens and chemical waste that this requestor alleges are harmful to the human body.
11. Two of the three available COVID-19 vaccines are mRNA vaccines that do not contain attenuated virus.
12. The claimant believes her body is a temple of the Holy Spirit based on her interpretation of 1 Corinthians 6:19.
13. The claimant's beliefs manifest in personal choices about the substances she puts in her body.
14. The claimant's beliefs do not preclude her from receiving mRNA COVID-19 vaccines.
15. On November 2, 2021, the employer notified the claimant it denied her request for a religious exemption.

16. On November 14, 2021, the claimant was placed on administrative leave.
17. On December 2, 2021, the employer terminated the claimant's employment for failing to comply with the COVID-19 vaccine policy.
18. On January 12, 2022, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Disqualification effective November 28, 2021; stating she was not eligible for benefits.
19. The claimant appealed the determination.

#### Credibility Assessment:

The claimant's testimony is credited regarding her belief that her body is a Temple for the Holy Spirit, which in turn precludes her from receiving the Covid-19 vaccine, because her interpretation of 1 Corinthians 6:19 is reasonable regardless of her belief of what the vaccines contain.

The employer's contentions regarding the assertions made by the claimant in her religious exemption application is credited. The claimant's belief regarding those assertions, while misinformed, do not negate her religious belief that her body is a Temple of the Holy Spirit. Conflation of the two beliefs would be unreasonable where one is derived from empirical fact and the other religious.

#### 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. We reject Consolidated Finding # 14 as inconsistent with the evidence of record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to benefits.

Because the claimant was discharged from her employment, her qualification 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, it 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 December 1, 2021. Consolidated Finding # 5. There was also no dispute that the claimant was discharged because she chose not to get vaccinated by that deadline. Consolidated Findings ## 9 and 17. 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 patients and employees from exposure to COVID-19 and to ensure that the employer was in compliance with federal workplace safety regulations, we agree that the employer’s policy was reasonable. Further, the employer had made it clear to all employees that transition to remote work was temporary and all employees may be required to physically report to work as needed.<sup>1</sup> Accordingly, the fact the claimant had been temporarily working in a remote capacity does not alter our analysis in this case. *See* Consolidated Finding # 3.

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<sup>1</sup> The employer’s uncontested testimony in this regard 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).

The claimant was aware of the employer's policy and understood that it expected her to receive the COVID-19 vaccine. Consolidated Findings ## 4, 5, 9, and 10. Since there is no indication that she missed the vaccination deadline inadvertently, it is evident that her decision not to get the COVID-19 vaccine was deliberate.

Even though the employer denied her request for a religious exemption, the claimant maintained that she ultimately declined to get vaccinated because it was contrary to her religious beliefs. *See* Consolidated Findings ## 9, 10, 12, and 13. Therefore, in considering whether the claimant engaged in deliberate misconduct, we must examine whether her religious beliefs constituted mitigating circumstances for her 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 belief that she must carefully choose what she puts in her body because it is a Temple of the Holy Spirit. 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 her religious beliefs about the sanctity of her body precluded her from using any medication or vaccine that contained hazardous substances, animal parts, foreign DNA albumen from human blood, or attenuated viruses. Consolidated Finding # 10. While Consolidated Finding # 11 specifies that the two mRNA vaccines do not contain the attenuated virus, such does not address the claimant's specifically articulated concerns about other ingredients contained in the three COVID-19 vaccines. Further, there is no indication the review examiner had the requisite evidentiary foundation to make a conclusion about the contents of the two mRNA vaccines. For this reason, we believe the record does not support Consolidated Finding # 14, in which the review examiner found that the claimant's religious beliefs did not preclude her from receiving the mRNA COVID vaccines.

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 receiving the COVID-19 vaccines, we believe the claimant has met her burden to show she had mitigating circumstances for her conduct. *See* G.L. c. 151A, § 74. She was not acting in wilful disregard of the employer's interest, but pursuant to her 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 beginning the week of November 28, 2021, and for subsequent weeks if otherwise eligible.



**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 25, 2023**

Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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.

LSW/rh