

**The claimant was discharged because she failed to comply with the employer's mandatory COVID-19 vaccination policy after the employer denied her request for a religious exemption. Her sincerely held religious beliefs, which prevented her from getting the vaccination, constituted mitigating circumstances, and she may not be disqualified for deliberate misconduct in wilful disregard of the employer's interest. The claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0075 8374 65**

### 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 separated from her position with the employer on November 18, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 30, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on May 19, 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, 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 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's articulated religious beliefs did not constitute mitigating circumstances for her failure to comply with the employer's COVID-19 vaccination mandate, 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 staff investigator and program manager for the employer, a state agency, from 2015 until November 18, 2021.
2. The claimant's immediate supervisor was the senior investigator ("the SI").
3. The employer maintained a policy requiring COVID-19 vaccinations as a condition of employment with a deadline of October 17, 2021. The employer maintained this policy to protect clients and staff from COVID-19 infections and to comply with an executive order issued by the Governor of Massachusetts. The policy applied to all employees. The policy was communicated to employees through general communications by email. Employees could apply for religious or medical exemptions. Employees who did not meet the requirements were subject to termination.
4. The employer maintained an expectation that employees would be vaccinated against COVID-19. The purpose of the expectation was to protect clients and staff and to comply with the executive order issued by the Governor of Massachusetts. The expectation was communicated through general communications by email. The claimant was aware of the expectation.
5. The claimant's job duties required her to work in person including direct interaction with other individuals, including work in office and on the road in private residences.
6. On October 8, 2021, the claimant applied for a religious exemption as a Christian.
7. The claimant believed that taking a COVID-19 vaccine would go against her religious belief that God had created her immune system.
8. The claimant has taken vaccines and medicines in the past.
9. As of an unknown date approximately 15 years ago, the claimant stopped taking vaccines and medicines because of her religious beliefs.
10. On November 1, 2021, the employer denied the claimant's exemption because the claimant's role required the claimant to interact with vulnerable or high-risk clients and employees and accommodations would be an undue hardship to the employer. The employer stated that the claimant had successfully demonstrated a sincerely held religious belief.
11. On November 9, 2021, the claimant was not vaccinated against COVID-19. The claimant was placed on a 5-day suspension to allow her to comply with the policy.
12. On November 18, 2021, the claimant was discharged for not complying with the employer's vaccine policy.

### Credibility Assessment:

The claimant participated in the original hearing. The employer, invited as a witness only, did not attend the original hearing.

The claimant testified that she had a sincerely held religious belief which prevented her from receiving the COVID-19 vaccine. The claimant testified that she stopped taking medications and vaccines because she developed her religious belief that her immune system was created by God. The claimant's testimony is deemed credible. In the employer's November 1, 2021, letter, the employer stated that the claimant had demonstrated a sincerely held religious belief.

### 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest.

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 . . . .

(Emphasis added.) “[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 the employer was not present at the hearing, there was insufficient evidence in the record to determine whether all other employees who failed to comply with the employer's COVID-19 vaccination policy had been terminated. For this reason, the employer has not established that the claimant was discharged for violating a *uniformly* enforced policy. We, therefore, consider only whether the claimant's actions constituted 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 to get vaccinated by October 17, 2021. Consolidated Findings ## 3 and 4. There was also no dispute that the claimant chose not to get vaccinated by that deadline and, as a result, was terminated for failing to comply with the employer's policy. Consolidated Findings ## 11 and 12. 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 vulnerable clients and employees from exposure to and illness from COVID-19, we agree that the employer's policy was reasonable. *See* Consolidated Finding # 4. The claimant was aware of this policy and understood that the employer expected her to comply with it. Consolidated Findings ## 4 and 10. It is evident that her choice not to get the vaccine was deliberate.

Even though the employer denied her request for a religious exemption, the claimant ultimately declined to get vaccinated because it was contrary to her religious beliefs. *See* Consolidated Findings ## 6, 7, 9–11. Therefore, in considering whether the claimant acted in wilful disregard of the employer's interest, 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).

The claimant believes that taking vaccines or other medications would go against her belief that God had created her body and anything introduced to her body would cause impurity with the holy spirit. *See* Consolidated Finding # 7. In accordance with her belief, the claimant has abstained from taking any kind of medication or vaccine for the past 15 years. Consolidated Finding # 9. Based upon this testimony, and information about the claimant's application for a religious exemption, the review examiner accepted as credible the claimant's testimony that her sincerely held religious beliefs precluded her from getting the COVID-19 vaccine. 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, we see no reason to disturb the review examiner's credibility assessment.

In the absence of any meaningful evidence detracting from her contentions, we conclude the claimant has demonstrated that her misconduct was attributable to mitigating circumstances. Stated another way, her failure to get vaccinated was not done in wilful disregard of the employer's interest. Rather, she was not complying with the policy because doing so would be in direct opposition to her sincerely held religious beliefs.

We, therefore, conclude as a matter of law that the claimant was not discharged for a knowing violation of a reasonable and uniformly enforced policy or 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 beginning the week of November 21, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 26, 2022**



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](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