

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Department of Unemployment Assistance,
Petitioner

v.

Docket No. DET-22-0334

Lacee A. Donohoe,
Respondent

Appearance for Petitioner:

Pro se
10 Kelleher Avenue
Plaistow, NH 03865-3124

Appearance for Respondent:

John P. Cronin, Esq.
Department of Unemployment Assistance
19 Staniford Street, 1st Floor
Boston, MA 02114

Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

The respondent state agency required its employees to become vaccinated against COVID-19, subject to exemptions based on medical or religious reasons. The claimant refused to become vaccinated. A preponderance of the evidence establishes that her refusal was the result of a sincerely held religious belief that her Catholic faith made it impossible to take the vaccine because the makers of the vaccines used cells that were derived from cells that were obtained from an aborted fetus. Consequently, the agency's termination of the claimant's employment was not attributable to her violation of a "reasonable" employment policy within the meaning of G.L. c. 151A, § 25(e)(2). The claimant is therefore entitled to unemployment benefits.

DECISION

Ms. Donohoe appealed, under G.L. c. 30A, § 10, the April 9, 2021 Notice of Disqualification issued by the Employer, the Department of Unemployment Assistance (DUA), a subdivision of the Executive Office of Labor and Workforce Development (EOLWD). The DUA determined that G.L. c. 151A, § 25(e)(2) rendered Ms. Donohoe ineligible to receive unemployment benefits following her discharge from DUA. She filed an appeal and DUA then referred the matter to the Division of Administrative Law Appeals (DALA) for a hearing. *See* G.L. c. 151A, § 39(b).

On October 27, 2022, with the assent of the parties I held an evidentiary hearing by WebEx. The Respondent submitted a list of proposed exhibits that I marked for identification. I recorded the hearing digitally. At the hearing, I admitted the Department's 21 proposed exhibits as marked. (Exs. 1-21.) Stephanie Ross, EOLWD Director of Labor Relations, testified at the hearing on behalf of DUA. Ms. Donohoe testified on her own behalf. The administrative record closed at the conclusion of the hearing. The parties filed post-hearing briefs.

FINDINGS OF FACT

Based on the evidence presented by the parties, I make the following findings of fact:

1. On July 12, 2022, the DUA, a subdivision of EOLWD, hired Lacey Donohoe as a fully remote, limited duration Job Service Representative 1 Adjudicator Claims Adjuster (JSR1 Adjudicator) for a nine-month probationary period. (Ex. 17.)

2. As a limited duration JSR1 Adjudicator, Ms. Donohoe was in a category of workers on a per-need basis, meaning that at any time the DUA could terminate the relationship. (S. Ross test.)

3. Although her position was fully remote, she was required to promptly report to the agency's office when requested, typically for matters like acknowledging and signing her employment offer letter and the DUA's telework policy. (Exs. 14, 15, 17.)

4. On August 19, 2021, Governor Charles D. Baker issued Executive Order No. 595 (the Order) implementing a requirement for COVID-19 vaccination for the Commonwealth's Executive Department employees. The Commonwealth's interest was the health and safety of the employees and the public they serviced. (Ex. 6; S. Ross test.)

5. According to the Order, the Human Resources Division had 60 days to establish and issue a written policy for all Executive Department employees to present proof of COVID-19 vaccination. (Ex. 6.)

6. The policy was implemented by each executive branch agency, bureau, department, office, and division, which included the DUA. (Ex. 6.)

7. On August 19, 2021, DUA began an information campaign covering the COVID-19 vaccine requirements. Chief Human Resources Officer Jeff McCue emailed all executive department employees of the Commonwealth about the vaccine mandate, vaccination deadlines, vaccination locations, protocols to use paid time to get vaccinated, accommodation and exemption details, informational resources, and regulations mandating that non-compliance would result in termination. (Exs. 6, 7; S. Ross test.)

8. On August 26, 2021, Jeff McCue sent another email to all executive department employees of the Commonwealth responding to frequently asked questions about the vaccine and announcing the commencement of weekly follow-up emails regarding compliance with the order. (Ex. 6.)

9. Each agency sent out emails, and lower-level supervisors directly communicated with employees about methods of complying with the Order. (S. Ross test.)

10. As implemented, the Order required all executive branch employees to show proof of vaccination by October 17, 2021, unless granted a medical or religious exemption. (Exs. 6, 7.)

11. Ms. Donohue did not get vaccinated. Instead, on October 8, 2021, after consulting with an attorney, she filed a Vaccination Religious Exemption Request Form with her supervisor, Louis Pena. To demonstrate how her sincerely held religious belief conflicted with her compliance with the Order she replied, “vaccine-makers such as Pfizer and Moderna employed embryonic cell lines in their COVID-19 research.” When asked for additional information that might be of assistance she provided, “I am catholic [sic] and abortion is against my religion—I can not with good conscience receive the vaccine now knowing this information.” (Ex. 19.)

12. When I questioned how her religious beliefs affect her views on modern medicine and health care, Ms. Donohoe maintained that she exclusively uses “functional medicine” and other “natural home remedies.” She continued to espouse her disbelief in industrially manufactured over-the-counter medicinal compounds like Advil or Tylenol

and testified to being “happy when [her] children get fevers . . . because it means they are getting better.” (L. Donohoe test.)

13. When asked whether she was aware that Pope Francis and Boston’s Cardinal Sean O’Malley had opined that getting vaccinated was a moral duty of Catholics, she insisted that Pope Francis and other church leaders had been “paid” to push pro-vaccine messages. (L. Donohoe test.)

14. On October 25, 2021, EOLWD Director of Labor Relations Stephanie Ross notified Ms. Donohoe by email that her exemption request had been rejected. Ms. Ross also directed Ms. Donohoe to fill out a short form inquiring into whether she would comply with the Order, which vaccine she planned to take, and what dates she planned to get vaccinated. (Ex. 21.)

15. On October 25, 2021, Ms. Donohoe replied to Ms. Ross’s email by asking for the grounds on which her religious exemption request was denied. Ms. Donohoe also completed the form, as previously requested, by placing an “X” in the blank next to the option indicating that she would not comply with the Order and would remain unvaccinated. (Ex. 21.)

16. EOLWD Diversity Officer Dennis Johnson immediately emailed Ms. Donohoe to inform her that under the Commonwealth’s Human Resources Division policy implementing the Order, she could not appeal the EOLWD’s decision. Mr. Johnson stated that Ms. Donohoe had three calendar days to be vaccinated, or disciplinary action would be taken. (Ex. 21.)

17. On October 25, 2021, Mr. Johnson issued a COVID-19 Vaccination Religious Exemption Response Form denying Ms. Donohoe the exemption. In explaining

the decision to deny her request, Mr. Johnson stated: “The Pfizer and Moderna vaccines do not require the use of fetal cell culture in order to manufacture the vaccine. The Pfizer and Moderna vaccines did not use fetal cells in their production and their use would not be inconsistent with your stated religious belief. Therefore, your request for an exemption is denied.” (Ex. 20.)

18. On October 26, 2021, EOLWD Benefits Administrator Stephen Henkel and Chief Operating Officer Migdalia Diaz both notified Ms. Donohoe by email that she was terminated. (Exs. 16, 17; S. Ross test.)

19. Ms. Donohoe filed an application for unemployment benefits. DUA initially denied her application because it did not have her earnings records. On November 22, 2021, Ms. Donohoe appealed that denial. (Ex. 8.)

20. On February 4, 2022, DUA (acting as her employer) submitted a questionnaire that detailed Ms. Donohoe’s employment history and the reasons that she left employment. (Ex. 2.)

21. On February 9, 2022, DUA again requested wage information from Ms. Donohoe. The next day, she responded that, of course, DUA already had her wage information, as it had been her employer. (Ex. 9.)

22. On April 9, 2022, DUA sent Ms. Donohoe a Notice of Disqualification. Applying G.L. c. 151A, § 25(e)(2), EOLWD determined that Ms. Donohoe was discharged “because of a knowing violation of a reasonable and uniformly enforced policy regarding vaccination requirements.” (Ex. 5.)

23. On April 21, 2022, Ms. Donohoe timely appealed DUA’s disqualification. (Ex. 13.)

CONCLUSION AND ORDER

The Massachusetts Unemployment Insurance Law requires certain employers to contribute to the state Unemployment Compensation Fund, which in turn pays benefits to certain eligible individuals who become unemployed. *See* G.L. c. 151A, §§ 1, 74. The purpose of the Unemployment Insurance Law is “to afford benefits to [employees] who are out of work and unable to secure work through no fault of their own.” *Connolly v. Dir. of the Div. of Unemployment Assistance*, 460 Mass. 24, 25 (2011) (citations and internal quotation marks omitted). The statute must be “construed liberally in aid of its purpose, which . . . is to lighten the burden which now falls on the unemployed worker and his family.” G.L. c. 151A, § 74. *See Emerson v. Director of Div. of Emp. Sec.*, 393 Mass. 351, 352 (1984).

One situation in which an employee loses eligibility for benefits is when his or her separation from employment was “attributable to . . . a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.” G.L. c. 151A, § 25(e)(2). This rule is an “exception[] or defense[] to an eligible employee’s right to benefits, and the burdens of production and persuasion rest with the employer.” *Still v. Commissioner of Emp. & Training*, 423 Mass. 805, 809 (1996).

In a similar decision considering the same policy, DALA explained:

As written, the vaccination policy at issue here was “reasonable.” It compelled employees to take the COVID-19 vaccine, subject to exemptions based on medical or religious reasons. Such a policy tends to promote the health and welfare of the employer’s staff and constituents. *See Boston Firefighters Union, Loc. 718, Int’l Ass’n of Fire Fighters, AFL-CIO v. City of Boston*, 491 Mass. 556, 564 (2023). An employer may reasonably extend such a policy to remote workers who, though teleworking today, may be back in the office tomorrow. *See Roman v. DUA*, No. DET-22-336, 2022 WL 17185546, at *4 (DALA Nov. 17, 2022).

The “reasonable policy” rule seeks to identify individuals who are out of work, but not “through no fault of their own.” *Connolly*, 460 Mass. at 25. An employee’s violation of an employment policy signifies “fault” by the employee only if the policy was reasonable not only on paper, but also as implemented in the employee’s circumstances. *See Still*, 423 Mass. at 808 n.3, 815 n.11. *Cf. New England Wooden Ware Corp. v. Commissioner of Dep’t of Emp. & Training*, 61 Mass. App. Ct. 532, 534-36 (2004) (uniformity of a policy’s enforcement is examined both “on its face” and “in practice”). At the very least, that is the department’s interpretation of § 25(e)(2), a “statute within which it operates.” *Gupta v. Deputy Dir. of Div. of Emp. & Training*, 62 Mass. App. Ct. 579, 583 (2004). *See DUA Adjudication Handbook*, ch. 8, § 1(c)(2)(a) (2020).

When a policy imposes consequences only on employees who lack sincere religious objections to vaccination, the circumstances pertinent to the reasonableness of the policy’s implementation focus on the specific employee’s true beliefs and motives. Any evaluations of those beliefs and motives by the employer’s staff are not preclusive, and command no particular deference. It is therefore not surprising that, “[i]n . . . religious exemption cases, the [Board of Review’s] analysis [has] rested on whether the employee’s belief was sincere.” *Jenkins v. DUA*, No. DET-23-17, at * 8 (DALA May 4, 2023) (collecting cases). The department reports that the District Courts have endorsed the Board of Review’s approach. In any event, hearing officers are expected to obey the holdings of pertinent appellate tribunals. *See generally Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993).

Binjour v. DUA, DET-22-0339, at *5-7 (DALA June 14, 2023) (footnotes omitted).

The only material issue for me to decide then is whether Ms. Donohoe refrained from getting vaccinated as a result of her sincerely held religious beliefs, regardless of whether I find them reasonable. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *U.S. v. Seeger*, 380 U.S. 163, 185 (1965). “It is not our function to pass on the merits of the plaintiff’s religious beliefs. No matter how misguided or even ridiculous such beliefs may appear to be to the court, or to the overwhelming majority of the people.” *Dalli v. Bd. of Education*, 358 Mass. 753, 758 (1971). Sincere religious belief must “address fundamental and ultimate questions having to do with deep and

imponderable matters” and must be a part of a “comprehensive system of beliefs” without being “isolated moral teaching[s].” *Fallon v. Mercy Catholic Med. Ctr. of Southeastern Pennsylvania*, 877 F.3d 487, 492 (3d Cir. 2017). Religious beliefs must also be actually *religious*. They cannot be “purely secular considerations” nor “merely a matter of personal preference.” *Troulliet v. Gray Media Group, Inc.*, 2023 WL 2894707 (E.D. La. April 11, 2023); *see also Frazee v. Ill. Dep’t of Employment Sec.*, 489 U.S. 829, 833 (1989) (“Purely secular views do not suffice.”); *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972) (“philosophical and personal, rather than religious . . . belief[s] do] not rise to the demands of the Religion Clauses”).

Here, in Ms. Donohoe’s religious exemption request form, she unambiguously stated that she believed that vaccine producers—especially Pfizer and Moderna—used embryonic cells in their research and added “I am catholic [sic] and abortion is against my religion—I [cannot] with good conscience receive the vaccine now knowing this information.” When asked about how her religious beliefs affect her relationship with contemporary medicine and health care, she confirmed that her beliefs prevent her from trusting in either. For this reason, she prefers “natural home remedies.” Her preference for natural home remedies could be understood as a secular preference, but that preference is rooted in her religious beliefs. What matters is whether Ms. Donohoe sincerely believes that her religious principles require her to act in a certain way.

Though Ms. Donohoe rejects the moral authority of the Pope and other Catholic church leaders concerning COVID vaccines due to concerns about corruption, she made it clear that her religious beliefs serve as an insurmountable obstacle to her willingness to get vaccinated. Religious beliefs are entitled to no less protection when they “differ from

the established dogma of a religion or are not accepted as dogma by any religion.” *Sagar v. Sagar*, 57 Mass. App. Ct. 71, 74 n.3 (2003). See *Frazee v. Illinois Dep’t of Emp. Sec.*, 489 U.S. 829, 832-34 (1989).

While the claim that Pfizer and Moderna use fetal cell cultures in the development or production of the vaccine has not been substantiated,¹ it is not my place to judge her beliefs on their merit. See Board of Review Decision No. 0074 8702 80, at *5. Again, it is not DALA’s function to evaluate the merits of Ms. Donohoe’s religious beliefs. See *Dalli v. Bd. of Education*, 358 Mass. at 758. Ultimately, I find the Petitioner is genuine in her distrust of the vaccine, and I credit her testimony that her beliefs are sincerely held and religious.

Given that Ms. Donohoe refused to become vaccinated as a result of a sincerely held religious belief, the department’s applicable policy was not “reasonable” as enforced against her. By extension, Ms. Donohoe also committed no “deliberate misconduct.” G.L. c. 151A, § 25(e)(2). The department’s grounds for denying unemployment benefits to Ms. Donohoe were therefore erroneous.

¹ Here, DUA declined to grant Ms. Donohoe a religious exemption from the Covid vaccine requirement because “[t]he Pfizer and Moderna vaccines did not use fetal cells in their production and their use would not be inconsistent with your stated religious belief.” That is, DUA did not question the religious nature of her objection or its sincerity. Rather, it thought her belief was irrelevant to the requirement to get vaccinated because these Covid vaccines did not use fetal cells in the production of the vaccines. But Ms. Donohoe did not base her request for an exemption on a belief that fetal cells were used in vaccine production. Rather, she asserted that “Pfizer and Moderna employed embryonic cell lines in their COVID-19 research.” Neither party brought in evidence as to whether embryonic stem cell lines derived from aborted fetuses were used in the development of the Pfizer or Moderna vaccines. DUA had the burden to show that Ms. Donohoe’s purported factual basis for declining to be vaccinated was not based in fact. It has therefore failed to prove that the religious rationale she offered for objecting to vaccination was unconnected to the actual way in which the vaccines were developed.

Ms. Donohoe is entitled to receive unemployment assistance benefits in connection with the period of unemployment that followed her termination by the department. The department's contrary decision is REVERSED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED:

JUN 28 2023