

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Ruth Dorcy,
Petitioner

v.

Docket No. DET-22-0335

Department of Unemployment Assistance,
Respondent

Appearance for Petitioner:

Ruth Dorcy
7 Samoset Street #3
Boston, MA 02124

Appearance for Respondent:

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

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

The denial by the Department of Unemployment Assistance (DUA), as the petitioner's employer, of unemployment benefits is affirmed.

DECISION

The petitioner, Ruth Dorcy, appeals DUA's denial of her application for unemployment benefits.

I held a hearing on December 6, 2022 by Webex, which I recorded. Mrs. Dorcy represented herself, testified, and called no other witness. DUA called as a witness Stephanie Ross, Director of Labor Relations for the Executive Office of Workforce and Labor Development. I admitted 18 exhibits.

I gave the parties the option to argue orally at the end of the hearing or to submit a post-hearing brief. Mrs. Dorcy opted to argue orally. DUA opted to submit a post-hearing brief. I later told DUA that it had made its position clear at the hearing and it did not need to submit a post-hearing brief. Still later, I reconsidered on my own and asked DUA for a brief, which it submitted on April 4, 2023.

Findings of Fact

1. On August 19, 2021 Massachusetts Governor Charles D. Baker issued Executive Order 595. Its title was “Implementing a Requirement for COVID-19 Vaccination for the Commonwealth’s Executive Department Employees.” (Ex. 5)

2. Executive Order 595’s recital clauses stated in part:

WHEREAS, vaccination is the most effective tool for combating the 2019 novel Coronavirus (“COVID-19”) and the executive department of the Commonwealth, as the largest employer in the State, can lead in promoting policies to ensure the health and safety of all Massachusetts workers and residents;

WHEREAS, widespread vaccination is the only means the Commonwealth has over the long-term to ensure protection from COVID-19 in all its variations and to end the many negative consequences COVID-19 produces in our daily lives;

....

WHEREAS, the COVID-19 vaccine is a proven measure at preventing hospitalization and severe disease;

WHEREAS, achieving full vaccination among the executive department workforce is necessary to ensure that the executive department can provide the full measure of public services due to the residents of the Commonwealth.

(Ex. 5)

3. Executive Order 595 stated in part:

It is the policy of the Commonwealth that all executive department employees shall be required to demonstrate that they have received COVID-19 vaccination and maintain full COVID-19 vaccination as a condition of continuing employment.

(Ex. 5)

4. Executive Order 595 directed the Human Resources Division (HRD) to “issue a written policy” that would include the following, among other things:

1. a requirement that all executive department employees demonstrate no later than October 17, 2021 to their employing agency, bureau, department, office, or division that they have received COVID-19 vaccination and, going forward, that they demonstrate they are maintaining full COVID-19 vaccination;
2. a procedure to allow limited exemptions from the vaccination requirement where a reasonable accommodation can be reached for any employee who is unable to receive COVID-19 vaccination due to medical disability or who is unwilling to receive COVID-19 vaccination due to a sincerely held religious belief.

(Ex. 5)

5. On September 10, 2021, Jeff McCue of HRD, the Chief Human Resources Officer, emailed all executive department employees in part as follows:

Next week, you will receive an email from me with more detailed instructions and a link to begin the self-attestation process. There will be two options for successfully completing the attestation form, if

1. You received full COVID-19 vaccinations, you will commit to receiving booster vaccinations, and you authorize a match against Massachusetts Immunization Information System (MIIS) to verify vaccination status; **or**

2. You received an agency-approved medical or religious exemption for COVID-19 vaccine from your Diversity Officer or ADA Coordinator.

....

For those employees seeking a medical or religious exemption, HRD's Office of Diversity and Equal Opportunity (ODEO) has worked with Secretariat and Agency representatives to finalize a process that can be found here.¹

If you believe you qualify for an exemption, please review the procedure document² and complete the appropriate request form linked below....

The links included "Religious Exemption Form."³ The email continued in part:

To allow time for processing, requests for an exemption should be submitted by **October 8, 2021** to your agency's Diversity Officer or ADA Coordinator.

For an exemption to be approved, the employee must be able to perform their essential job functions with a reasonable accommodation.

(Ex. 6)

6. Mrs. Dorcy was a Customer Service Representative with DUA. (Ex. 2)

7. On October 7, 2021 Mrs. Dorcy signed the COVID-19 Vaccination Religious Exemption Request Form. (Ex. 16)

The form read in part:

Please complete this form and submit it to Dennis Johnson....

The Diversity Officer will engage in an interactive process with you to determine whether you are eligible for an exemption/accommodation and if so, will determine what reasonable accommodation can be provided that will enable you to perform the essential functions of your position. A request for accommodation will not be granted if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace and/or to you, the employee, or if it creates an undue hardship.

¹ Presumably this represented a link.

² It is not clear what this is.

³ Presumably, this is the COVID-19 Vaccination Religious Exemption Request Form, which Mrs. Dorcy submitted. (Ex. 16)

(Ex. 16)

8. The form continued:

To obtain a religious exemption, please describe the religious principles that guide your objection to immunization. Indicate how [your] sincerely held belief conflicts with the COVID-19 vaccine mandate....

(Ex. 16) (emphasis omitted)

9. Mrs. Dorcy wrote:

My Faith in the Lord Jesus Chris and the word He gave me over my life in 2019.⁴

I am a strong Christian that [is] led by the Holy Spirit to grow in the Faith every day. My religious principles that guide me is to Trust in God's Word and believe it. In 2015, my body was experienc[ing] multiple sorts of symptoms [and] illnesses until 2019. In 2019, I received a miraculous healing and my physician at that time witness[ed] the healing and understood the reasons why my body could not tolerate all those treatments and medicine and I was getting worse [until that time]. Then, I was tak[en] off all medications and [told?] not to take flu vaccine and alike. I did share to my physician [that] my faith heals me and [he] told me he could not add it to my medical record. According to my faith and the word of God [that instructs me] to protect my body according to 1 Corinthians 6, I cannot transgress God's word over my body. I do believe in God's Word and Miracle and not to take anything that would conflict with my faith. I have not done anything to my body since 2019 and the Covid-19 vaccine will contradict my faith and God's word over my life.

Since my issue is religion because God heals me and [I] cannot disobey His Word and as well as medical⁵ because they witnessed it and they know my body cannot tolerate medicine.⁶ However, my now physician is not available and other physicians would not give out [a] medical exemption to [a] non-patient. Therefore, I stand firm in my faith and the word of God over my life and the Church knows it.

⁴ Presumably, this incomplete sentence answers the request to “describe the religious principles that guide your objection to immunization.”

⁵ Although Mrs. Dorcy testified that she applied for a medical exemption on September 22 or 27, 2021 (her testimony is unclear), Mrs. Dorcy did not submit and the record does not contain an application for, rejection of, or discussion of a medical exemption. Ms. Ross testified that she is unaware that Mrs. Dorcy applied for a medical exemption.

⁶ It is unknown to whom “they” refers. DUA?

(Ex. 16)

10. On October 15, 2021 – after the deadline for applying for an exemption – HRD issued Covid 19 Vaccination Verification Policy for Executive Department Agencies.” (The record does not reveal why the policy was issued after the deadline.) The policy read in part:

6. Employees *may* be approved for exemption from the requirement to provide documentation confirming COVID-19 vaccination under the following circumstances:

a. Employees who verify and document that the vaccine is medically contraindicated....

b. Employees who object to vaccination due to a sincerely held religious belief, provided that any such employee is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the agency.

....

9. Employees who fail to comply with this policy and are not otherwise subject to paragraph 6 ...will be subject to progressive discipline, up to and including termination.

(Ex. 6) (emphasis added)

11. DUA personnel met with applicants about their exemptions. (Ross testimony)

12. On October 23, 2021 Mrs. Dorcy emailed to DUA the following message, although it is not clear to whom at DUA she sent it:

To All,

My name is name is Ruth Dorcy.

I have been working in DUA since 2015.

I am in compliance with the Governor Executive Order 595, by provided all the documents that required either get a vaccine or an exemption. I understand that this decision cannot be appealed, however, I do believe it can be redetermined. The religious form states that “Indicate how your sincerely held religious belief conflicts with the COVID-19 vaccine mandate” the key words for me is “religious belief conflicts”.

According to the great constitution of the United States of America, this country that hold and respect religion belief and faith, I believe the conversation was not fair. Taking any vaccine will violate my right to serve God according to my Faith. On Wednesday 20th 2021, I had a conversation with Dennis [Johnson] to amplify how the mandate of a vaccine will transgress the word of God, my faith, my belief. I explained my journey and how my faith come to this point. The mandate to take vaccine is putting me in the position to disobey the word of Word.⁷ The vaccine will violate my faith, my belief and my religious right [to] serve God as God's please. The conflict lies that the vaccine will put me in a position of shame, cast out and mentally wipe[d] out. I submitted the support my church, my teacher that emphasizes on Faith and hearing the word of God. Then I see I did not get the approbation.

I like my job. I would like to continue to work at home as long as it allows me. I would like the decision to be redetermined. I have a family to protect and serve. I [am] open for another conversation; I would do whatever it takes as long as it does not violate my right to serve God.

Thank you all for the consideration

Sincerely,

Ruth Dorcy
Servant of God

(Ex. 18)⁸

13. On October 25, 2021 Dennis Johnson electronically signed DUA's COVID-19

Vaccination Religious Exemption – Response Form. It stated:

We have engaged in the interactive process and completed our review of your religious exemption request on Oct. 20, 2021 on Microsoft teams.⁹

⁷ Mrs. Dorcy presumably meant “the word of God.”

⁸ Mrs. Dorcy contended during the hearing that Exhibit 10, as introduced by DUA, was incomplete. After I spent a lot of time trying to get her to specify how it was incomplete and what document(s) would complete it to her satisfaction, Mrs. Dorsey agreed that her forwarding of Exhibit 18 to DUA represented a completion of the email thread in Exhibit 10. On November 4, 2021 Mrs. Dorcy apparently forwarded her October 23, 2021 “To All” email (Ex. 18) to Mr. Johnson and three other people at DUA, not including Ms. Ross, with the subject line, “Reconsideration- Vaccination Exemption Request.” Ms. Ross did see the message around the time of the hearing in November 2021 that DUA held before terminating Mrs. Dorcy. (Ross testimony)

⁹ “We” and the “interactive process” apparently refer to Mrs. Dorcy and DUA personnel engaging in an interactive process, as mentioned later in the response form. “[O]ur review”

(Ex. 17)

14. After “Exemption/Accommodation Granted?,” the “No” box had a X in it. (Ex. 17)

15. After “If an exemption is not granted, explain why,” Mr. Johnson wrote:

We have concluded our review of your request for a religious exemption from the Governor’s EO #595 mandate. During our conversation, you spoke of your religious principles that guide you but not how they conflict with taking the vaccination. In addition, during the interactive process¹⁰ you explained that your objection is rooted in medical concerns[.] [H]owever[,] after careful consideration, I cannot determine a conflict with your sincerely held religious beliefs. Therefore, your request for an exemption is denied.

The response from continued:

Per the policy of the Commonwealth’s Human Resources Division implementing Executive Order #595, EOLWD’s [Executive Office of Labor and Workforce Development’s] decision on your exemption request cannot be appealed.¹¹

(Ex. 17)

16. The COVID-19 Vaccination Religious Exemption – Response Form did not notify Mrs. Dorcy of any right to appeal the denial of her request for a religious exemption. (Ex. 17)

17. No right to appeal the denial of executive department employees’ requests for a religious exemption is known to exist.

18. Also on October 25, 2021, Ms. Ross sent Mrs. Dorcy an email with high importance. It required Mrs. Dorcy to “complete the checkbox form provided below” by October 27, 2021 at 5:00 p.m. The checkbox form had three options:

apparently refers to DUA’s review. The reference to Microsoft Teams is that apparently DUA personnel used Microsoft Teams, a communication platform, for the interactive process.

¹⁰ The “interactive process” and “our conversation” may have been the same thing.

¹¹ This sentence is not precisely correct. The policy does not provide an appeal procedure but the policy does not state that an applicant for an exemption cannot appeal DUA’s denial. I confirmed this with DUA’s lawyer, who, on March 13, 2023 emailed that the policy, “by conspicuous omission, implicitly prohibits appeals of those requests.”

___ I will not comply with Executive Order 595
___ I have received the first Moderna shot on ___ and the second is scheduled on ____.
___ I received my J&J vaccine on ____.

(Ex. 10)

19. Mrs. Dorcy checked none of the boxes that were provided her, but instead created a new option: “_X_ I AM in comply with Executive Order 595.” (Ex. 10; Ross testimony)¹²

20. On the same day Mrs. Dorcy sent another email to Ms. Ross stating, “I AM in comply with Executive Order 595 – I submitted my Religious Exemption.” (Ex. 10)

21. On the same day Ms. Ross emailed Mrs. Dorcy in part:

Your religious exemption was denied.
As such, the only way to comply with the mandate is to become vaccinated.

(Ex. 10)

22. On the same day Mrs. Dorcy emailed Ms. Ross: “I emailed my position last Saturday [Oct. 23] on the email I received Friday [Oct. 22] and I am waiting ...for a respon[se].” (Ex. 10) (The October 22, 2021 email to Mrs. Dorcy is not in evidence but is apparently not significant. Her October 23, 2021 response is Exhibit 18.)

23. Also on October 27, 2021 DUA notified Mrs. Dorcy that it was suspending her for five days for failing to comply with the vaccine mandate. (Ex. 11)

24. On November 4, 2021 DUA notified Mrs. Dorcy that it was suspending her for an additional ten days for failing to comply with the vaccine mandate. (Ex. 15)

25. The two suspensions were part of progressive discipline. (Ex. 6; Ross testimony)

¹² At the hearing, Mrs. Dorcy repeatedly testified that she had complied with Executive Order 595 and the policy that implemented it. She did not specify whether she meant that by applying for a religious exemption, she had complied with the executive order and policy, whether or not she received an exemption; she had complied with the executive order and policy because she was entitled to an exemption; or some other reason.

26. Also on November 4, 2021 Mrs. Dorcy apparently forwarded her October 23, 2021 “To All” email, which asked DUA to reconsider its denial of her request for a religious exemption, to Mr. Johnson and three other people at DUA. (Ex. 18)

27. On November 18, 2021 DUA discharged Mrs. Dorcy. (Exs. 2, 12)

28. DUA discharged Mrs. Dorcy for “[f]ailure to adhere to Executive Order 595, Covid Vaccine Mandate.” (Ex. 4, p. 2)

29. On August 9, 2022 Mrs. Dorcy applied for unemployment benefits. (Ex. 2)

30. When asked, “Were you fired (discharged) for disobeying (violating) a company rule or policy?,” Mrs. Dorcy answered no. (Ex. 2) Her answer was incorrect.

31. When asked, “Do you believe that you disobeyed (violated) that rule?,” Mrs. Dorcy answered no. (Ex. 2)

32. On August 9, 2022 DUA sent Mrs. Dorcy a second form. (Ex. 3)

33. In the form DUA stated in part:

Your employer [that is, DUA] states you were discharged or failing to adhere to their vaccination policy. Do you agree with the above statement?

(Ex. 3)

34. Mrs. Dorcy answered:

No, I did not agree.¹³ According to their policy, I followed all requirements and procedures in due time. My employer chose on their own merit¹⁴ not to accept my exemption[,] which is the second part of their policy. The policy gives two

¹³ Mrs. Dorcy’s use of the past tense – “I did not agree” – makes it unclear whether she did not agree with DUA’s discharging her or with DUA’s characterization of how it came to fire her.

¹⁴ It is unclear what Mrs. Dorcy meant by “on their own merit.” DUA chose not to grant her an exemption on the merits?

options but my employer did not follow their own policy¹⁵ and imposed one option on me.¹⁶ Not fair.

(Ex. 3)

35. To evaluate Mrs. Dorcy's claim, DUA also asked itself as an employer to provide information. A DUA Human Resources analyst filled in the form. (Ex. 4)

36. When asked, "Was the claimant fired (discharged) for something s/he *did* or *did not* do?," DUA answered yes. (Ex. 4)

37. When asked "What proof do you (the employer) have (if any) that s/he did that **on purpose?**," DUA answered, "Did not complete the Covid attestation document." (Ex. 4)

38. When asked, "What reason(s) did the claimant give for what s/he did?," DUA answered, "Refused to become vaccinated against Covid." (Ex. 4)¹⁷

39. On December 23, 2021 DUA sent Mrs. Dorcy a Notice of Disqualification. It stated;

You were discharged because of a knowing violation of a uniformly enforced company rule or policy.

You were discharged because of a knowing violation of a reasonable and uniformly enforced work rule or policy regarding vaccination requirements.

(Ex. 7) It cited G.L. c. 151A, § 25(e).¹⁸

¹⁵ It is unclear what how DUA did not follow its policy, according to Mrs. Dorcy.

¹⁶ It is unclear how DUA imposed one option on Mrs. Dorcy and which option she meant. The option to get vaccinated? The option to apply for a religious exemption, as opposed to also applying for a medical exemption?

¹⁷ This is not the complete reason that Mrs. Dorcy did not become vaccinated. As discussed, she did not become vaccinated because she claimed that a vaccination would violate her religious belief.

¹⁸ The statute bars an employee from receiving unemployment benefits if the employee was "discharge[d]" for "deliberate misconduct in wilful disregard" of the employer's interest, or for "a knowing violation of a reasonable and uniformly enforced rule or policy of the employer." G.L. c. 151A, § 25(e). The Notice of Disqualification in effect specified that the first reason was not at issue.

40. The Notice of Disqualification has a section with the heading, “How to Request a Hearing on this Determination.” (Ex. 7) “[T]his determination” refers to the determination that Mrs. Dorcy was not eligible to receive unemployment benefits, not the determination that she was not eligible for a religious exemption to the vaccination mandate.

41. On December 31, 2021 Mrs. Dorcy timely appealed. (Ex. 8)

42. After “Reason for Appeal,” Mrs. Dorcy left the form blank. (Ex. 8) That is, Mrs. Dorcy did not specify that she was appealing DUA’s denial of her request for a religious exemption.

43. On January 3, 2020 DUA received Mrs. Dorcy’s timely appeal. (Ex. 9)

44. DUA referred Mrs. Hardy’s appeal to the Division of Administrative Law Appeals for a hearing.

45. DUA’s policy, implementing the Governor’s executive order, was reasonable. Massachusetts was in a public health crisis, as was the rest of the world. Requiring Commonwealth employees to become vaccinated against COVID-10 was a reasonable policy to respond to the public health crisis; the policy allowed DUA to keep its employees healthy and able to serve constituents. (Ross testimony) *See also Diane Geryk v. DUA*, DET-22-0185, 2022 WL 16921480 (Aug. 4, 2021) (finding that DUA’s policy was reasonable); *Mariela Roman v. Department of Unemployment Assistance*, DET-22-336 (DALA Nov. 17, 2022) (same).

46. DUA uniformly enforced the policy. Every employee whose religious or medical exemption DUA approved, DUA reasonably accommodated; every such employee continued working at DUA. Every employee to whom DUA denied an exemption and became vaccinated continued working at DUA. Every employee to whom DUA denied an exemption and refused vaccination was discharged. (Ross testimony)

Discussion

DUA made various decisions that were not appealable, and are therefore not before me: DUA's decision not to grant a religious exemption, DUA's decision to impose a five-day suspension, DUA's decision to impose a ten-day suspension, and DUA's decision to discharge Mrs. Dorcy. (The basis for DUA's decision to discharge Mrs. Dorcy is before me indirectly, because DUA's decision not to pay unemployment benefits to Mrs. Dorcy is before me.) If DUA had granted Mrs. Dorcy a religious exemption but also found that it could not reasonably accommodate her, that decision, too, would apparently not be appealable. The only issue that Mrs. Dorcy was allowed to appeal, did appeal, and is before me is DUA's decision not to pay unemployment benefits to Mrs. Dorcy. *See Sorrentino v. State Board of Retirement*, CR-19-0118 (DALA 2023) (Bresler, A.M.) ("I have authority to decide in an appeal only the issues that a petitioner has appealed. I cannot decide issues that are not on appeal") (citation omitted).

What is on appeal is DUA's decision as an employer not to give unemployment benefits to Mrs. Dorcy because she knowingly violated a reasonable policy that is uniformly enforced. Mrs. Dorcy did knowingly violate a reasonable policy that was uniformly enforced. For one piece of evidence that Mrs. Dorcy violated the policy knowingly, see Ms. Ross's email to Mrs. Dorcy, stating that because her request for a religious exemption was denied, "the only way to comply with the mandate is to become vaccinated." (Ex. 10)

I am aware that Chapter 151A, the unemployment compensation chapter, "shall be construed liberally." G.L. c. 151A, §74. Nonetheless, I see no way to construe Mrs. Dorcy's appeal so as to award her unemployment benefits.

Conclusion and Order

Mrs. Dorcy violated her employer's uniformly enforced reasonable policy. She is not entitled to unemployment benefits. DUA's decision as an employer not to pay her unemployment benefits is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

Dated: