

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**R.D.,**  
Petitioner

v.

Docket No. DET-22-0335

**Department of Unemployment Assistance,**  
Respondent

**Appearance for Petitioner:**

R.D.

**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

**REMAND DECISION**

The petitioner, R.D., appeals DUA's denial of her application for unemployment benefits.

I held an in initial hearing on December 6, 2022 by Webex, which I recorded. R.D. 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. On May 4, 2023, I issued a decision.

On June 21, 2024, DUA's Board of Review remanded the case for additional evidence.

The remand order stated in part:

1. Kindly ask the claimant to explain what was her religious belief, practice, or observance in September, 2021 that caused her not to get a COVID-19 vaccine? Please be specific.
2. Has the claimant received other vaccines besides the COVID-19 vaccine, such as the annual flu vaccine?
  - a. If so, when did she receive vaccines, and against what was she vaccinated? Please be specific.
  - b. If the claimant stopped receiving vaccines after having received them previously, when and why did she stop receiving them? Please be specific.
  - c. If the claimant has not received vaccines previously, why not?
3. The Magistrate may ask any further questions he deems necessary to determine whether the claimant held a sincere religious belief that precluded becoming vaccinated against COVID-19 in September, 2021.
4. The Magistrate is asked to render a credibility assessment as to whether the claimant's asserted religious objection to the COVID-19 vaccine in September, 2021, was sincerely held at the time.
  - a. If so, did the claimant decline to get the mandated COVID-19 vaccine in September and October, 2021, because of this sincerely held religious belief?
  - b. If not, did the claimant have a different personal or political reason for not getting the COVID-19 vaccine at the time?

On August 19, 2024, I held a remand hearing. R.D. was the only witness. I admitted three more exhibits, as follows: Remand Ex. 1: Appeal form; Remand Ex. 2: Allowance of Application for Review; and Remand Ex. 3: Remand order.

I retain, unchanged, Findings of Fact 1 through 46 from my decision of May 4, 2023. In this remand decision, the new substance appears under the heading “Remand Hearing, Its Aftermath, and Credibility Finding.”

### **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](#).<sup>1</sup>

If you believe you qualify for an exemption, please review the procedure document<sup>2</sup> and complete the appropriate request form linked below....

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<sup>1</sup> Presumably this represented a link.

<sup>2</sup> It is not clear what this is.

The links included “Religious Exemption Form.”<sup>3</sup> 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. R.D. was a Customer Service Representative with DUA. (Ex. 2)

7. On October 7, 2021 R.D. 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.

(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. R.D. wrote:

My Faith in the Lord Jesus Christ and the word He gave me over my life in 2019.<sup>4</sup>

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<sup>3</sup> Presumably, this is the COVID-19 Vaccination Religious Exemption Request Form, which R.D. submitted. (Ex. 16)

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

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 medical<sup>5</sup> because they witnessed it and they know my body cannot tolerate medicine.<sup>6</sup> 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.

(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....

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<sup>5</sup> Although R.D. testified that she applied for a medical exemption on September 22 or 27, 2021 (her testimony is unclear), R.D. 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 R.D. applied for a medical exemption.

<sup>6</sup> It is unknown to whom “they” refers. DUA?

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, R.D. 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 [R.D.].

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.<sup>7</sup> 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.

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<sup>7</sup> R.D. presumably meant "the word of God."

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,

[R.D.]  
Servant of God

(Ex. 18)<sup>8</sup>

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.<sup>9</sup>

(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 process<sup>10</sup> you explained that your

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<sup>8</sup> R.D. 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 R.D. 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 R.D.. (Ross testimony)

<sup>9</sup> “We” and the “interactive process” apparently refer to R.D. and DUA personnel engaging in an interactive process, as mentioned later in the response form. “[O]ur review” 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.

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



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.<sup>11</sup>

(Ex. 17)

16. The COVID-19 Vaccination Religious Exemption – Response Form did not notify R.D. 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 R.D. an email with high importance. It required R.D. to “complete the checkbox form provided below” by October 27, 2021 at 5:00 p.m. The checkbox form had three options:

- 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. R.D. 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)<sup>12</sup>

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<sup>11</sup> 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.”

<sup>12</sup> At the hearing, R.D. 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.

20. On the same day R.D. 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 R.D. 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 R.D. 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 R.D. 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 R.D. 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 R.D. 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)

26. Also on November 4, 2021 R.D. 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 R.D.. (Exs. 2, 12)

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

29. On August 9, 2022 R.D. applied for unemployment benefits. (Ex. 2)

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

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

32. On August 9, 2022 DUA sent R.D. 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. R.D. answered:

No, I did not agree.<sup>13</sup> According to their policy, I followed all requirements and procedures in due time. My employer chose on their own merit<sup>14</sup> not to accept my exemption[,], which is the second part of their policy. The policy gives two options but my employer did not follow their own policy<sup>15</sup> and imposed one option on me.<sup>16</sup> Not fair.

(Ex. 3)

35. To evaluate R.D.’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)

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<sup>13</sup> R.D.’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.

<sup>14</sup> It is unclear what R.D. meant by “on their own merit.” DUA chose not to grant her an exemption on the merits?

<sup>15</sup> It is unclear what how DUA did not follow its policy, according to R.D..

<sup>16</sup> It is unclear how DUA imposed one option on R.D. 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?

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)<sup>17</sup>

39. On December 23, 2021 DUA sent R.D. 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).<sup>18</sup>

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 R.D. 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 R.D. timely appealed. (Ex. 8)

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

43. On January 3, 2020 DUA received R.D.’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

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<sup>17</sup> This is not the complete reason that R.D. did not become vaccinated. As discussed, she did not become vaccinated because she claimed that a vaccination would violate her religious belief.

<sup>18</sup> 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.

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)

### **Remand Hearing, Its Aftermath, and Credibility Finding**

At least three related factors made the remand hearing and this credibility finding more difficult than it should have been. The first factor was R.D.'s continued insistence on doing things her way. See Factual Finding #19 in which R.D., in effect, declined to answer DUA's form and created her own version of it to answer in her favor. More on this factor later.

The second factor was R.D.'s unwillingness or inability to recognize that (1) she was appearing in an administrative law hearing (2) that I was presiding over (3) whose topic was the remand order about her credibility and the sincerity of her religious beliefs. R.D. did not appreciate being asked about her religious beliefs and medical history.

The third factor was the imprecision of R.D.'s testimony. She gave disjointed, incomplete, indecisive, and contradictory answers. I told her twice at the hearing that I was having trouble understanding her testimony. I said that I wanted to tell her so *during the hearing*, rather than in this remand decision, so that she could testify to her benefit while the hearing was

still underway. At the end of the hearing, she said that she felt I had disliked her answers. I said that I did not like or dislike her answers.

As best as I can assemble from R.D.'s disjointed, incomplete, indecisive, and contradictory answers, her testimony is as follows. These are not factual findings.

R.D. has been a Christian since 1997, when she was baptized. Her father is a pastor. She is active in the Haitian Baptist community.

In approximately 2015, she began experiencing sneezing, coughing, facial swelling, and nasal congestion. Her condition went undiagnosed.

In approximately April 2019, she and her doctor decided that she would not take medication for her undiagnosed condition. She may have been on more than one medication, but she does not remember the name of it or names of them.

In August or September 2019, possibly after her church's members prayed for her, she healed miraculously; her symptoms disappeared.

R.D. used to receive a flu vaccine, but has not done so since 2015 or 2016. When she received a flu vaccine, her tooth broke and she took herbal medicine for her broken tooth. She has not had a vaccine since 2019.

R.D. has a medical checkup annually. She wears dark glasses and implied that she does so as part of her medical care. She occasionally takes vitamins and iron, but no prescribed medicines.

In January 2023 (and possibly other times), R.D. had surgery for what she called "feminine issues." She declined to be more specific. When I confirmed that she would not be more specific, she said, "No. It's a medical record." I assumed that she was referring me to her medical records and I asked if she could submit her records. She agreed and said that she would

ask both Boston Medical Center and Codman Square Health Center that afternoon for her medical records. I told her that on or before September 16, 2024, she should mail to me either her medical records or an explanation why she could not get them. I said I did not want to hold another hearing on why I did not have her records. I said that if I did not have her medical records, I would tell the Board of Review that I cannot determine whether she has sincerely held religious beliefs against receiving the COVID-19 vaccine. More on her medical records later.

R.D. also said that she did not know off the top of her head whether she had had any other medical procedures. She said that she would have to review her medical records.

When I asked why she did not get a vaccine, R.D. said that she is a Christian. She said that she was acting according to her deep faith.

R.D. testified that neither her pastor nor anyone else in her church advised her on getting vaccinated. Every church member decided on whether to receive the COVID-19 vaccine according to the member's individual faith.

R.D. said that in 2021, she prayed and God spoke to her, possibly in a dream. (These may have been separate occurrences: God spoke to R.D., and God appeared to her.) God told her and her family not to take the vaccine. She did not get vaccinated because it would transgress the word of God.

I do not accept her testimony about God speaking to her or about a dream as credible for three reasons. One, this testimony occurred approximately 40 minutes into a hearing that lasted approximately one hour. It occurred after I had repeatedly asked her why she had not received the COVID-19 vaccine, after I gave her the opportunity to say anything more about her religious beliefs, and during questions by DUA's lawyer.

Two, R.D. did not mention God speaking to her or a dream about God in her submissions

to DUA. See Factual Findings 9 and 12.

Three, it is conceivable that R.D. both decided to stop receiving vaccinations in 2019 and that God told her in 2021 not to receive the COVID-19 vaccine. However, she did not acknowledge that she had two reasons not to receive the vaccine, and she spent most of the hearing discussing the first reason (that she decided to stop receiving vaccinations in 2019).

Let me be clear. I am not making a credibility finding on R.D.'s testimony that God talked to her or appeared in a dream. I am making a credibility finding that it was unlikely that that was the reason that R.D. did not receive the COVID-19 vaccine.

DUA had previously accommodated her religious life. In 2019, she wanted vacation time to go to Haiti and help build a church. However, that trip was during the summer, a blackout time when DUA employees without enough seniority were not entitled to take vacation. DUA approved her request to take vacation then. On another occasion, when she wanted to attend a religious revival, DUA allowed her to leave work early and make up the time. R.D.'s point, I think, was that DUA knew that she was religious and had accommodated her religious belief and therefore should have granted her a religious exemption from the COVID-19 vaccine.

At the end of the hearing, when I discussed with the parties whether they wanted to make an oral closing argument then or submit a post-hearing brief later, DUA's lawyer said that it would be premature to opine on the sincerity of R.D.'s religious beliefs until he saw her medical records. He soon refined DUA's position and said that he was willing to rest on the record, without submitting a post-hearing brief, once R.D.'s medical records arrived. When I asked R.D. what she wanted to do, referring to an oral closing argument or a post-hearing brief, she answered that she wanted a fair trial, clearly implying that she did not believe that I had given her a fair hearing.



R.D.'s medical records never arrived. On September 17, 2024, I emailed R.D.:

DALA has received a bill from GRM Document Management for your records at Codman Square Health Center. The bill is for \$149.49. DALA will not be paying this bill.

I did not tell you to get your medical records and that DALA would pay for any charges. You did not ask DALA whether the bill should be sent to it and whether DALA would pay. No one authorized you to give DALA's address to GRM Document Management with the implication that DALA would pay.

Will you be getting your records to DALA, as I asked? If so, when? Should I proceed with my remand decision? I cannot commit to what I will write in my remand decision, but I anticipate writing that your medical records will help or would have helped determine the issue of the sincerity of your religious beliefs, I don't have your medical records, and you arranged for a bill to be sent to DALA.

By not communicating with me about the bill for her medical records, R.D. continued to do things her way. Furthermore, she did not respond to my email. I now try to answer the Board of Review's questions. which appear in bold below.

1. **Kindly ask the claimant to explain what was her religious belief, practice, or observance in September, 2021 that caused her not to get a COVID-19 vaccine? Please be specific.**

When I asked R.D. this question, she responded that she was a Christian. She also seemed to answer that because prayer had miraculously healed her medical condition in 2019, she eschewed vaccinations and prescription medicines.

2. **Has the claimant received other vaccines besides the COVID-19 vaccine, such as the annual flu vaccine?**

R.D. testified that she has received the flu vaccine. Her medical records, which she did not provide, would demonstrate whether she has received other vaccines.

- a. **If so, when did she receive vaccines, and against what was she vaccinated? Please be specific.**

R.D. testified that she last received a flu vaccine in 2015 or 2016.

- b. If the claimant stopped receiving vaccines after having received them previously, when and why did she stop receiving them? Please be specific.**

R.D. appeared to testify that she stopped receiving vaccines in 2019 after prayer miraculously healed her medical condition.

- c. If the claimant has not received vaccines previously, why not?**

Not applicable.

- 3. The Magistrate may ask any further questions he deems necessary to determine whether the claimant held a sincere religious belief that precluded becoming vaccinated against COVID-19 in September, 2021.**
- 4. The Magistrate is asked to render a credibility assessment as to whether the claimant's asserted religious objection to the COVID-19 vaccine in September, 2021, was sincerely held at the time.**

R.D. testified that her religious objection to the COVID-19 vaccine was because she was a Christian. I have no reason to doubt that R.D. sincerely held beliefs as a Christian in 2021.

However, she did not provide enough details for me to determine whether she sincerely believed that she should not receive a COVID-19 vaccine because of her Christian faith.

- a. If so, did the claimant decline to get the mandated COVID-19 vaccine in September and October, 2021, because of this sincerely held religious belief?**

R.D. appeared to testify that she stopped receiving vaccines in 2019 after prayer miraculously healed her medical condition. To determine (1) whether she had stopped receiving all vaccines; (2) stopped taking all prescription medicines; and (3) the extent that she had refused or accepted other medical care – all of which would elucidate her belief in the power of prayer, and thus the sincerity of her religious beliefs related to the COVID-19 vaccine – I asked her for her medical records. Because she did not provide her medical records and because her answers to my questions about the sincerity of her religious beliefs were not entirely responsive, I cannot assess the sincerity of her religious beliefs related to the COVID-19 vaccine.

- b. **If not, did the claimant have a different personal or political reason for not getting the COVID-19 vaccine at the time?**

Not that I know of with the information that I have.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: