

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)**

**Maria Seery,**  
Petitioner

v.

Docket No. DET-22-0315

**Department of Unemployment Assistance,**  
Respondent

**Appearance for Petitioner:**

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**Appearance for Respondent:**

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Legal Department  
Department of Unemployment Assistance  
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**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, Maria Seery, appeals DUA's denial of her application for unemployment benefits.

In a prehearing order, I ruled that the following issues would not be the subject of the hearing: whether Miss Seery's beliefs were religious and sincerely held, whether DUA should have accommodated Miss Seery,<sup>1</sup> and whether DUA violated Miss Seery's right to free exercise of religion. I also ruled that whether Miss Seery's union rights were violated would not be the subject of the hearing, a ruling that I had to reissue during the hearing to foreclose testimony on the issue.

I held a hearing on November 22, 2022 by Webex, which I recorded. Miss Seery testified and called no other witness. Stephanie Ross, Director of Labor Relations for the Executive Office of Workforce and Labor Development testified for DUA. I admitted 21 exhibits at the hearing. After the hearing, I admitted a twenty-second exhibit documenting the Commonwealth's repeal of its vaccine mandate for its employees.

Both parties submitted post-hearing briefs, which I received at the end of January 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. 4)

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

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<sup>1</sup> If DUA granted an employee a religious or medical exemption, it then had to decide whether it could reasonably accommodate the employee. If DUA did not grant an exemption, it did not need to reach and did not reach the accommodation decision. After DUA decided to deny a religious exemption to Miss Seery, it did not need to decide the next step, whether to accommodate her. Every DUA employee who received a religious exemption from DUA was accommodated. (Ross testimony) Despite my order that DUA's accommodation of Miss Seery would not be the subject of the hearing or post-hearing briefs, Miss Seery's lawyer spent time cross-examining Ms. Ross about accommodation and then argued the issue in the post-hearing brief.

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. 4)

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. 4)

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. 4)

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>2</sup>

If you believe you qualify for an exemption, please review the procedure document<sup>3</sup> and complete the appropriate request form linked below....

The links included "Religious Exemption Form."<sup>4</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. 5)

6. From April 26 to October 20, 2021 Miss Seery worked for DUA as a Junior Service Representative I – Adjudication. (Ex. 1) She answered telephone calls and determined callers'

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<sup>2</sup> Presumably this represented a link.

<sup>3</sup> It is not clear what this is.

<sup>4</sup> Presumably, this is the COVID-19 Vaccination Religious Exemption Request Form, which Miss Seery submitted. (Ex. 10)

eligibility for unemployment benefits. (Seery testimony)

7. Miss Seery worked entirely at home (Seery testimony), but could have been called in to DUA's office for various reasons. (Ross testimony)

8. During Miss Seery's entire employment with DUA, she was a probationary employee. That is, under the union contract, she was in her first nine months, and did not have full union protection. As a probationary employee, DUA could discharge Miss Seery without imposing progressive discipline, such as a five-day suspension and then a ten-day suspension for violating a policy. (Ross testimony)

9. On September 16, 2021 Miss Seery filled in a COVID-19 Vaccination Religious Exemption Request Form. The form asked Miss Seery to

describe the religious principle that guide your objection to immunization. Indicate how your sincerely held religious belief conflicts with the COVID-19 vaccine mandate.

(Ex. 10)

10. Miss Seery answered:

The religious principle that guides my objection to immunization is founded on the pro-life position that all life is sacred to God. While I know that actual fetal tissues are not in the vaccines, it is my understanding that the Johnson & Johnson vaccine required the use of PER-C6 fetal cell line in order to produce their vaccine. In addition, both Pfizer and Moderna used fetal cell lines for testing their vaccines after it was already produced. I cannot in good conscience allow myself to have a vaccine that would use actual fetal tissue as an ingredient or one that uses fetal cell lines in the development, production or testing, as that violates my conscience and faith in God regarding the sanctity of life.

(Ex. 10)

11. With her request for a religious exemption, Miss Seery submitted a document from her pastor. The document is two-and-a-half single-spaced pages from a group or church called the Faith Christian Fellowship. (Ex. 10)

12. The first page extensively quoted the Christian Bible, and discussed pregnancy and fetuses growing in mothers' wombs. The page ended with a quotation with this excerpt: "[Y]our body is the temple of the Holy Ghost." (Ex. 6)

13. The second page contained this quotation:

Our position and belief is that abortion is a sin against God because it is the taking of an innocent life. Further, not only do we find the abortion itself to be abhorrent, but also that cells or parts of an aborted baby are used for medical research. While it is true that actual cells from an aborted baby are not direct ingredients of the Covid-19 vaccines, so called "fetal cell lines" derived from actual abortions are used in the testing of the Modern[a] and Pfizer vaccines and are required in the manufacturing process for the Johnson & Johnson shot. We reject the use of any fetal tissue being used in any phase of medical research and that we should not be injected with such pharmaceuticals. It is our sincerely held religious belief that to receive these vaccines would violate the aforementioned command to glorify God in body and spirit.

(Ex. 6)<sup>5</sup>

14. At the bottom of the second page, continuing to its end, the document discussed the biblical account of the midwives disobeying the Pharaoh's "unrighteous decree" to slay Israelite boys as they were born. (Ex. 6)

15. On October 4, 2021 DUA denied Miss Seery's request for a religious exemption. It stated:

After careful consideration of your statement and our discussion, the direct link between a sincerely held religious belief and all three COVID-19 vaccines, and a contradiction with the Governor's Executive Order, could not be ascertained.

(Ex. 11)

16. On October 20, 2021 DUA terminated Miss Seery effective immediately. (Ex. 14)

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<sup>5</sup> I have not researched whether these assertions about the three vaccines are factual because I am not examining the sincerity of Miss Seery's religious beliefs or DUA's denial of her request for a religious exemption.

17. On or about October 20, 2021<sup>6</sup> Miss Seery applied for unemployment benefits. (Ex. 1)
18. When asked, “Do you believe that you disobeyed (violated) that rule?,” Miss Seery answered yes. (Ex. 1)
19. When asked why she disobeyed the vaccine rule, Miss Seery stated, “I disobeyed the rule because I have sincerely held religious beliefs, and I don’t believe in taking the vaccination.” (Ex. 1)
20. On October 21, 2021 DUA filled out the employer questionnaire. (Ex. 2)
21. When asked, “Was the claimant fired (discharged) for something s/he *did* or *did not* do?,” DUA checked the Yes box. (Ex. 2)
22. When asked, “What proof do you (the employer) have (if any) that s/he did that **on purpose?**,” DUA wrote, “Failure to adhere to Executive Order 595, Covid vaccine mandate.” (Ex. 2)
23. When asked, “What reason(s) did the claimant give for what s/he did?,” DUA wrote, “None.” (Ex. 2). This was not correct.
24. When asked, “If you (the employer) were **harm**ed by what s/he did, explain how:,” DUA wrote, “N/A.” (Ex. 2)
25. When asked, “How did the claimant know that what s/he did would harm you (the employer)?,” DUA wrote, “N/A.” (Ex. 2)
26. On November 6, 2021 DUA sent a Notice of Disqualification to Miss Seery. It wrote:
- Your discharge is attributable to deliberate misconduct in willful disregard of the employing unit’s interest.

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<sup>6</sup> The date on the application is August 2, 2022, which I assume is incorrect.

You were terminated within your probationary period because of a knowing violation of a reasonable and uniformly enforced policy regarding vaccination requirements.

(Ex. 7)

27. On November 6, 2021 Miss Seery timely appealed. (Ex. 8)

28. DUA referred Miss Seery's appeal to the Division of Administrative Law Appeals for a hearing.

29. 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).

30. 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)

31. On October 25, 2022, MassLive, an online publication, reported:

At least some Massachusetts state employees who were fired after refusing to be vaccinated against COVID-19 under Gov. Charlie Baker's sweeping executive order, are being offered their jobs back.

(Ex. 19)

32. The news that appeared in MassLive and other publications was about one state



agency that had previously granted exemptions to employees but could not accommodate them. The agency terminated them. The agency then became able to accommodate those employees and invited them to return to work. (Ross testimony)

### **Discussion**

G.L. c. 151A, § 25(e)(2) bars an employee from receiving unemployment benefits if the employee was “discharge[d]” for “deliberate misconduct in wilful [sic] disregard” of the employer’s interest, or for “a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.” Miss Seery is ineligible for unemployment benefits if she fails either provision. *Diane Geryk v. DUA*, DET-22-0185, 2022 WL 16921480 (Aug. 4, 2021).

I doubt that it can fairly be said that Miss Seery willfully disregarded DUA’s interest because DUA, when asked whether Miss Seery harmed it, answered, “N/A” or “not applicable.” (Ex. 2)

However, Miss Seery did knowingly violate a reasonable policy that was uniformly enforced. For one piece of evidence that Miss Seery violated the policy knowingly, see her application for unemployment benefits; when asked if she believed that she disobeyed a DUA rules, Miss Seery answered yes. (Ex. 1)

Miss Seery argues that reinstatement in 2022 of some state employees who were terminated in 2021 after refusing vaccination (Ex. 19) demonstrates that DUA’s policy was not uniformly enforced. It demonstrates no such thing. DUA was Miss Seery’s employer, it had a policy, and it uniformly enforced it in 2021. (Ross testimony) The fact that a year later, after the pandemic and public health responses had evolved, *another* state agency reinstated *some* employees – employees who had received exemptions – does not demonstrate that DUA did not uniformly enforce its reasonable policy – any more than the Commonwealth’s planned repeal of

Executive Order 595 on May 11, 2023 demonstrates that DUA did not uniformly enforce the executive order against Miss Seery and others a year-and-a-half before. (Ex. 22)

Miss Seery also argues that the vaccination policy was not reasonable because she worked remotely at home and did not work in DUA's office. However, DUA could have called her in to its office for various reasons (Ross testimony). This argument was rejected in *Roman*, DET-22-336.

Miss Seery bases one argument on "a letter from the Office of Labor and Workforce Development dated 8/2/22." (Pet. Br. 8) She does not provide a citation to an exhibit. I have read and reread her brief. She may be referring to a document that is not in evidence. Her argument seems to be that DUA did not uniformly enforce its policy because it did not subject Miss Seery to a five-day suspension and then a ten-day suspension before terminating her. (Pet. Br. 9) This argument is unavailing.

DUA's uniformly enforced policy at issue was this: Employees who did not receive a religious or medical exemption and remained unvaccinated were discharged. DUA's policy at issue was *not* this: Employees who did not receive a religious or medical exemption and remained unvaccinated were given a five-day suspension, then a ten-day suspension, and then discharged.

What is on appeal is DUA's denial of unemployment benefits to Miss Seery. What is not on appeal is DUA's termination of Miss Seery. *A fortiori*, what is not on appeal is DUA's not suspending Miss Seery for five days and then for ten days before terminating her. *And if DUA's termination of Miss Seery without first suspending her for five days and then for ten days were on appeal*, the reason that she did not receive such suspensions is simple: Miss Seery was a probationary employee who was not entitled to progressive discipline. (Ross testimony)

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 Miss Seery’s appeal so as to award her unemployment benefits.

**Conclusion and Order**

Miss Seery 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

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Kenneth Bresler  
Administrative Magistrate

Dated: