

COMMONWEALTH OF MASSACHUSETTS

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

Maria Seery,
Petitioner

v.

Docket No. DET-22-0315

Department of Unemployment Assistance,
Respondent

Appearance for Petitioner:

Wesley A. McClure, Esq.
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Mansfield, MA 02048

Appearance for Respondent:

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Assistant Chief Counsel
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19 Staniford Street, 1st Floor
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Administrative Magistrate:

Kenneth Bresler

REMAND DECISION

The petitioner, Maria Seery, appeals DUA's denial of her application for unemployment benefits.

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 the Department of Unemployment

Assistance (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. On May 4, 2023, I issued a decision.

On January 5, 2024, DUA's Board of Review remanded the case for additional evidence.

The remand order stated in part:

1. During the hearing, the claimant testified that she submitted the document referenced in Findings of Fact ## 11 – 14 to supplement her statement on the exemption request form. In her own words, the claimant is asked to explain – what was her religious belief, practice, or observance in September, 2021 that caused her not to get a COVID-19 vaccine?
2. Has the claimant received other vaccines besides the COVID-19 vaccine, such as the annual flu vaccine?
 - a. If so:
 - i. When?
 - ii. Why?
 - b. If not, why not?
3. 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 February 20, 2024, I held a remand hearing. Miss Seery 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 the Findings of Fact from my decision of May 4, 2023. In this remand decision, I have added Findings of Fact 33 to 47.

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 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](#).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:

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 Miss Seery submitted. (Ex. 10)

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' 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)⁴

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)

⁴ The original footnote reads: 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.

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)

17. On or about October 20, 2021⁵ 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:,"

⁵ The date on the application is August 2, 2022, which I assume is incorrect.

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.

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)

33. In 2014, Miss Seery became a Christian. (Seery testimony)

34. She attends church services on Sundays and prayer meetings on Wednesdays. (Seery testimony)

35. Miss Seery believes the content of the document from her church (Ex. 6), which she called a letter. (Seery testimony)

36. Miss Seery's pastor wrote the letter, after she spoke with him about DUA's requiring her to receive a COVID-10 vaccine. (Seery testimony)

37. Miss Seery believes that her body is not her own, that it belongs to God, and that if she puts anything in her body, such as a vaccine, doing so goes against God's wishes and her beliefs. This belief derives from the Christian Bible, I Corinthians 19-20.⁶ (Seery testimony)

38. More specifically, Miss Seery will not put anything into her body that alters her genetic makeup, which she believes any vaccine would do. (Seery testimony)

39. When asked how she knew that vaccines would alter her genetic makeup, Miss Seery said that aborted fetal cells were used to produce and test the COVID-19 vaccine, which

⁶ I have not examined this source.

contravenes the sanctity of life, and anything that alters her genetic makeup contravenes her Christian beliefs, the Bible, and God's word. (Seery testimony)

40. Miss Seery objects to receiving any vaccines, even those that were not developed or tested with fetal cells. (Seery testimony)

41. If Miss Seery became convinced that vaccines did not alter her genetic makeup, she still would not get vaccinated because of her religious beliefs. (Seery testimony)

42. If Miss Seery became convinced that vaccines did not use aborted fetal cells at any stage, she still would not get vaccinated because of her religious beliefs. (Seery testimony)

43. Miss Seery did not refuse to take the COVID-19 vaccine for political reasons. (Seery testimony)

44. Miss Seery has not been vaccinated since 2004, when she had one vaccine, which her college required. She has not had the flu vaccine.

45. Because of her objection to putting anything in her body, she would not get tattooed. (Seery testimony)

46. Miss Seery does not take non-vaccine medications, even aspirin, and has not done so since she was in high school. She does not take antibiotics and would not do so if she had an infection. (Seery testimony)

47. Before 2014, her doctor prescribed medications that she did not take. (Seery testimony)

Credibility finding

I have no reason to doubt the sincerity of Miss Seery's religious beliefs. She did not backtrack, or demonstrate doubt, confusion, hesitation, or sincerity as she testified. Her face, which I observed on Webex, did not show anything to me that I interpreted as lack of candor or lack of belief in what she testified to.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth Bresler

Kenneth Bresler
Administrative Magistrate

Dated:

MAR 20 2024

