

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1369**

Rachel Millington,
Relator,

vs.

Federal Reserve Bank of Minneapolis,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 12, 2023
Reversed
Segal, Chief Judge**

Department of Employment and Economic Development
File No. 48752311-2

James V. F. Dickey, Douglas P. Seaton, Upper Midwest Law Center, Golden Valley,
Minnesota (for relator)

Federal Reserve Bank of Minneapolis, Minneapolis, Minnesota (respondent employer)

Keri A. Phillips, Lossom Allen, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Segal, Chief Judge; Worke, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Relator Rachel Millington refused to comply with her employer's COVID-19
vaccination policy and was required to terminate her employment. An unemployment-law

judge (ULJ) denied her subsequent application for unemployment benefits finding that her refusal to comply with her employer's policy constituted employment misconduct that rendered her ineligible for benefits.

Millington contends that the record supports that her refusal to be vaccinated was based on a sincerely held religious belief and that the Free Exercise Clause of the First Amendment requires us to reverse the ULJ's determination. Respondent Minnesota Department of Employment and Economic Development (DEED) agrees that the ULJ's determination should be reversed.¹ We conclude that the record lacks substantial evidence to support the ULJ's finding that Millington's vaccine refusal was not based on a sincerely held religious belief. We therefore reverse the ULJ's decision denying Millington unemployment benefits.

FACTS

Millington was employed by respondent Federal Reserve Bank of Minneapolis (FRB) as a business analyst until February 28, 2022. Millington resigned her employment after refusing to comply with FRB's COVID-19 vaccination policy. Millington had been granted a religious accommodation from the policy while working remotely. But as FRB prepared to return its workforce to the office, it revisited Millington's accommodation and determined that continuing the accommodation would be unduly burdensome. FRB

¹ Even though DEED agrees that the ULJ's determination must be reversed, "we are bound by the statutory grounds for review set out in subdivision 7(d) of Minnesota Statutes section 268.105 and must apply that statutory standard in assessing whether to affirm or reverse the ULJ's determination regardless of the position taken by DEED before this court." *Goede v. Astra Zeneca Pharms.*, ___ N.W.2d ___, ___, No. A22-1320, slip op. at 8 (Minn. App. June 12, 2023).

notified Millington that her employment would be terminated if she remained unvaccinated. Millington resigned her employment in order to receive a payout of her accrued paid-time-off benefit.²

Millington applied for unemployment benefits, asserting that she had refused the COVID-19 vaccination because of her religious beliefs.³ DEED issued a determination of ineligibility. Millington filed an administrative appeal, and a hearing was scheduled before a ULJ.

In written answers to questions posed by DEED, Millington explained her reasons for refusing the COVID-19 vaccination:

I cannot receive the COVID-19 vaccine because of my religious beliefs for two reasons. First, my body is a temple unto my creator, as the Bible instructs me. 1 Corinthians 6:19-22. Based on my understanding of the Bible, it is my God given right to refuse to introduce any foreign substances into my body that might be unnecessary or unsafe. . . . Second, I cannot receive the vaccine because it was developed and tested using cell lines from an aborted fetus. As a Christian, I believe that abortion is the murder of an unborn child. To me, the use of cells from an aborted fetus to develop and test the vaccine makes anyone who takes the vaccine complicit in the murder of that child.

² Although she resigned, the ULJ found that Millington was discharged for purposes of the unemployment-benefits determination. *See* Minn. Stat. § 268.095, subd. 5(a) (2022) (defining discharge to occur “when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity”). That finding is not at issue on appeal.

³ Millington also asserted in her unemployment-benefits application and before the ULJ that she had been discharged because of her age and FRB’s desire to avoid paying her retirement benefits. The ULJ found that Millington was not discharged because of her age, and Millington does not challenge this finding on appeal.

Millington stated that she had not received other vaccinations as an adult and that her “church does not specifically teach about vaccines but teaches that Bible-believing Christians should follow the dictates of their conscience and decide whether to get vaccinated based on prayerful consideration.”

Millington also testified regarding her religious beliefs at the hearing before the ULJ. She testified that she belongs to the Assemblies of God and attends church once every couple of months, but that she daily practices her “own way of worship” with her Bible and prayer time. She explained that, although no church leader had advised her not to take the COVID-19 vaccine, she made her own decision because “[i]t’s between the person and God I believe.” She testified that she did not get the vaccine because she believed it to be “morally wrong.” At the hearing, Millington testified that taking the vaccine “felt sinful” to her. She explained:

I’m a pro-life Christian. I’m against abortion. I have been against abortion since the beginning. And when I started researching the vaccine, I found out they used fetal cells from abortion and that didn’t sit well with me at all. I felt like I would be complicit to abortion if I participated in that.

She further testified:

I’m very much against injecting anything into my body. And one of those reasons, I mean there’s a Bible verse that says, my body’s my temple. But it’s not just that one verse. I truly believe I lived that my entire life. Keeping, you know, being healthy, maintaining my health, exercising, healthy eating. Just not [injecting] any kind of chemicals has been almost, you know, a religion my entire life.

In response to questioning by the ULJ, Millington acknowledged that she is not against all medical interventions and takes over-the-counter medications including Tylenol

when needed. Asked whether she had done any research on Tylenol in relation to fetal cell lines, Millington answered “no” and explained: “It’s not my goal right now to like find, you know, what fetal cells are in all kinds of medications.” Millington answered “yes” when her counsel asked her whether she would stop using Tylenol if she found out it “was made using fetal cells.” Millington also testified that she drinks wine, which she believes has health benefits, but very rarely drinks other forms of alcohol.

Millington acknowledged in her testimony that she had concerns about the safety and efficacy of the COVID-19 vaccine. She testified that she believed that she did not need a vaccine because she had already contracted COVID-19. But she answered “no” in response to the ULJ’s question: “So if you had not had COVID, would you have gotten the vaccine?” She expressed her concern that people were getting sick from the vaccine and explained that that was related to her religion because she is “religiously in favor of maintaining [her] health.”

In response to questioning from her counsel, Millington testified that her “number one reason” for not getting vaccinated was “because it’s against my religion, it’s against what I believe about abortion, and I believe abortion is murder.” Her counsel concluded by asking: “So if you found, if you were convinced that COVID vaccine was 100% safe, it never made anyone sick, but it still contained fetal cells, you wouldn’t take it?”^[4] She answered: “Correct.”

⁴ We note that there is no evidence in the record to support counsel’s assertion that “fetal cells” were contained in any COVID-19 vaccine. We nevertheless accept Millington’s assertion as a statement of her beliefs, not as an established fact.

Following the hearing, the ULJ issued a decision determining that Millington had committed employment misconduct by refusing to comply with her employer's COVID-19 vaccination policy and that she was therefore ineligible for benefits. The ULJ found that "Millington did not have a sincerely held religious belief that prevented her from getting vaccinated against COVID-19." The ULJ reasoned:

Based on Millington's testimony . . . including that she uses over-the-counter medications and alcohol, and no religious leader has advised Millington against receiving the COVID-19 vaccine, it is not credible that Millington has a sincerely held religious belief that prevented her from getting vaccinated against COVID-19. The more likely explanation is that Millington made a personal decision not to get vaccinated against COVID-19 because she is pro-life.

The ULJ noted that Millington had not researched whether fetal cell lines were used in other medications she uses and that it was not her goal to do so. Millington sought reconsideration, and the ULJ upheld the decision that Millington was not eligible for unemployment benefits.

DECISION

We may affirm the decision of a ULJ or remand the case for further proceedings, or we "may reverse or modify the decision if the substantial rights of the [relator] may have been prejudiced because the findings, inferences, conclusion, or decision are," among other things, in violation of constitutional provisions or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2022).

A ULJ's decision denying unemployment benefits based on an applicant's refusal to comply with an employer's COVID-19 vaccination policy violates the Free Exercise

Clause of the First Amendment if the applicant's vaccine refusal was based on sincerely held religious beliefs. *See Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) (explaining that "a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program"). We will not disturb a ULJ's factual finding that an applicant's vaccine refusal was not based on sincerely held religious beliefs if that finding is supported by substantial evidence. *See id.*; *Goede*, slip op. at 14-15. "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ" and "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012) (quotation omitted); *see also Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016).

Millington and DEED argue that there is not substantial evidence in the record to support the ULJ's finding that Millington did not have a sincerely held religious belief that precluded her from receiving the COVID-19 vaccination. We agree. Millington clearly and consistently testified regarding her religious reasons for refusing the COVID-19 vaccine. Millington's testimony concerning personal reasons for refusing the vaccine—that she already had COVID-19 and believed she did not need the vaccine and that she had concerns about the safety of the vaccine—are not sufficient to constitute substantial evidence.

In addition, although we generally defer to a ULJ's credibility findings, the ULJ's credibility finding in this case was based on at least two erroneous considerations. First,

the ULJ erred by relying on the absence of direction from a religious leader to support a finding that Millington did not have a sincerely held religious belief. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 832-33 (1989); *see also Thomas*, 450 U.S. at 715-16 (“[T]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect.”). Second, the ULJ failed to explain how Millington’s use of over-the-counter medications or alcohol is pertinent to her objection to the COVID-19 vaccine based on its relationship to fetal cell lines. Consequently, the ULJ’s credibility determination is not entitled to the same deference typically owed by an appellate court.

Finally, while the facts of this case bear similarity to those in our recent precedential opinion in *Goede*, where we affirmed a ULJ’s ineligibility determination based on the relator’s COVID-19 vaccine refusal, the facts leading to our conclusion in that case are distinguishable from the record here. *Goede*, slip op. at 17. Both *Goede* and Millington asserted that their belief that the COVID-19 vaccine had a connection to fetal cells lines prevented them from taking the vaccine because of their religious opposition to abortion. *Goede*, however, testified that she would not take the COVID-19 vaccine even if it had *no* connection to fetal cells or abortion “because it doesn’t work” and “has killed more people than it’s saving.” *Id.*, slip op. at 12. By contrast, Millington testified that her “number one” reason for not getting the vaccine was religious. She testified that, even if she was convinced that the vaccine was 100% safe, she still would not take it because of her belief that the vaccine used fetal cells and that this was against her religious beliefs as a “pro-life Christian.”

As another example, Millington, like Goede, did not research whether certain medical treatments were connected to fetal cell lines. *Id.*, slip op. at 3-4. But unlike Goede, Millington testified that it was not her goal to research all medications and that she would avoid medications if she became aware of a connection to fetal cell lines. Goede's testimony on this point was inconsistent and contradictory. We thus affirmed the ULJ's denial of benefits in *Goede* because substantial evidence supported the ULJ's credibility determination that Goede refused to be vaccinated because of her concerns over the efficacy and safety of the vaccine, not her religious beliefs. *Id.*, slip op. at 14-15. The ULJ's credibility determination in this case lacks that same level of evidentiary support and, as a consequence, we reach a different result here than in *Goede*.

We therefore conclude that the ULJ's finding—that Millington did not have a sincerely held religious belief that precluded her from getting a COVID-19 vaccine—is unsupported by substantial evidence.

Reversed.