

*This opinion is nonprecedential except as provided by  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  
A22-1397**

Mitchel Benish,  
Relator,

vs.

Berkley Risk Administrators Company, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

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

Department of Employment and Economic Development  
File No. 48523192-3

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Minnesota (for relator)

Berkley Risk Administrators Company, LLC, Minneapolis, Minnesota (respondent  
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Considered and decided by Segal, Chief Judge; Worke, Judge; and Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**SEGAL**, Chief Judge

Relator Mitchel Benish challenges the determination of an unemployment-law  
judge (ULJ) that Benish was ineligible for unemployment benefits because his refusal to

comply with his employer's COVID-19 vaccination policy constituted employment misconduct. Benish argues that the evidence supports a finding that his refusal to comply with the policy was based on a sincerely held religious belief and that the Free Exercise Clause of the First Amendment requires reversal. Respondent Minnesota Department of Employment and Economic Development (DEED) agrees that the ULJ's decision should be reversed.

We conclude that the record lacks substantial evidence to support the ULJ's finding that Benish's vaccine refusal was not based on a sincerely held religious belief. We therefore reverse the ULJ's decision denying Benish unemployment benefits.

### **FACTS**

Benish worked as a field adjuster for respondent Berkley Risk Administrators Company, LLC until February 4, 2022, when he was discharged for failing to comply with Berkley's COVID-19 vaccination policy. Benish had requested a religious exemption from the policy. Berkley approved the exemption but notified Benish that it could not accommodate the exemption because his job required in-person contact with customers.

Benish applied for unemployment benefits, asserting that he had refused the COVID-19 vaccination because of his religious beliefs. DEED issued a determination of ineligibility. Benish filed an administrative appeal, and a ULJ held an evidentiary hearing.

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

In accordance with my Christianity, my body is viewed as my temple. I hold to it my God-given responsibility to protect my body from unnecessary, unclean, unnatural, and immoral

injections. “God created us in his own image.” Genesis 1:27. I have been gifted an amazing immune system, and any unnecessary alterations to that would be to defy my God. In Matthew 9:12, Jesus said, “It is not the healthy who need a doctor, but the sick.”

Benish stated that his “religion does not approve nor proscribe vaccinations” but that “taking the COVID vaccine would permanently modify the body that God already made perfect. As guardian of this body, I take it as my personal God-given responsibility to protect it from unnecessary injections or modifications.” Benish stated that he had not received *any* vaccinations as an adult.

At the hearing before the ULJ, Benish explained that he does not deny “necessary medical treatment” but does not “feel that it’s necessary to get vaccinations when [he’s] healthy and [his] body . . . naturally fights off infection.” Asked whether he agreed with the Pope’s encouragement to get the vaccination as an act of love, Benish stated:

I agree that his opinion is that it is an act of love, but . . . the church also states that, um, vaccine as a rule is not a moral obligation, and must be voluntary. So you, and anyone can, can feel free to get the vaccination, it’s not against the, you know any religion to get the vaccination, um, if you feel that your body needs the vaccination, feel free to get the vaccination. I, uh, you know as a healthy, young individual, that I don’t feel that I need it. And, and, I guess as my, the, the holder of my body, the temple, I should be the one to make those decisions.

Following the hearing, the ULJ issued a decision determining that Benish had committed employment misconduct by failing to comply with Berkley’s COVID-19 vaccination policy and that he was therefore ineligible for unemployment benefits. The ULJ found that “Benish did not have a sincerely held religious belief that prevented him

from getting vaccinated” and that “[h]e chose not to based on his personal beliefs.” The ULJ explained that the finding was based on Benish’s testimony and emphasized that the Pope had made statements favoring vaccination, that Benish did not reject other medical treatments, and that Benish did not explain how the COVID-19 vaccine was “immoral” or “unclean.” The ULJ reasoned that inconsistencies in Benish’s beliefs “call[ed] into question the sincerity of his belief” and that Benish’s refusal to receive the COVID-19 vaccine was “most credibly framed as a personal choice and not a sincerely held religious belief.” Benish sought reconsideration, and the ULJ upheld the decision that Benish 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 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. *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012). “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.” *Id.* (quotation omitted); *see also Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016).

Benish and DEED argue that there is not substantial evidence in the record to support the ULJ’s finding that Benish did not have a sincerely held religious belief that precluded him from receiving the COVID-19 vaccination.<sup>1</sup> We agree. The ULJ found that Benish made a “personal choice” to refuse the vaccine, but Benish did not testify to *any* personal reasons for refusing the vaccine. Instead, he consistently testified that his reason for refusing it was religious. The ULJ also placed improper weight on inconsistencies in Benish’s religious beliefs and on the fact that the Pope had encouraged vaccination in determining that Benish’s beliefs were not sincerely held. *See Thomas*, 450 U.S. at 715-16 (admonishing that “[c]ourts should not undertake to dissect religious beliefs” and noting that “the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect”).

In our recent precedential opinion in *Goede*, we affirmed a ULJ’s determination that an applicant for unemployment benefits was ineligible based on her refusal to comply with

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<sup>1</sup> Even though DEED agrees with Benish 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).

her employer's COVID-19 vaccination policy. *Goede*, slip op. at 17. The applicant claimed that her refusal was based on religious beliefs. The ULJ determined, however, that her reasons for refusing the vaccine were secular, not religious, and that she was therefore ineligible for benefits. We affirmed the ULJ's determination because the substantial evidence in the record supported that the applicant's reason for rejecting the vaccine was based on concerns about the vaccine's safety and efficacy, not religious beliefs. *Id.*, slip op. at 14-15.

While there are arguable similarities between this case and *Goede*, the record here demonstrates that Benish testified consistently that his refusal to receive the vaccine was based on religious reasons. Consequently, we conclude that the ULJ's finding—that Benish did not have a sincerely held religious belief that precluded him from getting a COVID-19 vaccine—is unsupported by substantial evidence and must be reversed.

**Reversed.**