

Stewart v New York City Police Dept.

2022 NY Slip Op 33822(U)

November 9, 2022

Supreme Court, New York County

Docket Number: Index No. 157928/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

KEVIN STEWART,

Petitioner,

- v -

THE NEW YORK CITY POLICE DEPARTMENT, THE CITY
OF NEW YORK

Respondent.

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INDEX NO. 157928/2022

MOTION DATE 10/31/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The petition is granted to the extent that petitioner is entitled to a religious exemption from the COVID-19 vaccine mandate.

Background

Petitioner, a police officer for the NYPD, sought a religious exemption from the NYPD (NYSCEF Doc. No. 5). He asserts that he is a Christian and that getting a vaccination would conflict with his religious beliefs. Respondents denied this request in a decision dated February 8, 2022. This decision, reflected on a standard form, identified three pre-printed areas (each of which was checked off) for denying petitioner's request. They included respondents' conclusion that 1) the objection was personal, political, or philosophical, 2) the statement did not appear to be written by the applicant/it was a generic statement that did not support the request and 3) petitioner did not demonstrate a history of vaccine/medicine refusal (NYSCEF Doc. No. 23 at 19). Also included in respondents' papers is a "worksheet" that identified the above reasons as

well as the assertion that petitioner's statement did not set forth how his religious beliefs conflict with the vaccine (*id.*).

Petitioner then appealed this denial. He explained that he was raised in a devout Catholic family, and continued practicing Catholicism before leaving that church for "personal reasons" seven years ago (NYSCEF Doc. No. 23 at 28). Petitioner noted that he and his wife now attended "a non-denominational Christian Church" (*id.*). He then addressed each of the reasons identified by respondents to justify the initial denial of his exemption request. Petitioner acknowledged that he has received vaccines in the past but now no longer believes receiving vaccines comports with his religious beliefs (*id.* at 29).

Respondents denied his appeal. The decision stated that "The City of New York Reasonable Accommodation Appeals Panel has carefully reviewed your Agency's determination, all of the documentation submitted to the agency and the additional information you submitted in connection with the appeal. Based on this review, the Appeals Panel has decided to deny your appeal. This determination represents the final decision with respect to your reasonable accommodation request. The decision classification for your appeal is as follows: Does Not Meet Criteria" (NYSCEF Doc. No. 7).

Petitioner now seeks *inter alia* to reverse that determination.

Respondents argue that they identified the reasons for the denial of petitioner's exemption request in the initial February 8, 2022 denial. They insist the Citywide Panel carefully reviewed petitioner's appeal and then denied his request again. Respondents also argue that the members of the Citywide Panel used their subject matter expertise to consider petitioner's application. Respondents also insist that this Court should remand this proceeding to that they

can clarify their reasoning and develop the record, particularly with respect to the undue burden the request would have on respondents.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court grants the petition only to the extent that petitioner is entitled to a religious exemption from the Covid-19 vaccine mandate. The Court observes that, as an initial matter, the determination from which petitioner appealed contains no reasoning whatsoever. It mentions, vaguely, that the Citywide Panel reviewed documents but does not ever cite which documents or an actual reason for rejecting petitioner’s exemption request. In fact, the only stated basis is that petitioner’s request did not meet the criteria. That bland and conclusory assertion does not justify terminating someone’s employment. Such a determination should, at the very least, consider petitioner’s reasons for seeking the appeal and explain why respondents decided not to grant the exemption request. Unfortunately, there was not a single individualized reason offered. Simply stating that respondents carefully considered the application does not make it so.

The Court also observes that the Citywide Panel determination does not specifically mention the initial February 8, 2022 denial and so the Court cannot simply assume that the

Citywide Panel incorporated that decision in the final determination. Even if did, that initial denial cannot form the basis for denying petitioner's exemption request because it took the form of a checklist that failed to include any individualized reasoning whatsoever. For instance, one reason cited was that petitioner's exemption was "personal, political or philosophical." The Court has no idea which of these reasons were the basis for checking this box. Was it personal, political, or philosophical? Or all three? Or two of the three? The Court should not have to speculate to assess the rationality of an agency's determination.

The Court also observes that another reason cited contains two options (one that the statement was not written by the applicant and that it does not support the exemption request). Just as the reason cited above, the Court cannot ascertain whether one or both the justifications were relied upon by respondents. And, of course, there is no explanation for how this justification relates to petitioner's exemption request.

The last box checked insists that there was no demonstrated history of vaccine or medicine refusal. While that reason is self-explanatory, the fact that there is no additional reasoning makes this justification insufficient. Respondents do not insist that petitioner was required to cite a history of vaccine refusal in order to receive an exemption or point to, for example, an admission from petitioner that he has never refused a vaccine in support of this cited reason.¹ Certainly, a history of routinely receiving vaccines could have been cited to question an alleged sincerely held religious belief against getting any vaccines. But respondents did not engage in such an analysis. Instead, they just checked a vague box.

The Court also denies respondents' request to remand. The purpose of remand is not to, as respondents argue, develop the record. Respondents had many opportunities to justify their

¹ On these papers, it seems that petitioner admitted in his appeal that he previously has regularly received vaccines and only now has decided he can no longer get vaccines.

decision; they are not entitled to a “do-over” because they now realize the final determination was lacking. Remand, particularly in Article 78 proceedings, is typically used to allow newly discovered evidence to be considered or where an agency agrees to overlook a technical or procedural defect and consider a matter on the merits. It is not an opportunity for an agency to write a better decision.

In other words, respondents had a chance to issue a determination that actually addressed petitioner’s specific request. They could have considered whether he had a sincerely held religious belief that prevented him from getting the vaccine or respondents could have explored whether or not providing petitioner with an accommodation would constitute an undue burden. Instead, they did neither. Respondents offered a conclusory denial of petitioner’s request on the ground that he did not meet the criteria. That is simply not a valid basis to terminate his employment. The Court stresses that respondents need not address every conceivable basis for denying petitioner’s exemption request. They just had to offer a rational explanation for denying *petitioner’s* request rather than offer a generic response to what could have been any religious exemption application.

Remaining Claims

The Court denies the remaining claims asserted by petitioner. These include, but are not limited to, a request that the Court enjoin respondents from enforcing the vaccine mandate altogether, a declaration that respondents violated petitioner’s constitutional rights and that respondents be enjoined from violating petitioner’s constitutional rights. Petitioner wholly failed to meet his burden and the Court denies this form of relief.

The vaccine mandate on city employees has been consistently upheld by various courts (*see e.g., Broecker v New York City Dept. of Educ.*, 21-CV-6387(KAM)(LRM), 2022 WL

426113 [ED NY 2022]; *Garland v New York City Fire Dept.*, 574 F Supp 3d 120 [ED NY 2021]).² Based on these decisions, there is no basis to find that the vaccine mandate violates petitioner's constitutional rights and, specifically, the free exercise clause. In fact, a vaccine mandate does not violate the free exercise clause under the New York State Constitution at all (*see C.F. v New York City Dept. of Health and Mental Hygiene*, 191 AD3d 52, 139 NYS3d 273 [2d Dept 2020] [finding that a vaccine mandate for measles did not violate the free exercise clause and that the agency could "unquestionably" take steps, including imposing vaccine requirements, to protect the public from a contagious disease]).

This proceeding is limited solely to petitioner's individual exemption request and respondents' arbitrary and capricious denial with respect to that application.

The Court also denies petitioner's request for legal fees (contained in the wherefore clause of the petition) as he did not bother to cite a basis for this relief.

Accordingly, it is hereby

ORDERED that the petition is granted only to the extent that respondents' determination denying petitioner's application for a religious exemption is vacated; and it is further

DECLARED that petitioner is entitled to a religious exemption from the COVID-19 vaccine mandate and petitioner may not be terminated from the NYPD based upon the lack of the COVID-19 vaccine; and it is further


ORDERED that the petition is denied with respect to the remaining relief requested; and it is further

² The Court recognizes, however, that a court of coordinate jurisdiction recently invalidated the vaccine mandate with respect to police officers as an impermissible new condition of employment (*see Police Benevolent Assn. of the City of New York v City of New York*, 2022 WL 4398685 [Sup Ct, NY County 2022]) and that issue is currently on appeal. That matter could, of course, preempt the individual dispute raised in this proceeding.

ORDERED that the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondents along with costs and disbursements upon presentation of proper papers therefor.

11/9/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE