

Cepeda v City of New York

2023 NY Slip Op 30360(U)

February 3, 2023

Supreme Court, New York County

Docket Number: Index No. 157658/2022

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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RAMON CEPEDA,

Petitioner,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT, SERGEANTS BENEVOLENT
ASSOCIATION OF THE CITY OF NEW YORK, INC., ERIC
ADAMS, in his official capacity, ASHWIN VASAN, in his
official capacity,

Respondents.

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INDEX NO. 157658/2022

MOTION DATE 09/08/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the court grants in part Petitioner Ramon Cepeda’s (“Petitioner”), Verified Petition as against Respondents The City of New York (“City”) and The New York City Police Department (“NYPD”), to the extent that the court determines that Respondents’ The City’s and NYPD’s denial of Petitioner’s appeal of NYPD’s denial of his religious accommodation request was arbitrary and capricious, the court annuls and reverses the decision and orders Respondents The City and NYPD to grant Petitioner’s reasonable accommodation request and permit him to work at full pay status with compliance with the City’s weekly PCR Covid-19 testing requirement. The court denies the remainder of the Verified Petition and dismisses it against Respondents Sergeants Benevolent Association of the City of New York, Inc., Eric Adams and Ashwin Vasan, without costs to any party.

Petitioner is an unvaccinated Sergeant with NYPD. Petitioner was previously granted a reasonable accommodation based on his sincerely held religious beliefs which permitted him to

grow a beard. Petitioner brought this proceeding against Respondents The City, NYPD, Sergeants Benevolent Association of the City of New York, Inc., Eric Adams, in his official capacity, and Ashwin Vasan, in his official capacity. In his Verified Petition, Petitioner alleges in substance that he refused to be vaccinated against Covid-19 because it violates his sincerely held religious beliefs. Petitioner further states that he has submitted to the weekly testing requirement since September 2021 and that he has performed all of the essential functions of his position as a NYPD Sergeant while remaining unvaccinated from the outset of the pandemic.

On October 20, 2021, the Commissioner of the New York City Department of Health and Mental Hygiene ordered that all City employees were required to show proof of at least one dose of vaccination by 5:00 p.m. on October 29, 2021, or they would be excluded from the premises at which they work beginning on November 1, 2021. City employees could apply for a reasonable accommodation for exemption from the vaccination requirement by October 27, 2021, or they would be placed on Leave Without Pay status effective on November 1, 2021. The City would still require the employee to submit weekly negative PCR Covid-19 test results to continue working.

On or about September 4, 2021, Petitioner filed a reasonable accommodation request for exemption from Covid-19 testing based on his alleged sincerely held religious beliefs. Petitioner stated in substance that since he was a young boy growing up in the Dominican Republic he has loved “the lord Jesus Christ,” that he has a special relationship with Jesus that has grown stronger over the years. He also stated in substance that every decision he makes follows Jesus’ footsteps and that “it would be very disrespectful to betray (Jesus) by contaminating the body that (Jesus) gave (Petitioner) in (Jesus’) own image.” Petitioner referenced particular biblical verses and quotes by Pope Francis in support of the reasons for his anti-abortion religious views.

Petitioner further stated in substance that based on his religious beliefs, he believes that “the intentional killing of an unborn baby is murder and that “all of the currently available Covid-19 vaccines were either developed with or tested using the cells from aborted babies,” which is the product of murder. Petitioner further stated in substance that if he took the vaccine, then he would be an accomplice to that murder, be in defiance of God’s word and knowingly be committing a mortal sin.

On or about October 12, 2021, NYPD’s Equal Employment Opportunity (“EEO”) Division denied Petitioner’s request for a reasonable accommodation for exemption of weekly Covid-19 testing. The Director of the EEO Division stated in substance that the decision to deny the request was made after careful review, consideration of the most recent City and CDC Covid guidelines, the operational needs of NYPD, and the potential risk of harm to the health or safety to Petitioner and others.

On or about October 16, 2021, Petitioner appealed the denial of his request for a weekly testing exemption. On October 21, 2021, Petitioner resubmitted the appeal and included a request to be exempt from taking the Covid-19 vaccine based on his sincerely held religious beliefs. In both appeals, Petitioner included additional details explaining his sincerely held religious beliefs based on biblical references, his lifestyle choices not to “taint” his body with “any foreign substances or sinful behaviors,” including not taking medicinal and non-medicinal drugs or vaccinations, and why taking the Covid-19 vaccination and getting weekly tested for Covid-19 would be a direct violation of his sincerely held religious beliefs.

After a court order requiring NYPD to include additional information regarding the reasons for its denials of requests for reasonable accommodations based on alleged sincerely held religious beliefs, on February 8, 2022, NYPD’s Office of the Deputy Commissioner for

Equity and Inclusion, Equal Employment Opportunity Division, denied Petitioner's reasonable accommodation request for exemption from taking the mandatory vaccination. The denial indicated that the decision was made after careful review of Petitioner's application and the documents submitted. Two boxes were checked indicating that the reasons for the denial were that Petitioner's objection was "personal, political or philosophical" and that there was "[n]o demonstrated history of vaccination/medicine refusal."

On February 9, 2022, Petitioner wrote to the Executor Director of the EEO Division and provided additional information challenging the purported reasons for the denial. Petitioner stressed that his reasons were based on his sincerely held religious beliefs and that he has not taken any vaccinations since he was 18 years of age because "vaccinations violate the pureness of the body and the blood given to [him] by the Lord Jesus Christ."

On July 27, 2022, the NYC Employee Vaccine Appeals notified Petitioner via email that his appeal was denied. The denial indicated that the decision classification was "Does Not Meet Criteria." The denial indicated that the determination was made after The City of New York Reasonable Accommodation Appeals Panel ("Appeals Panel") carefully reviewed Petitioner's agency's determination, all of the documentation submitted to the agency and the additional information that Petitioner submitted in connection with the appeal. It also advised Petitioner that it was the final decision regarding his request for a reasonable accommodation, that he had seven calendar days to submit proof of vaccination, or if he failed to do so, then he would be placed on Leave Without Pay.

Petitioner's Verified Petition challenges the denial of his appeal on various grounds and seeks a judgment:

1) Declaring that Respondents' denial of Petitioner's request for a reasonable accommodation exempting him from the Covid-19 vaccination requirement is arbitrary, capricious, an abuse of discretion and erroneous as a matter of law, and annulling the decision;

2) Ordering Respondents to grant Petitioner a reasonable accommodation to work at full pay status with continued weekly Covid-19 testing; and

3) Awarding Petitioner money damages suffered due to adverse employment action taken against him because of the unlawful denial of his reasonable accommodation request.

Respondents filed an Answer in opposition to Petitioner's Verified Petition.

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 109 [1st Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1st Dept 2010]). When a court reviews an agency's determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1st Dept 1988]).

Furthermore, an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law, however an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation (*see Vink v New York State Div. of Hous. and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001]).

Pursuant to both the New York State Human Rights Law, Executive Law §296 (NYSHRL), and the New York City Human Rights Law, Administrative Code of the City of New York §8-107(28)(a) (NYCHRL), the first step in providing a reasonable accommodation is to engage in a good faith interactive process or cooperative dialogue that assesses the needs of the employee and the reasonableness of the accommodation requested. The interactive process continues until, if possible, an accommodation reasonable to the employee and employer is reached (*Hosking v Mem'l Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 63 [1st Dept 2020]).

The court has the authority to enter judgment granting Petitioner the relief for which he is entitled and since Petitioner seeks review of an agency's determination, the judgment may annul or confirm the determination in whole or in part, or modify it, and the court may direct or prohibit specified action by the Respondents (CPLR 7806). The court also has discretion to order restitution or damages.

Here, Petitioner only seeks review of the denial of his appeal of NYPD's denial of his request for exemption from taking the Covid-19 vaccination. He is now consenting to continued weekly testing. The court determines that Respondent City's decision, dated July 27, 2022, denying Petitioner's appeal of NYPD's denial of his request for a reasonable accommodation and exemption from the Covid-19 vaccination requirement was arbitrary and capricious and without a rational basis. The court finds that the determination was without sound basis in reason

and without regard for the facts included in Petitioner's letters, which contradict the purported reason set forth in the denial of Petitioner's appeal and in NYPD's underlying checked box denial of his application.

However, the court denies the Verified Petition and dismisses it against Respondents Sergeants Benevolent Association of the City of New York, Inc., Eric Adams and Ashwin Vasan, as Petitioner failed to demonstrate his entitlement to any of the relief requested against them.

In his submissions with his applications and appeals, Petitioner included details about his Christian beliefs, his relationship with God and Jesus, his understanding of certain biblical verses and principles, the basis for his belief that the "vaccines were either developed with or tested using the cells from aborted babies," and why taking the vaccine would violate his sincerely held religious beliefs.

Conversely, despite Petitioner's detailed submissions, the Appeals Panel failed to mention any of Petitioner's arguments, let alone refute them as being based on something other than Petitioner's sincerely held religious beliefs. The decision also failed to mention the reasons set forth in NYPD's underlying decision denying Petitioner's application, failed to state whether the Appeals Panel was in agreement with the reasons set forth in NYPD's decision and failed to state whether the Appeals Panel was affirming the decision.

Additionally, the Appeals Panel failed to state what the criteria was for obtaining a reasonable accommodation, which criteria Petitioner's request failed to satisfy, or provide any details or support for its determination. The court cannot predict whether the unsatisfied criteria was based on the lack of sincerity of the beliefs, whether the beliefs were non-religious in nature, whether the vaccine did not contradict Petitioner's beliefs, or something else. Simply, the denial

of the appeal is devoid of any explanation, reasoning, or support for its determination that Petitioner's request for a reasonable accommodation did not meet criteria. Therefore, the purported reason provided is tantamount to no reason at all.

Since the Appeals Panel indicated that its decision to deny Petitioner's appeal was made after careful review of the agency's determination, the documentation submitted to the agency and the additional information submitted with the appeal, it is clear that the Appeals Panel claimed that it reviewed Petitioner's written statements and all other documents submitted in support of his appeal. However, despite the detailed information provided by Petitioner, the Appeals Panel failed to mention any of it, failed to challenge it and failed to provide any explanation for finding that it did not meet the criteria.

Additionally, even if the Appeals Panel based its decision on the reasons set forth in the underlying checked box denial, then Respondents The City and NYPD still failed to provide any basis for the court to evaluate whether the denials had a rational basis. The two checked boxes were too general, conclusory, and without explanation to adequately apprise Petitioner of the reasons for the denial of his request. It appears that NYPD ignored Petitioner's submissions since the decision contradicted Petitioner's reasons without providing any evidentiary basis for doing so. Respondent NYPD provided nothing to support its determination that Petitioner's claims were based on "personal, political or philosophical" reasons. It is unclear whether Respondent NYPD found that Petitioner's alleged beliefs were personal, political, philosophical, or a combination of any, or all of these alleged reasons.

However, it is clear that neither Respondents nor the court can impose our opinions about whether we agree with Petitioner's alleged religious beliefs or his understanding of the purported scientific and medical reasons why the vaccines violate his religious beliefs. The City's decision

denying the appeal provided no evidentiary basis or reasons for challenging whether Petitioner's alleged religious beliefs were sincerely held or whether the vaccine conflicted with those beliefs.

Additionally, Respondent NYPD failed to provide any explanation as to why it believed Petitioner did not demonstrate a history of vaccination/medicine refusal. Petitioner clearly stated in substance that, although he was required to take vaccinations when he was younger to attend school, he has not taken any medications or vaccinations since he was eighteen years of age. Respondents City and NYPD failed to provide any evidence or arguments to dispute these claims, yet they appear to require Petitioner to provide something more than his mere statement.

Therefore, based on the details and support provided in Petitioner's appeal, the court finds that the Appeals Panel's decision that Petitioner did not meet criteria, without more, fails to provide a sufficient basis for denial of Petitioner's appeal. Therefore, the court finds that the Appeals Panel's decision was not rationally based and was arbitrary and capricious.

Additionally, the court finds no evidence that the Respondents engaged in any cooperative dialogue with Petitioner or that the granting of the requested accommodation would unduly burden Respondents.

The court declines to accept Respondents' additional information provided in their Answer and submissions in opposition to Petitioner's Verified Petition in an effort to explain the reasons for the denial of Petitioner's appeal and details of the guidelines and criteria considered by the Appeals Panel as the court is limited to the appellate record before it and cannot consider Respondents' subsequent explanations. For example, Respondents' arguments explaining the meaning of "Does Not Meet Criteria," that Respondents were not obligated to engage in collaborative dialogue because Petitioner did not meet the threshold, and that the accommodation would be an undue burden on them is simply too little, too late.

The court denies Petitioner's additional requests for relief.

Therefore, the court grants in part Petitioner's Verified Petition, to the extent set forth herein.

The court has considered any additional arguments not specifically discussed herein and the court denies any additional relief not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court grants in part Petitioner Ramon Cepeda's Article 78 Verified Petition against Respondents The City of New York and The New York City Police Department, to the extent that the court determines that Respondent The City of New York's denial of Petitioner's appeal of Respondent The New York City Police Department's denial of his religious accommodation request for exemption from the Covid-19 vaccination requirement was arbitrary and capricious, the court annuls and reverses the decision and the court orders Respondents The City of New York and The New York City Police Department to grant Petitioner's reasonable accommodation request and permit him to work at full pay status with compliance with the City's weekly PCR Covid-19 testing requirement; and it is further

DECLARED that Respondent The City of New York's denial of Petitioner Ramon Cepeda's appeal of Respondent The New York City Police Department's denial of his request for a reasonable accommodation and exemption from the Covid-19 vaccine requirement with weekly Covid-19 testing is arbitrary and capricious; and it is further


DECLARED that Petitioner Ramon Cepeda is entitled to a reasonable accommodation from the Covid-19 vaccine mandate and that he is entitled to work at full pay status with compliance with the requirement for weekly PCR Covid-19 testing; and it is further

ORDERED that the court denies the remainder of the Verified Petition and dismisses it against Respondents Sergeants Benevolent Association of the City of New York, Inc., Eric Adams and Ashwin Vasani; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of Petitioner Ramon Cepeda as against Respondents The City of New York and The New York City Police Department, only, without costs to any party; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of Respondents Sergeants Benevolent Association of the City of New York, Inc., Eric Adams and Ashwin Vasani as against Petitioner Ramon Cepeda, without costs to any party.

This constitutes the decision and order of the court.


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2/3/2023
DATE

ERIKA M. EDWARDS, 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