

Duarte v Adams

2023 NY Slip Op 30957(U)

March 22, 2023

Supreme Court, New York County

Docket Number: Index No. 157213/2022

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 52

Justice

-----X

RAQUEL DUARTE,

Petitioner,

- v -

ERIC ADAMS, ASHWIN VASAN, THE CITY OF NEW YORK,

Respondent.

-----X

INDEX NO. 157213/2022

MOTION DATE 12/02/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 32, 44, 45, 46, 47, 48, 49, 50, 51

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

Upon the foregoing documents, it is

In this proceeding pursuant to CPLR article 78, the petitioner seeks judicial review of an April 25, 2022, determination of the City of New York Reasonable Accommodation Appeals Panel (the Panel). That determination affirmed a February 8, 2022, New York City Police Department (NYPD) Equal Employment Opportunity Division (EEOD) determination that had denied her request for a reasonable accommodation exempting her from the City’s mandatory COVID-19 employee vaccination requirement on religious grounds.

The petition is granted to the extent that the April 25, 2022, determination is annulled as arbitrary and capricious, and the denial of the petitioner’s request for a religious exemption from the COVID-19 vaccination mandate is vacated. The petition is otherwise denied.

On October 20, 2021, the Commissioner of the New York City Department of Health and Mental Hygiene (NYC DOHMH) issued an order requiring City employees, including NYPD officers, to receive vaccinations protecting them from the COVID-19 virus on or before October 29, 2021. That administrative order further provided that “[a]ny City employee who has not provided . . . proof [of vaccination] must be excluded from the premises at which they work beginning on November 1, 2021.” The order also permitted employees to apply for a reasonable accommodation from the vaccine mandate. By administrative order dated December 13, 2021, the NYC DOHMH Commissioner required City agencies to exclude from employment staff members who were not vaccinated against the COVID-19 virus, but provided the opportunity for City employees to apply for a reasonable accommodation exemption from the requirement, based, among other things, on religious grounds. On March 24, 2022, New York City Mayor Eric Adams issued Emergency Executive Order No. 62, referable to the ongoing COVID-19 pandemic. In that executive order, the Mayor incorporated the provisions of the December 13, 2021, order, and directed that “covered entities,” including the NYPD,

“shall continue to require that a covered worker provide proof of vaccination, unless such worker has received a reasonable accommodation. Covered entities shall continue to keep a written record of their protocol for checking covered workers’ proof of vaccination and to maintain records of such workers’ proof of vaccination.”

The executive order defined “covered workers” to include NYPD employees and officers.

The petitioner is a Sergeant for the NYPD. On or about October 27, 2021, the petitioner submitted, to the NYPD, a request for a reasonable accommodation exempting her from the COVID-19 vaccination requirement on the ground that it would

be contradictory to her Christian faith in that the COVID vaccines were researched, produced, or manufactured with aborted fetal cell lines.

In its February 15, 2022 determination, the NYPD EEOD wrote that, “[a]fter careful review of your application and the documents you submitted, the reasonable accommodation is DENIED due to the following reasons,” and thereupon checked off two boxes on a pre-printed form, indicating that its reasons for the determination were that the “[o]bjection was personal, political, or philosophical” and “[o]bjection appears to be based on verifiable false information, misinformation, fear of unknown origin of vaccine or side effects.” It provided no further explanation as to why those boxes were checked. The only reason given by the City of New York Reasonable Accommodation Appeals Panel for denying the appeal of that decision is “The decision classification for your appeal is as follows: Does Not Meet Criteria.”

Where, as here, an administrative determination is made, and there is no statutory requirement of a trial-type hearing, that determination must be confirmed unless it is arbitrary and capricious, affected by an error of law, or made in violation of lawful procedure (see CPLR 7803[3]; *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyreva v New York City Dept. of Educ.*, 50 AD3d 283, 283 [1st Dept 2008]; *Matter of Rumors Disco v New York State Liquor Auth.*, 232 AD2d 421, 421 [2d Dept 1996]). Inasmuch as the petitioner made no allegations that the Panel’s determination was made in violation of lawful procedure, the Panel’s determination to deny the petitioner’s administrative

appeal must be confirmed unless it was arbitrary and capricious or affected by an error of law.

A determination is arbitrary and capricious where it is not rationally based, or has no support in the record (see *Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624, 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (see *Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 608 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made “without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). Consequently, an agency determination is arbitrary and capricious where the agency provides only a “perfunctory recitation” of relevant statutory factors or other required considerations as a basis for its conclusions (*Matter of BarFreeBedford v New York State Liq. Auth.*, 130 AD3d 71, 78 [1st Dept 2015]; see *Matter of Wallman v Travis*, 18 AD3d 304, 308 [1st Dept 2005] [“perfunctory discussion”]), provides no reason whatsoever for its determination (see *Matter of Rhino Assets, LLC v New York City Dept. for the Aging, SCRIE Programs*, 31 AD3d 292, 294 [1st Dept 2006]; *Matter of Jones v New York State Dept. of Corrections & Community Supervision*, 2016 NY Misc LEXIS 15778, *1-2 [Sup Ct, Erie County, Jul. 28, 2016]), or provides only a post hoc rationalization therefor (see *Matter of New York State Chapter, Inc., Associated Gen. Contrrs. of Am. v New York State Thruway Auth.*, 88 NY2d 56, 756 [1996]; *Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d 127, 135 [1st Dept 2009]).

"Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent"

(*Matter of Figel v Dwyer*, 75 AD3d 802, 804-805 [3d Dept 2010] [internal quotation marks and citations omitted]).

Inasmuch as the Panel's determination sets forth absolutely no rationale whatsoever for its conclusions, other than to incorporate the conclusory reasons articulated by the NYPD EEOD, the Panel's determination is facially arbitrary and capricious, and may be annulled on that ground alone (*see Matter of Moscatelli v New York City Police Dept.*, 2022 NY Slip Op 34393[U], *8, 2022 NY Misc LEXIS 8341, *12-13 [Sup Ct, N.Y. County, Dec. 22, 2022] [Kelley, J.]; *Matter of Deletto v Adams*, 2022 NY Slip Op 33129[U], *6, 2022 NY Misc LEXIS 5571, *7 [Sup Ct, N.Y. County, Sep. 13, 2022]).

Even were the court directly to review the NYPD EEOD's initial determination, it nonetheless would be constrained to conclude that the initial determination also was arbitrary and capricious. The NYPD EEOD's determination is a prime example of a determination that sets forth only the most perfunctory discussion of reasons for administrative action. The court has nothing before it that would enable it to analyze how the pre-printed "reasons" that were checked off on the supplement memorandum related to or defeated the petitioner's request for accommodation. This type of conclusory administrative determination would require the court to speculate as to the

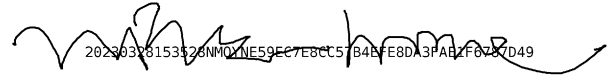
thought processes of the person who checked the boxes, and provide its own reasons for those choices, an approach prohibited by longstanding rules of law (see *Matter of Moscatelli v New York City Police Dept.*, 2022 NY Slip Op 34393[U], *8, 2022 NY Misc LEXIS 8341, *13, *Matter of Deletto v Adams*, 2022 NY Slip Op 33129[U], *3-4, *6, 2022 NY Misc LEXIS 5571, *5-6). Here, it is unexplained as to why the petitioner's professed beliefs were merely personal, political or philosophical, as opposed to religious. In the absence of any explanation as to why the petitioner's statement did not articulate his beliefs in this regard, the NYPD EEOD determination is arbitrary and capricious. Moreover, the NYPD EEOD's bald conclusion that the petitioner's "[o]bjection appears to be based on verifiable false information, misinformation, fear of unknown origin of vaccine or side effects" cannot serve as the basis for an administrative determination where, as here, they have not indicated what the allegedly false information of misinformation is.

For the reasons set forth herein, it is hereby

ORDERED that the petition is granted to the extent that the April 25, 2022 determination of the City of New York Reasonable Accommodation Appeals Panel, denying the petitioner's appeal of a February 8, 2022 New York City Police Department Equal Employment Opportunity Division determination, that had denied his request for a reasonable accommodation exempting him from the City's mandatory COVID-19 employee vaccination requirement, is annulled as arbitrary and capricious, and is expunged from the petitioner's personnel record; and it is further

ORDERED that the petition is otherwise denied.

This constitutes the decision and order of this court.


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3/22/2023

DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: