

Anderson v Adams

2022 NY Slip Op 33614(U)

October 20, 2022

Supreme Court, New York County

Docket Number: Index No. 156824/2022

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

CHRISTOPHER ANDERSON,

Petitioner,

- v -

ERIC ADAMS, in his Official Capacity as Mayor of the City of
New York, ASHWIN VASAN, MD, PhD in his Official
Capacity as the Commissioner of the New York City
Department of Health and Mental Hygiene and THE CITY
OF NEW YORK

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for

ARTICLE 78

**DECISION + ORDER ON
MOTION**

The petition is granted to the extent that petitioner is entitled to a religious exemption from the vaccine mandate imposed on police officers in New York City.

Background

Petitioner is a police officer for the NYPD. He submitted an application requesting an exemption from the COVID-19 vaccine mandate on October 27, 2021 (NYSCEF Doc. No. 2). In his application, petitioner asserted he was raised in the Catholic faith and claimed he could not get a vaccine as a result (NYSCEF Doc. No. 3).

On December 14, 2021, respondents denied this initial request for a religious exemption (NYSCEF Doc. No. 13). The denial was contained in a “form letter” in which three boxes were checked as reasons for the denial (*id.*). These boxes were 1) “Objection was personal, political or

philosophical,” 2) “Insufficient or missing religious documentation,” and 3) “Written statement does not set forth how religious tenets conflicts [sic] with vaccine requirement” (*id.*).

Petitioner then appealed this decision (NYSCEF Doc. No. 14). That appeal was denied on August 9, 2022 by a Citywide Panel in a decision that stated “Does Not Meet Criteria” (NYSCEF Doc. No. 24). Petitioner subsequently received a letter detailing his impending termination for not receiving the vaccine (NYSCEF Doc. No. 4). Petitioner then commenced this proceeding and the Court granted a temporary restraining order preventing petitioner from being terminated from his position.

Petitioner claims he does not want to get vaccinated because it would conflict with his religious beliefs and maintains that respondents did not offer a reason to deny his religious exemption request. He insists the decision was inherently arbitrary and capricious. Petitioner argues that “what the Pope or any other religious leader says is irrelevant.” He claims that an employer’s disagreement with an employee’s religious beliefs violates the First Amendment.

In opposition, respondents insist there was ample support for the denial of petitioner’s religious exemption request. They argue the decision had a rational basis. Respondents maintain that the final denial incorporated the initial denial (the one that checked a few boxes on the standard form). Respondents argue that the Citywide Panel was not required to provide a further explanation because it affirmed the initial denial. They point out that petitioner failed to mention in his petition that he even received the initial denial of his religious exemption request.

Respondents scrutinize the letter submitted by petitioner as part of his application and argue that petitioner’s personal and political beliefs cannot justify his exemption even where those beliefs are cloaked in religious language. They observe that petitioner’s exemption request

was based on petitioner's own view about the COVID-19 vaccines rather than based on any religious practice.

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 and may not be terminated by the NYPD due to a lack of Covid-19 vaccine.

In support of his application for a religious exemption, petitioner pointed to his religious upbringing and his views about the vaccines. In response to this letter, respondents denied his request and checked off three boxes. No further explanation was provided. The problem for this Court is the three reasons cited are conclusory and vague. They do not assess petitioner's specific reasons for requesting a religious exemption or analyze why respondents do not credit petitioner's assertions.

For instance, the first reason identified was that petitioner's “Objection was personal, political or philosophical.” As a conclusion, that is a rational justification for denying a request

for a religious exemption. But without any analysis or application of the facts to support this conclusion, it rings hollow as an explanation. The Court observes that in respondents' memorandum of law in opposition, an *actual* analysis as to how someone could conclude that petitioner's objections were personal, political, or philosophical is explored (*see* NYSCEF Doc. No. 27 at 8). Why this was not done by respondents when it issued the initial denial is baffling. Instead, the Court is left to guess or speculate about whether respondents viewed petitioner's objection as personal or political or philosophical, two of these three reasons, or, maybe, all three.

And respondents cannot supplement the record by raising a justification for the first time in this proceeding. "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, 804-05, 907 NYS2d 75 [3d Dept 2010] [internal quotations and citations omitted]).

Similarly, the second reason—that petitioner was missing religious documentation or submitted insufficient support—is also unaccompanied by any explanation. What should have petitioner submitted to satisfy this objection? That is anyone's guess and so the Court cannot find it constitutes a rational basis to deny the religious exemption request. The third reason claims that petitioner failed to explain how the religious tenets upon which he relies conflicts with the vaccine requirement. Given that petitioner claims he cannot get the vaccine due to his

Catholic faith, something more than this conclusory reason was required. In fact, in his memorandum of law, petitioner even claimed that Catholic leaders' views about the vaccines do not matter (NYSCEF Doc. No. 8 at 12). Respondents could have easily explored this issue; but they did not. The Court has no idea how respondents came to their initial conclusion and so the Court cannot properly evaluate whether the initial denial was rational or just some random checking of these boxes.

The Court's analysis does not end with the initial denial. Petitioner appealed to a Citywide Panel which responded that petitioner did not meet the criteria. That determination is a textbook example of an arbitrary and capricious finding. It is completely devoid of reasoning without which the Court is unable to evaluate whether respondents had a rational basis for it. Respondents' assertion that the Citywide Panel did not have to provide any reason for the denial of petitioner's application is without merit and contrary to the applicable law concerning Article 78 reviews of governmental determinations. There is no indication that anybody even read petitioner's arguments.

The Court observes that respondents' claim that the Citywide Panel incorporated the initial denial does not justify denying the petition. As explained above, the initial determination was sorely lacking. And the determination does not directly incorporate any previous findings. While it references that the panel reviewed the documentation petitioner submitted, it does not contain any language that it ever reviewed the initial determination. Simply put, it is too big of a leap for this Court to assume that the Citywide Panel denial constitutes a mere affirmation of the initial denial.

Critically, the Court emphasizes that the respondents set up a process by which petitioner and other police officers could request a religious exemption. This is not a situation, such as

where an agency fires a probationary employee, where a governmental agency need not provide any reason for its decision (*e.g.*, *Soto v Koehler*, 171 AD2d 567, 567 NYS2d 652 [1st Dept 1991]). Petitioner was entitled, at the very least, to a determination that addressed his reasons for requesting a religious exemption. Respondents did not have to compose a three-volume treatise to explain their decision; a brief explanation that acknowledged petitioner's specific request was all that was necessary. But respondents did not do that.

The description of the religious exemption appeals process by the Citywide Panel by Eric Eichenholtz details an impressive and deliberative workflow to consider exemption requests (NYSCEF Doc. No. 28). But without a written explanation to justify their conclusion that petitioner "did not meet the criteria," this Court cannot presume respondents had a good reason for denying petitioner's exemption request. Nor can this Court search the record itself.

The Court grants the exemption because of the circumstances present. Petitioner should not lose his job where his employer did not bother to justify the denial of his request for a religious exemption. Moreover, respondents did not seek to remand the request back to respondents. Therefore, the only just result is to grant the exemption.

Petitioner's Other Claims

Petitioner's other requests for relief are denied. Among these claims are an apparent 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 for any of this relief.

As an initial matter, the vaccine mandate on city employees has been routinely 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]).¹ Based on these decisions, there is no basis to find that the vaccine mandate somehow 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 (*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]).

In other words, the expansive remedies sought by petitioner are denied. This proceeding is limited solely to petitioner's individual exemption request and respondents' arbitrary and capricious denial with respect to that application.

Petitioner's argument that the distinction between the application of the private employer vaccine mandate and the public sector mandate justifies the vacating the entire vaccine mandate is baseless. Public employees, because they work for the public, are subjected to many more restrictions than employees for private companies. For instance, public employees can be saddled with restrictions on their political activities and donations, strict codes of personal conduct, and financial disclosure requirements. The difference between how private and public employees are treated is not a basis to vacate the vaccine mandate.

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

¹ 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 notices of appeal have been filed in that case. That matter could, of course, preempt the individual dispute raised in this proceeding.

Summary

This Court is well aware that there have been many Article 78 proceedings commenced by city employees who refused to get vaccinated. This decision is limited to the individual determination provided to petitioner. That determination was wholly irrational because it declared only that petitioner did not meet the criteria for a religious exemption. And, to the extent that respondents attempt to rely upon the initial denial (which the final determination did not specifically reference), the initial denial is also irrational. Asserting stock or boilerplate justifications without assessing petitioner's individual reasons is not a basis to terminate a police officer's employment.

However, the Court rejects petitioner's apparent effort to assert a facial challenge to the vaccine mandate itself or for relief relating to his constitutional rights. The fact is that petitioner's religious freedom was protected—the existence of a religious exemption request process demonstrates that he had ample opportunities to raise religious objections to the mandate. The instant decision by this Court concerns respondents' woeful and underwhelming response.

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

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.

10/20/2022

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