STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
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DECISION OF THE BOARD

Mailed and Filed: JULY 20, 2022

IN THE MATTER OF:
Appeal Board No. 622158

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause; or in the alternative, disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by . prior to September 27, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 22, 2022 (), the Administrative Law Judge sustained the initial determination disqualifying the claimant from receiving benefits on the basis that the claimant voluntarily separated from employment without good cause, and overruled the alternate determination disqualifying the claimant from receiving benefits on the basis that the claimant lost employment through misconduct in connection with that employment.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The Board considered the arguments contained in the written statement submitted by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as an addiction therapist by a regional health center for one year. Prior to September 9, 2021, the employer informed its employees, including the claimant, that all healthcare workers were required to receive at least the first dose of a VID-19 vaccine by September 27, 2021, unless a medical exemption for that employee was granted. The employer provided a form to request a medical exemption from the VID-19 vaccination mandate, which included an acknowledgement to be signed by the employee, and a questionnaire to be completed by the employee's healthcare provider. The instructions on the form indicated that the New York State Department of Health requires that a licensed physician or certified nurse practitioner certify that immunization with the VID-19 vaccine would be detrimental to the health of the employee seeking exemption, based upon a pre-existing health condition, and in accordance with generally accepted medical standards. On September 9, 2021, the claimant signed the form indicating that she was seeking a medical exemption. The claimant had experienced extreme allergic reactions to vaccinations in the past, including anaphylaxis, requiring hospital treatment on more than one occasion.

The claimant met with her primary care physician by video on August 22, 2021. Her physician completed and signed the questionnaire provided by the employer on September 2, 2021. On the questionnaire, the claimant's physician certified that the VID-19 vaccination would be detrimental to the claimant; that the claimant has a pre-existing and permanent medical condition dating back to September 2018; specifying that the claimant has been to the emergency room on more than one occasion with "severe allergic reaction (Angioedema) of unknown cause," and that the risk to the claimant of a potential severe allergic reaction outweighs the benefit of the vaccine for the claimant. The claimant submitted this completed questionnaire, along with her physician's signed "Verification of Treatment" to the employer.

On September 20, 2021, the employer informed the claimant by email that her request for a medical exemption from the VID-10 vaccination requirement was denied, stating that her request did not meet the requirements of the New York State Regulation because it did not establish that immunization with VID-19 vaccine is detrimental to her health based on a pre-existing health condition and in accordance with generally accepted medical standards. The email advised the claimant that if she did not provide documentation of her first vaccine dose by September 27, 2021, or had not been granted a medical exemption by

that date, she would be placed on leave for five days, and if she did not present proof of vaccination within those five days, her employment would end.

The claimant advised her primary care physician, and on September 20, 2021 the physician re-certified the answers on the questionnaire she had previously completed. The claimant re-submitted this completed and re-certified questionnaire, and was advised by the employer by email dated September 23, 2021 that her request for a medical exemption was denied. The email reiterated the September 27 deadline, and the repercussions if the claimant did not meet the deadline. The claimant responded by email on September 23, stating that her request could easily be accommodated by continuing mask wearing and weekly testing. The claimant was not vaccinated by September 27, 2021; by letter dated October 5, the employer advised the claimant that her employment had been terminated as of October 3, 2021.

OPINION: The credible evidence establishes that the claimant's employment ended as of October 3, 2021 because the claimant chose not to receive the VID-19 vaccination, which she knew was required as a condition of her continued employment. This decision not to comply with the employer's mandate constitutes a voluntary separation from employment for unemployment insurance purposes. The credible evidence also establishes that the claimant's decision was based upon her history of severe allergic reactions to

vaccinations, and her physician's medical advice that getting vaccinated would be detrimental to her health.

We note that while the employer denied the claimant's requests for a medical exemption, the information provided by the claimant in support of her applications was precisely what the employer requested, including the questionnaire completed and certified by the claimant's primary care physician. Specifically, the claimant's physician certified that receiving the VID-19 vaccination would be detrimental to the claimant; that the claimant has a pre-existing and permanent medical condition dating back to September 2018; and that condition resulted in severe allergic reactions causing Angioedema and anaphylaxis, meeting the requirements for an exemption set forth by the employer. Regardless of the employer's denials, however, this record establishes by credible and consistent evidence, that the claimant's physician certified that receiving a VID-19 vaccine would be detrimental to the claimant's health.

Although the employer, a health care facility, could lawfully impose a vaccine mandate on its employees, since the undisputed evidence establishes that the claimant presented the employer with the requested information and physician certification seeking a medical exemption from the vaccine, and since the claimant has established by credible, consistent evidence that her decision not to comply with the employer's vaccine mandate was based upon the advice of her physician, we find that the claimant had a compelling medical reason for her decision not to be vaccinated, and therefore had a compelling reason for her noncompliance with that mandate. Under these circumstances, we find that the claimant's voluntary separation from employment was with good cause under the Labor Law. Accordingly, we conclude that the claimant was separated from employment under nondisqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER