IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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AMANDA TAYLOR,

PETITIONER (Claimant Below),

v. **No. 22-ICA-81**
(R-2021-4361)

WORKFORCE WEST VIRGINIA &
DISMAS CHARITIES, Inc.,

RESPONDENTS (Respondents Below).

BRIEF ON BEHALF OF RESPONDENT WORKFORCE WEST VIRGINIA

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STATEMENT OF THE CASE

- **Identification of the Parties**

The Petitioner, Amanda Taylor, was the Claimant below and is the Petitioner in the current proceeding. Her employer was Dismas Charities, Inc., and the Respondent was employed as a relief cook by this Employer. The Petitioner, WorkForce West Virginia, is an agency of the State of West Virginia and is the state administrator for unemployment compensation.

- **Procedural History**

The Petitioner filed an unemployment compensation claim on or about October 22, 2021, after she was discharged from employment with Dismas Charities, Inc., on October 15, 2021. Respondent WorkForce's deputy issued a decision dated November 9, 2021, finding that the Petitioner had been discharged for refusing to obtain a Covid-19 vaccination as required by the Employer and that the Petitioner had received prior written warning. (D.R. 0003). The deputy held that the Petitioner's failure to obtain the Covid-19 vaccination to be misconduct as defined by W. Va. Code §21A-6-3(2) and held the Petitioner to be disqualified beginning October 10, 2021, until she had returned to covered employment and had worked at least 30 working days.

Petitioner filed an appeal to the Board of Review, WorkForce West Virginia, at a local office on November 17, 2021. (D.R. 0002). This appeal was assigned Case No: R-2021-4361 and a hearing was scheduled to take place on December 7, 2021. (D.R.

0011). A hearing took place on this date at which the Petitioner appeared with counsel and the Employer appeared by representative. (D. R. 0022 - 0034). A corrected decision was issued by Administrative Law Judge (ALJ) Trent A. Redman on May 16, 2022, and mailed the same date. The ALJ affirmed the decision of the deputy and held that the Petitioner had been discharged for gross misconduct and was disqualified from the receipt of unemployment compensation benefits. (D.R. 0013 - 0016).

The Petitioner subsequently appealed the ALJ's decision to the three-member panel Board of Review on May 23, 2022. (D. R. 0018 - 0021). After its review on August 4, 2022, the Board of Review affirmed the decision of the ALJ in its entirety and upheld the holding that the Petitioner was disqualified for gross misconduct in a decision issued and mailed that same date. (D.R. 0062 - 0064). The instant appeal to this Court followed with the filing of the Petitioner's notice of appeal on September 6, 2022.

- **Statement of Facts**

The Petitioner was employed as a relief cook by Dismas Charities, Inc., from February 20, 2019, until October 15, 2021, which was the date of discharge by the Employer. James Sands, the director of the local residential reentry center in St. Albans, West Virginia, testified at the hearing before the administrative law judge. This Employer operates multiple facilities across the country that permits federal prison inmates to serve their last three-to-six months of their sentences in a residential correctional facility. The Employer assists inmates with reentry into society such as locating housing and jobs and to obtaining identification (D.R. 0024; p. 11).

The Employer's corporate office in Louisville, Kentucky, issued a notice of a Covid-19 vaccination requirement on January 11, 2021. It was initially sent as an email from Ray Weis, President/CEO of Dismas Charities, Inc., and subsequently posted on two staff bulletin boards. (D.R. 0024; p. 12). The rationale for requiring employees to receive the Covid-19 vaccine was "to provide on-going service, staff employment and protection of the health and welfare of staff and residents". (D.R. 0044; E'er's Exh. 1). Staff were advised that if there was a "documented medical reason that you cannot take the vaccine you must provide this documentation to your Director/Supervisor." (D.R. 0044; E'er's Exh. 1).

Another email was sent by Mr. Weis on August 20, 2021, regarding the vaccine requirement. This email reiterated that obtaining the vaccine was mandatory for "all Dismas Team Members." (D.R. 0045; E'er's Exh. 2). This email established the date of October 15, 2021, as the final date "to obtain and maintain up-to-date Covid-19 vaccinations to access our physical office locations or to engage in business travel or in-person work meetings." (D.R. 0045; E'er's Exh. 2). "Team members who have not been vaccinated will not be allowed access to a Dismas location and will not be approved for business travel or to participate in in-person meetings on behalf of Dismas. Fraudulent documentation or an unauthorized attempt to enter a location may result in disciplinary action up to and including termination." (D.R. 0046; E'er's Exh. 2). This document also states that any employee "who is disabled or who has a qualifying medical condition that contraindicates a Covid-19 vaccination, or (ii) who objects to being vaccinated on the basis of a sincerely held religious belief, observance or practice may request a reasonable accommodation." (D.R. 0046; E'er Exh. 2). Instructions on requesting a

medical or religious accommodation were provided and employees were required to provide their vaccination card or their request for an accommodation no later than September 3, 2021. Directors were instructed to post this email on the employee bulletin board. Mr. Sands testified that he texted a copy of the August 20, 2021 email to the Petitioner and placed a paper copy of it in her staff box. (D.R. 0025; p.16). A copy of Mr. Sands' text to the Petitioner was admitted into the record. (D.R. 0047; E'er's Exh. 3).

Mr. Sands texted the Petitioner on October 1, 2021, to ask her if she planned on working on October 9th and 10th. The Petitioner responded affirmatively to this question. Mr. Sands then posed the question whether the Petitioner was going to resign or "be terminated" on [October] 15th. The Petitioner replied that she was "not going to resign." (D.R. 0026; p. 17). The Petitioner texted Mr. Sands on October 4, 2021, to ask if she could use Mr. Sands as a reference in job interviews that the Petitioner had previously scheduled. (D.R. 0026; pp. 17 - 18). Mr. Sands subsequently testified. ".... I don't believe there's any question that over eight months from January on that the vaccination policy was not [sic] made clear. The same information that's been entered in evidence was available also and then on the email on October 15th when the dates were laid out with October 15th being the last possible date, I think that Ms. Taylor was well aware of that." (D.R. 0026; pp. 18 - 19).

The Petitioner never provided a request for either a medical or a religious accommodation to Mr. Sands. (D.R. 0026; p. 19). The Petitioner was subsequently "terminated on the 15th of October for non-compliance." (D.R. 0026; p. 19).

On cross-examination, in response to a question as to whether the Petitioner received the emails from January 11, or August 20, 2021, Mr. Sands testified, “Every Dismas employee has a Dismas email. Now, most of our staff don’t bother to activate it but every single Dismas employee does have an email. …. Now, I don’t necessarily push employees to activate their email, but that’s why I always put stuff on the staff bulletin board.” (D.R. 0026; p. 20).

The Petitioner testified that she had suffered an allergic reaction in response to a “flu shot”. (D.R. 0031; p. 38). The Petitioner’s medical records on this incident were no longer available or could not be located. The Petitioner testified that she had spoken with her current physician’s office to determine if these records were available and was told that those records could not be located. However, the Petitioner did not testify any other information on her allergic response. She did not testify whether her reaction required only over-the-counter medication, an Epi-Pen, or whether she needed in-patient hospitalization or when this allergic reaction occurred. In addition, the Petitioner testified that she spoke with her physician’s office regarding the missing medical records, she did not testify about whether she spoke with anyone in the physician’s office regarding whether Petitioner could safely receive the Covid-19 vaccination. Petitioner also did not provide any testimony that she asked her physician’s office to provide a medical accommodation or the reason why such an accommodation could not be provided from her current physician’s office.

SUMMARY OF ARGUMENT

The Board of Review correctly concluded that Petitioner was disqualified from the receipt of unemployment benefits because she was discharged for gross misconduct. Petitioner received written warning that failure to take the Covid-19 vaccine would result in the termination of her employment. Further, the potential health hazards to which she would expose her coworkers and the residents at the facility by not taking the CoVid-19 vaccine was egregious enough conduct to rise to the level of "other gross misconduct" even without a written warning.

Petitioner did not qualify for the health and safety exception outlined in Peery v. Rutledge, 177 W. Va. 548, 355 S.E.2d 41 (1987). She did not establish that she had reasonable fears that taking the vaccine would expose her to health risks. Although the Petitioner inquired about her old medical records, she did not testify that she had spoken or even inquired about the safety of the Covid-19 vaccine with her current physician or requested her current physician to prepare a request for medical accommodation for submission to the Employer.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes that oral argument is not necessary pursuant to Rules of Appellate Procedure, Rule 18(a)(4), as the facts and legal arguments are adequately presented in the briefs and record on appeal and the decisional process would not be significantly aided by oral argument.

ARGUMENT

- **Standard of Review**

In Bd. of Educ. of Webster County. v. Hanna, 234 W.Va. 196, 764 S.E.2d 356 (W. Va. 2014), the West Virginia Supreme Court of Appeals held:

> "The findings of fact of the [Board of Review of WorkForce West Virginia] are entitled to substantial deference unless a reviewing court believes the findings are clearly wrong. If the question on review is one purely of law, no deference is given and the standard of judicial review by the court is *de novo*. " Syl. Pt. 3, Adkins v. Gatson, 192 W.Va. 561, 453 S.E.2d 395 (1994).
>
> "The standard of review used by this Court on a question of fact resolved by an ALJ is necessarily one of deference. We have consistently held that [a] reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." "Further, the ALJ's credibility determinations are binding unless patently without basis in the record." (internal citations omitted) Alcan Rolled Products Ravenswood, LLC, v. McCarthy, 234 W.Va. 312; 765 S.E.2d 201 (W. Va. 2014).
>
> "In addition to affording deference to the ALJ on credibility determinations, a reviewing court is not permitted to decide the factual issues *de novo* or to reverse an ALJ's decision simply because it would have weighed the evidence differently. As we explained in Wirt, in applying the clearly erroneous standard to the findings of a [lower tribunal] sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues *de novo.* Indeed, if the lower tribunal's conclusion is plausible when viewing the evidence in its entirety, the appellate court may not reverse even if it would have weighed the evidence differently if it had been the trier of fact." Board of Education of the County of Mercer v. Wirt, 192 W. Va. 538, at 578-579; 453 S.E.2d 402 (W. Va. 1994); Alcan Rolled Products Ravenswood, LLC, v. McCarthy, 234 W.Va. 312; 765 S.E.2d 201 (W. Va. 2014).

See also West Virginia Code §21A-7-21 which states in its entirety, "[i]n a judicial proceeding to review a decision of the board, the findings of fact of the board shall have

like weight to that accorded to the findings of fact of a trial chancellor or judge in equity procedure."

- **The Board of Review did not err in determining that Petitioner committed gross misconduct by declining to take the Covid-19 vaccine thereby disqualifying her for unemployment compensation benefits.**

W. Va. Code §21A-6-3(2) (2020), states in pertinent part:

> Upon the determination of the facts by the commissioner, an individual is disqualified for benefits:
>
> If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last 30 days employing unit for one of the following reasons: Gross misconduct consisting of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if the assault is committed at the individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter 60A of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety-sensitive positions as defined in §21-1D-2 of this code; violation of an employer's drug-free workplace program; violation of an employer's alcohol-free workplace program; arson, theft, larceny, fraud, or embezzlement in connection with his or her work; or any other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least 30 days in covered employment…

The following proviso is also included within the definition of gross misconduct:

> That for the purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct

where the individual has received prior written warning that termination of employment may result from the act or acts.

The West Virginia Supreme Court of Appeals has recognized that, "West Virginia's eligibility and disqualification provisions concerning the receipt of unemployment compensation benefits establish a two-step process." Hill v. Board of Review, 166 W.Va. 648, 276 S.E.2d 805 (W. Va. 1981); Ohio Valley Medical Center v. Gatson, 202 W.Va. 507, 505 S.E.2d 426 (per curiam). Further the Court has held, "The first step involves determining whether an individual is eligible to receive such benefits, and the second step is to consider whether the individual is disqualified." Lough v. Cole, 172 W.Va. 730, 310 S.E.2d 491 (W. Va.1983); Ohio Valley Medical Center v. Gatson, 202 W.Va. 507, 505 S.E.2d 426 (per curiam).

In the instant appeal, the Petitioner was deemed eligible to receive benefits as noted by the Deputy's decision (D.R. 0003), but was disqualified from the receipt of unemployment compensation benefits on the grounds of gross misconduct for the failure to receive the complete Covid-19 vaccination by the deadline as required by the employer.

The West Virginia Supreme Court of Appeals observed that "the legislature's provisions regarding gross misconduct can be divided into three distinct categories: (1) those specifically enumerated acts which shall be considered gross misconduct; (2) items which may be interpreted to be "other gross misconduct;" and (3) acts of misconduct for which the employee has received prior written warning that continued violation will result in employment termination. Except where an employee has received a prior written warning, the phrase, "other gross misconduct," in West Virginia Code

§21A-6-3 evidences the legislature's intent to provide some element of discretion in the Board and reviewing courts, based upon the peculiar facts of each case." Dailey v. Board of Review, 214 W.Va. 419, 589 S.E.2d 797, 805 (2003).

- **The Board of Review did not err in determining that Petitioner had received prior written warning that declining to take the Covid-19 vaccine would result in termination of employment.**

It is clear that the Petitioner's misconduct does not fall within the enumerated instances of gross misconduct. However, the Respondent contends that the Petitioner was, in fact, notified that her employment would be terminated if she failed to receive the Covid-19 vaccination and that Petitioner's failure to obtain the vaccine in light of a requirement by her employer to receive the vaccine also falls within the "other gross misconduct" as contemplated by the Legislature.

Review of the exhibits and testimony offered by the parties at the hearing before the administrative law judge reflects that the Petitioner was notified of potential termination if she failed to comply with the employer's directive to obtain the one or two doses of the Covid-19 vaccine. Mr. Weis' email dated August 20, 2021, contains the following statement: "Team members who have not been vaccinated will not be allowed access to a Dismas location and will not be approved for business travel or to participate in in-person meetings on behalf of Dismas. Fraudulent documentation or an unauthorized attempt to enter a location may result in disciplinary action up to and including termination." (D.R. 0045-46; E'er's Exh. 2). (emphasis added).

Unvaccinated employees would not be able to access a Dismas worksite after October 15, 2021, and the attempt to enter a Dismas location may have resulted in

termination of employment. The Petitioner would have to have access to her Employer's worksite in order to perform her duties as a relief cook. She did not testify that she could work remotely as a relief cook. Petitioner also testified that she had prepared and served meals to the residents of the center, planned and implemented menus, and recorded temperatures of foods that were served. (D.R. 0031, p. 37) The job posting of a relief cook also lists managing inventory and ordering of food and equipment, other record keeping, and maintaining safety and sanitary standards and ensuring the cleanliness of the kitchen, serving and prep areas and related equipment. (D.R. 0054; Claimant's Exh. 3). Very few of these duties and responsibilities could be performed virtually or in a remote location.

Although the Petitioner denied having access to email at her work, Mr. Sands testified that she had a working email address with the Dismas domain name. (D.R. 0026; p. 20). The two emails from Mr. Weis dated January 11, and August 20, 2021, were posted to the two staff bulletin boards at the employer's location. Mr. Sands had personally texted the August 20th email to the Petitioner on August 23, 2021. (D.R. 0047; Employer's Exh. 3), and had placed a paper copy of the email "in your [Petitioner's] box". (D.R. 0025, p. 16). Mr. Sands texted the Petitioner on October 1, 2021, to ask if she intended to work on October 9, and 10, 2021. After the Petitioner responded affirmatively to this question, Mr. Sands then asked her if she were going to resign or "get terminated" on October 15th. The Petitioner responded, "I'm not going to resign." The Petitioner texts Mr. Sands on October 4, 2021, to ask, "[i]s it okay if I use you for a reference?" Mr. Sands responded affirmatively and Petitioner states, "I have

an interview tomorrow for an executive administrative assistant." (D.R. 0049, Employer's Exh. 4).

At this point, even if one assumes that the Petitioner had no knowledge of the vaccine requirement and the potential ramifications of failing to receive a vaccine, she was unequivocally notified on October 1st that she was facing potential discharge from employment for the failure to receive the vaccine. Although it was too late to request a medical or religious accommodation, the Petitioner still had until October 15th to receive the required vaccine. However, it is apparent from the prior texts between Mr. Sands and the Petitioner and the text exchange on October 1, 2021, that the Petitioner was quite aware that she was facing potential discharge for the failure to obtain the required doses of Covid-19 vaccine. The Petitioner stated that she was not going to resign and had previously made arrangements for a job interview on October 5, 2021. Moreover, the Petitioner reported the following responses in her initial application for unemployment compensation benefits: (Petitioner's responses are in bolded type.)

> "What was the reason that you are not working there now?
> **Discharge**
> ….
> I was told I was being discharged because
> **Because I am not fully vaccinated against covid**
> What was the final incident causing you to be discharged? Explain fully.
> **Did not get covid vaccine**
> Had you received prior warnings regarding this?
> **Yes**
> The warning(s) was:
> **Written**
> Written Warning date(s)
> **9/3/2021**
> Did the warning state you may be discharged if it occurred again?
> **Yes**
> …." (D.R. 0007 - 0008, ALJ Exh. 2).

It is apparent that the Petitioner's responses when she filed for unemployment compensation benefits for the week ending October 17, 2022, varied wildly from her testimony at the hearing before the administrative law judge wherein she denied receiving or seeing the emails in any form. Respondent argues that the Petitioner's testimony is neither credible nor reliable on this issue.

Respondent asserts that the Employer's emails that were posted on the Employer's staff bulletin boards, the placement of a paper copy of the email dated August 20, 2021, in Petitioner's box by Mr. Sands, and Mr. Sands' texts to the Petitioner pertaining to the vaccination requirement are sufficient to meet the statutory requirement of "prior written warning that termination of employment may result from the act or acts" as required by W. Va. Code §21A-6-3(2).

Petitioner goes to great lengths to refute the mountain of evidence that she received written warning of potential termination for declining to take the vaccine. She claims that the emails should be disregarded because she did not receive them. However, it appears she did not receive them because she chose to not activate her work email account. The Petitioner should not be able to successfully argue that she was not provided sufficient notice via email, but she had not activated her email account. She claims the text of the notices should be disregarded because the notices were illegible. If so, Petitioner should have inquired about it. In addition, while the exhibits could not be clearly read, it does not mean that the texts to the Petitioner were illegible. Petitioner also simply ignores the evidence in the record that paper copies of the emails were placed in her staff box. Petitioner also claims that posting the email on

the bulletin boards should be disregarded because that is not sufficient notice citing Footnote 4 in Federoff v. Rutledge, 175 W. Va. 389, 332 S.E. 2d 403 (1985). Respondent contends that the Petitioner's failure to activate her work email, the posting of the emails on bulletin boards in conjunction with her supervisor's texts, and her supervisor's placement of paper copies of the emails in Petitioner's staff box is sufficient to meet the requirement of a prior written warning in this case.

- **Petitioner's failure to take the Covid-19 vaccine constituted "other gross misconduct" even without a prior warning.**

Respondent also contends that the Petitioner's failure to obtain the Covid-19 vaccination in direct violation of her employer's requirement to obtain the vaccination also falls within the definition of gross misconduct *even without a prior written warning*. As previously quoted, the West Virginia Supreme Court of Appeals held in Dailey v. Board of Review, 214 W. Va. 419, 589 S.E.2d 797 (W. Va. 2003):

> Thus, we believe that the legislature's provisions regarding gross misconduct can be divided into three distinct categories: (1) those specifically enumerated acts which shall be considered gross misconduct; (2) items which may be interpreted to be "other gross misconduct;" and (3) acts of misconduct for which the employee has received prior written warning that continued violation will result in employment termination. Except where an employee has received a prior written warning, the phrase, "other gross misconduct," in West Virginia Code § 21A-6-3 evidences the legislature's intent to provide some element of discretion in the Board and reviewing courts, based upon the peculiar facts of each case. If, for example, the nature of the employer's business rendered an act of misconduct particularly dangerous, shocking, or egregious, the misconduct could legitimately be elevated to gross misconduct for purposes of determining unemployment compensation eligibility. Where

> the catch-all provision of "other gross misconduct" in West Virginia Code § 21A-6-3 is utilized as a basis for denial of all unemployment compensation benefits in the absence of a qualifying prior written warning, the employer is required to furnish evidence that the act in question rises to a level of seriousness equal to or exceeding that of the other specifically enumerated items, and a resolution of matters brought under this subdivision must be analyzed on a case-by-case basis. Moreover, placement of a particular act in the category of gross misconduct should be carefully reviewed and should not be undertaken unless it is clear that such acts constitute gross misconduct as defined by the legislature. (Emphasis added)

The key question is whether refusal to receive a Covid-19 vaccination equaled or exceeded the enumerated examples of gross misconduct. Respondent asserts that the Petitioner's failure to obtain the Covid-19 vaccine increased the Petitioner's possibility of exposure to a disease that was highly contagious to others as well. The Petitioner worked as a relief cook in a residential setting that consisted of federal inmates who could not be directed to take the vaccine. The Petitioner had close exposure to the inmates by preparation and serving of meals to them. She also maintained the sanitary conditions of the kitchen, prep areas, and serving areas. The Employer was attempting to reduce the potential exposure of Petitioner, her co-workers, and the inmates to the possibility of contracting Covid-19 with the attendant possibility that they will suffer serious illness and potential death.

- **Petitioner's failure to take the Covid-19 vaccine did not qualify under the health and safety exception recognized in Peery v. Rutledge.**

Petitioner contends that her concerns about the Covid-19 vaccine qualify her for the health and safety exception as outlined in Peery v. Rutledge, 177 W.Va. 548, 355 S.E.2d 41 (1987). However, the facts of the two cases are not similar. In Peery, an employee was directed to drive a truck from Nitro to Lewisburg and back overnight albeit with a potential 3 or 4-hour rest period. The employee therein was exhausted from the five hours of physically demanding work he had previously performed that day. He was concerned that it would not be safe for him and other drivers on the road for him to drive the truck over the winding roads on the way to Lewisburg in his condition. He was fired for refusing to take the assignment. Peery, *id*., involved concrete concerns that anyone can readily understand.

By contrast, Petitioner's concerns about the safety of the Covid-19 vaccine are of a personal nature. She alleges she knows of another individual who had suffered a bad reaction to the Covid-19 vaccine, but Petitioner does not disclose any specific information about that individual's alleged bad reaction. Petitioner alleges, although she did not document, that she had a bad reaction to a different vaccine at some point in the past. She testified that the medical records that would have substantiated the incident were lost or no longer available, but she did not provide any documentation from her physician or his/his office corroborating her explanation. She did not testify that she asked her current physician about the safety of the Covid-19 vaccine if she were to receive the vaccine or asked her current physician to prepare and to submit a request for a medical accommodation on her behalf to the Employer. It is also apparent that the Petitioner has not acted in good faith in claiming entitlement to a health or safety exemption from disqualification. It is apparent from the Petitioner's testimony that she

did not agree with the requirement to obtain the vaccine and that she had no intention of obtaining it. The Petitioner made very little or no effort to attempt to obtain a medical or religious accommodation offered by her Employer. When Petitioner was advised on October 1st that termination of her employment would occur on October 15th, she still had two weeks to obtain the vaccine and failed to do so. The Petitioner made no attempt or effort to obtain a medical exemption from the Covid-19 vaccination and has failed to prove that she is not disqualified from the receipt of unemployment compensation benefits based upon the health and safety exemption.

Petitioner had also testified that she had religious objections to taking the Covid-19 vaccine. Review of Petitioner's testimony on this point did not disclose a religious affiliation that has instructed its members to refuse to obtain the Covid -19 vaccine or any effort on Petitioner's part to obtain correct information about the Covid-19 vaccine that would substantiate her religious objections. Moreover, there is no evidence that the Petitioner ever requested a religious accommodation from her Employer.

CONCLUSION

The Petitioner has failed to establish that the Board of Review erred in finding the Petitioner disqualified from the receipt of unemployment compensation benefits on the basis that she was discharged for gross misconduct, Accordingly, Respondent seeks an order affirming the decision of the Board of Review that the Petitioner was disqualified from the receipt of unemployment compensation benefits due to gross misconduct.

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CERTIFICATE OF SERVICE

I, Kimberly A. Levy, Counsel to WorkForce West Virginia, hereby certify that I have served a true copy of the foregoing Brief on Behalf of Respondent WorkForce West Virginia upon the following via File & Serve Xpress, on this the 17th day of January, 2023, to:

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