

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Joshua Heath,
Petitioner

v.

Docket No. DET-23-0502

Department of Unemployment Assistance,
Respondent

Appearance for Petitioner:

Joshua Heath, *pro se*

Appearance for Respondent:

Philip Ross, Esq.
Department of Unemployment Assistance
100 Cambridge Street, Suite 400
Boston, MA 02148

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner challenges a decision by the Department of Unemployment Assistance (DUA) to deny his application for unemployment benefits. The Petitioner, a former DUA review examiner, left this position because the DUA was planning on reinstating in-person hearings following a period of holding them remotely due to the COVID-19 pandemic. The Petitioner contends that because his office lacked security, the reintroduction of in-person hearings would pose a safety risk, because, among other reasons, he would be expected to break up fights that might arise among the parties. The Petitioner's claimed fear for his life and safety was unfounded and unreasonable. Accordingly, he has not met his burden of proving either (1) that he left his employment for good cause attributable to the DUA; or (2) that his reason for leaving was so urgent, compelling, and necessitous that his separation from employment should be deemed involuntary.

DECISION

Joshua Heath was a review examiner for the Department of Unemployment Assistance (“DUA”). He left this position because the DUA was planning on reinstating in-person hearings following a period of holding them remotely due to the COVID-19 pandemic. He thought that because his DUA office lacked security, holding in-person hearings would pose a risk to his safety. He appeals the DUA’s denial of his request for unemployment benefits following his separation from service. Because Mr. Heath is a former DUA employee, the DUA referred this matter to the Division of Administrative Law Appeals for a hearing.

An in-person hearing was held on November 28, 2023 at the Division of Administrative Law Appeals, in Malden, Massachusetts. I admitted Exhibits 1-12 into evidence. Mr. Heath testified. Eric Walsh, the Regional Hearings Manager for the DUA’s West/Central Regional Hearings Office, testified on behalf of the DUA. The parties presented closing arguments at the conclusion of the hearing, whereupon the record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

- A. The Review Examiner Position
1. During the COVID-19 pandemic, the DUA was tasked with administering various programs enacted in response to the pandemic, so multiple Review Examiner I (Limited Duration) positions were created. (Walsh Test.; Exhibit 9).
 2. The Review Examiner I (Limited Duration) position required the incumbent to

preside over administrative appeals arising from claims for unemployment benefits and to render decisions on those appeals. (Exhibit 9). The publicly available job description for this position stated that incumbents would “perform duties remotely while the Commonwealth continues to explore return to work options.” It also noted that incumbents would be required to “conduct hearings onsite in our Boston office periodically” and that “[t]ravel to other Regional Hearings Office locations to conduct hearings may be required.” (Exhibit 9).

3. The DUA had held in-person hearings in the past. Those were suspended as a result of the COVID-10 pandemic. (Walsh Test.).
4. At all times relevant to this appeal, Mr. Heath lived in Burlington, Vermont. The DUA office to which he was assigned at the time of his resignation was located in Springfield, Massachusetts. A commute from Burlington to Springfield, Massachusetts could take between three to four hours. (Heath Test.).
5. Mr. Heath had prior experience as a review examiner for the state of Florida. (Heath Test.). He had experience working as a review examiner in at least one other state as well. (Exhibit 2).
6. Mr. Heath began work as a Review Examiner I (Limited Duration) for DUA on July 12, 2021. (Exhibit 10).
7. Mr. Heath states that his new hire agreement, which was not in evidence at the hearing, provided that he would not have to report onsite -- except to report to Boston to respond to any disciplinary charges against him. (Heath Test.). Mr. Heath’s characterization of this document is inconsistent with the job description. I do not credit it.

8. During the entirety of his tenure as a limited duration review examiner and, later, as a permanent review examiner, Mr. Heath worked remotely. (Heath Test.).
9. In the summer of 2022, upper-level DUA management sent an e-mail to DUA staff stating that a hybrid work schedule was under consideration. Another e-mail referencing hybrid work was sent in late 2022. (Heath Test.).¹
10. On December 6, 2022, Mr. Heath was recommended for a permanent position in the West/Central Regional Hearings Office in Springfield, supervised by Mr. Walsh. (Exhibit 11; Walsh Test.). During his tenure as a temporary review examiner, it appears that Mr. Heath was assigned to that office. (Walsh Test.; Heath Test.).
11. That same day, in an e-mail to Mr. Walsh, Mr. Heath stated: "I do have questions around working in-person, but [a manager] explained to me the other day that it was still unclear what that might look like down the line. I'm flexible on my end, and expect that we can work something out as needed." (Exhibit 11).
12. Around that time, Mr. Walsh spoke with Mr. Heath via a Microsoft Teams videoconference. When discussing the DUA's hybrid work/return-to-the-office plans, Mr. Walsh said that "the word going around was that it would be once every two weeks," but he could not guarantee that would be the case. (Heath Test.).
13. Mr. Heath testified that while there had been some discussion about a hybrid return to the office, his management team had told him that he would never have to conduct in-

¹ The e-mails are not in evidence, and there was no testimony detailing their precise contents. Nor was there testimony specifying the names, titles, or positions of the individuals who sent these e-mails or whether all or some DUA employees received these e-mails. The lack of precision on such points is of little moment in this case. What matters is that they were evidently sent by individuals with the authority to make pronouncements on return-to-office matters and that Mr. Heath was among the recipients.

person hearings, even if he, himself, was in the office. (Heath Test.). I cannot credit Mr. Heath's statement. Definitive pronouncements by Mr. Heath's management team would have been gratuitous and inconsistent with the uncertain and tentative tenor of the discussions about return-to-office plans. (*See generally* Walsh Test; Heath Test.).²

14. Mr. Heath started as a permanent review examiner in January of 2023, assigned to the West/Central Regional Office in Springfield, Massachusetts. (Walsh Test.).

B. Security at the Springfield DUA Office

15. The Springfield DUA office is contained in a leased office space, which also houses a Mass Health office. The main door to the building opens up to a vestibule, which, in turn, leads to the DUA and MassHealth workspaces. The building does not have metal detectors. The Springfield DUA office does not have security personnel. (Walsh Test.).

16. The DUA office space is accessed via a lobby that contains a reception area behind a clear plastic partition. In the lobby, a locked door leads to the staff work areas. The DUA lobby also leads to the hearing room. The hearing room is not within the secured staff work areas. (Walsh Test.).

17. With one exception, the DUA space may be entered and exited only via the DUA lobby. The exception is a door in one of the DUA staff offices that leads to the MassHealth work space. (Walsh Test.).

18. There is only one way in and out of the hearing room. The review examiner sits close

² When asked whether he thought the limitations allegedly conveyed to him about non-contact with the parties "had to do with" the pandemic conditions at the time, Mr. Heath responded: "I don't know what it had to do with." (Heath Test.).

- to the exit. (Walsh Test.).
19. The hearing room has a discreet panic button. The panic button alerts to an alarm company, which in the event of an alarm would contact the Springfield Police Department. Mr. Walsh is not aware of any instance in which someone needed to activate the panic button. (Walsh Test.).
20. At least some DUA offices have a security presence. The Boston office has security personnel and metal detectors. (Heath Test.).
21. Mr. Walsh had previously been a DUA review examiner and had conducted approximately 1,000 hearings, most of which were in person. Although hearings can be contentious, on only one occasion did it seem to Mr. Walsh as though the parties might come to blows. (Walsh Test.).
22. There is no expectation that the review examiners will intervene in the event of physical violence. A review examiner who did not intervene in such circumstances would not be violating a policy and would face no punishment. (Walsh Test.).
23. According to Mr. Heath, who had spent six years working as a review examiner for the state of Florida, hearings in Florida were not conducted in person. The public did not have access to the building in which the review examiners worked, and on one occasion, when a claimant made his way into the elevator of that building, it was cause for concern and the building was “shut down.” (Heath Test.). I credit this testimony. Mr. Heath’s suggestion that Florida’s approach is based on security concerns is more problematic. (Heath Test.). It is a broad characterization, stated in a conclusory fashion. I do not credit it.
24. Commenting on his experience as a review examiner for other states, Mr. Heath

remarked that other states have “security in place to prevent in-person contact between review examiners and the parties, to protect the review examiners and office staff from irate and violent parties.” Describing the Springfield DUA office, Mr. Heath stated: “There were no security procedures or training in place.” (Exhibit 2). It is not clear whether Mr. Heath is suggesting that the parties are not physically present in the same location as the review examiners in these other states or just that there are security measures in place to prevent physical contact. Either way, Mr. Heath’s statement concerning other states’ security measures is too conclusory to be of probative value in this case.

C. Events Leading to Mr. Heath’s Separation from Employment

25. In March 2023, upper management sent an e-mail to DUA employees informing them that they would be scheduled to return to the office at least one day a week starting in May. (Heath Test.).
26. Around this time, Mr. Walsh sent his subordinates an e-mail asking them to rank order their preferences for an in-the-office day among the following options: Tuesday, Wednesday, and Thursday. Mr. Heath responded with an e-mail stating that he preferred Monday or Friday, which were not among the listed options. (Walsh Test.).
27. In another e-mail, Mr. Heath asked Mr. Walsh that his start time for his in-the-office day be 10:00 or 10:30 am, rather than 8:30 am, which was the official start time for the office. This request was denied. (Heath Test.; Walsh Test).³

³ At least some hearings began at 10:00 am or 10:30 am. (Walsh Test.). It appears that Mr. Heath may have conflated the hearing start times with the start of the workday. He seemed surprised by the suggestion that he might be expected to be on the clock prior to

28. As of April 2023, when and how DUA staff would return to the office on a hybrid basis had been a topic of conversation in the West/Central Regional Hearings Office staff meetings (conducted via teleconference) for months. (Walsh Test.).
29. During the regularly scheduled April staff meeting, the staff discussed the return-to-office plans. This included a discussion of the fact that in-person hearings would resume. (Heath Test.).
30. Mr. Heath raised concerns about the security and asked about the security set-up. (Mr. Heath had never stepped foot in the Springfield office.). Mr. Walsh explained that there was no security presence, but noted the existence of the panic button and the exit that led to the MassHealth office space. (Walsh Test.; Heath Test.).⁴
31. Mr. Heath asked about how they could prevent weapons from being brought into the office. Mr. Walsh explained that if the review examiner had concerns about a bag or other article, they could ask that it be left at DUA reception. If there was a concern in advance of the hearing, the review examiner could arrange for a telephonic hearing or involve the state police. (Walsh Test.).
32. Mr. Walsh made a statement to the effect that security was an issue of interest to the union, but it had not secured funding for increased security. (Walsh Test.).

the scheduled commencement of that day's hearings.

⁴ Mr. Heath testified that this April staff meeting was the first time he was told that in-person hearings would resume. It is possible that Mr. Heath had not been expressly told prior to the staff meeting that the parties would be physically present. It appears that the focus of the communications was on when and how often the *staff* would be returning to the office. Whether the *parties* would also be present appears to have occupied far less attention, perhaps because it was tacitly assumed that this would be the case. I credit Mr. Heath's testimony on this point to the extent he reports that he, himself, did not appreciate the fact that the parties would be physically present until the April staff meeting.

33. During the meeting, some of the staff members joked about security threats. One staff member stated that her method of dealing with intimidating people at the reception desk was to get a “big guy” from the staff to come over. There were also jokes about the best places to stand to avoid getting shot. (Heath Test.; Walsh Test.).
34. Mr. Heath likened the meeting to a stand-up comedy routine. The levity displayed in this meeting was not atypical for these end-of-the-month meetings. (Heath Test.).
35. There was some discussion about the alternate exit through Mass Heath, and one of the review examiners stated that she would like to know about the layout of the MassHeath space on the other side of the door. (Walsh Test.).
36. Mr. Heath did not raise his security concerns outside of the meeting, with the exception of the e-mail discussed in the next paragraph. Mr. Heath explained that he had “expected” Mr. Walsh to reach out to him after that meeting to discuss his concerns. (Heath Test.).
37. On May 5, 2023, Mr. Heath e-mailed Mr. Walsh and stated:

I took a week to give it consideration and I need to let you know that I’m not willing to participate in the in-person hearings, or be in an office where they are taking place. I understand that in-person hearings were held in the past, but it’s not something that I agreed to when I was hired, and I don’t believe that it’s safe. It’s a mistake on the Agency’s part not to recognize that the social climate has changed. It’s dangerous and reckless [*sic*] to place [Review Examiners] and office staff in a position where they will have to wing it if violence breaks out during a hearing.

If the Agency is willing to accommodate not having me in the office when in-person hearings start, I would be glad to continue holding hearings. Otherwise, please accept this as my two-week notice of resignation.

(Exhibit 12).

38. The DUA did not agree to Mr. Heath’s request to “continue to work remotely due to safety concerns.” (Exhibit 12).

39. Mr. Heath applied for unemployment benefits, claiming that he quit because he

“feared for my life and safety,” noting:

The employer required that we hold in-person hearings, without any security to screen the parties when they entered the building. I would have been in the same room with the parties, holding the hearings, and would be responsible for breaking up fights when they occurred.

He further stated: “The hearings were contentious, and the parties will sometimes fight or become agitated. There is no security, and I was expected to keep order.

Additionally, there is only one primary door in and out of the office.” (Exhibit 2).

40. On June 15, 2023, the DUA issued a notice of disqualification denying Mr. Heath’s application. The notice states:

You left work because you felt the required working conditions exposed you to a risk of injury or danger to health. It has not been established that such conditions were beyond the normal hazards of the job. Therefore, leaving work under these circumstances is determined to be voluntary and without good cause attributable to the employing unit. The claimant left his job due to anticipating conditions that would put him at physical risk.

(Exhibit 7).

41. On or about June 29, 2023, Mr. Heath file an appeal, noting “I don’t believe that the adjudicator considered the multiple ways the job requirements changed, including a newly required commute of four hours each way.” (Exhibit 8).

CONCLUSION AND ORDER

Mr. Heath appeals the denial of his application for unemployment benefits pursuant to G.L. c. 151A, § 74. In his application, Mr. Heath says he quit because he feared for his life and safety and does not reference the lengthy commute he would have experienced upon the resumption of a hybrid schedule. (Exhibit 2). In his notice of appeal, he mentions the commute, but does not expressly reference the safety concerns.

(Exhibit 8). At the hearing, Mr. Heath stated: “I was still very willing to report to the office. I just wasn’t willing to be in the office once other parties, the public, started showing up and there was no security.” (Heath Test.). He would have been willing to try to make the commute one or two days per week were it not for the security concerns arising from the presence of the parties. (*Id.*). Although the security issues were not expressly mentioned in the notice of appeal, the DUA has not identified, and I cannot discern, any prejudice arising from considering Mr. Heath’s security concerns as the basis for his decision.⁵

“The broader purpose” of Chapter 151A is to “provide temporary relief for those who are realistically compelled to leave work through no ‘fault’ of their own, whatever the source of the compulsion, personal or employer-initiated.” *Raytheon v. Dir. Of Division of Employment Security*, 364 Mass. 593 (1974). The statute is to “be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family.” G.L. c. 151A, § 74.

Notwithstanding statute’s liberality, Mr. Heath bears the burden of proof in this appeal. *Crane v. Comm’r of Dept. of Employment and Training*, 414 Mass. 658, 661 (1993) (citation omitted). Specifically, he must prove either (a) “that he left his employment for good cause attributable to” the DUA; or (b) that “his reason for leaving was of an urgent, compelling, and necessitous nature that would render his departure

⁵ Although Mr. Heath was understandably concerned about the commute, his testimony makes plain that he is not basing his resignation on the difficult commute. Accordingly, the remainder of this decision will consider his security concerns only. In any case, whatever his *hopes* may have been, in light of the job description, Mr. Heath could not have reasonably expected that the position would remain exclusively remote.

involuntary.” *Id.* Mr. Heath has not met his burden of proving either of these two bases for entitlement to benefits.

First, Mr. Heath has not met his burden of proving that his security concerns constituted good cause for quitting his position. In theory, threats to Mr. Heath’s life and safety could constitute good cause under the statute. After all, good cause includes intolerable working conditions that “may contribute to the physiological discomfort or demise of exposed employees.” *Sohler v. Dir. of Div. of Emp. Sec.*, 377 Mass. 785, 789 (1979). But Mr. Heath has not met his burden of proving that conducting in-person hearings would have threatened his life or safety. The fact that hearings can be contentious and that, in rare cases, the *parties* might come to blows, does not portend a serious risk of injury to the review examiners. The evidence is to the contrary. The review examiner’s seat was closest to the door, the review examiners were not expected or required to intervene if fisticuffs erupted among the parties, and the hearing room itself was equipped with a panic button.

Although Mr. Heath also expressed concern about firearms, Mr. Heath, on this record, has not met his burden of showing that the absence of metal detectors could be considered an “intolerable working condition.” *Sohler*, 377 Mass. at 789.⁶

Mr. Heath has likewise failed to meet his burden of proving that his safety concerns were reasonable and sufficiently compelling as to render his termination of service involuntary for purposes of establishing an entitlement to unemployment benefits. An employee’s reasonable belief that working conditions were detrimental to his health

⁶ The fact that the building housing the main DUA office has metal detectors does not mean that any DUA locations without metal detectors are therefore intolerably unsafe.

may constitute a sufficiently compelling reason to render his separation from employment involuntary. *Carney Hospital v. Dir. Of Div. of Employment Security*, 382 Mass. 691 (1981) (rescript). Moreover, there should not be “too narrow a view” taken of the “factors entering into the determination whether reasons are urgent, compelling and necessitous within the meaning of the statute.” *Norfolk Cnty. Ret. Sys. v. Dir. of Dep't of Lab. & Workforce Dev.*, 66 Mass. App. Ct. 759, 765 (2006) (citation and internal quotation marks omitted). But the belief must be reasonable. *Ducharme v. Comm'r of the Dep't of Unemployment and Training*, 49 Mass. App. Ct. 206, 209 (2000). Here, Mr. Heath's concerns that in-person hearings would pose a risk to life and limb were not reasonable.

First, had Mr. Heath employed even scant diligence in following up on his concerns by discussing them one-on-one with Mr. Walsh, he would have perhaps learned that he was *not* required to intervene if a hearing became contentious. He might have also learned that because the review examiner was seated closest to the exit, his belief that he would have to break up a fight “simply to get out the door,” (Heath Test.), was inaccurate. Nor did Mr. Heath make any discernable efforts to assay the actual prevalence of violence in DUA hearings (in the Springfield office or elsewhere).

Second, the grounds for his beliefs were shaky. Although he cites them frequently in his application and in his testimony, the comments made by his co-workers in the April meeting are a manifestly unreasonable basis for his security concerns. The remark about dealing with security threats by grabbing a “big guy” to deal with them was not a sound basis for Mr. Heath (a self-described “big guy”) to conclude that he would be tasked with the responsibility for breaking up fights. This comment and the musings

about the best places to avoid getting shot were obviously facetious, and Mr. Heath very nearly acknowledges them as such. But even if these comments were gallows humor masking real concerns, given the informal tenor of the meeting and Mr. Heath's own assessment that some participants were discussing serious topics in a frivolous and unprofessional manner, no reasonable person would rely upon them in making a sober assessment of safety risks.

Mr. Heath's prior experience as a review examiner is perhaps a less shaky foundation for his concerns. Florida, and perhaps other states, do not conduct in-person hearings. But, as indicated above, Mr. Heath's comments on the subject are brief and conclusory. I cannot assay the reasonableness of the conclusions Mr. Heath may have drawn from his knowledge or experience vis-à-vis these other states. It is not *impossible* that Massachusetts is unusually reckless or heedless of risks to the safety of its review examiners, but the record does not permit me to conclude that such a belief would be reasonable. To put it another way, conducting hearings remotely is probably *safer*, but that does not mean that conducting in-person hearings is *ipso facto* unsafe, let alone that in-person hearings are so perilous that someone, armed with the knowledge of how other states handle things, could reasonably believe that they had no realistic choice but to quit.

For the foregoing reasons, the DUA's notice of disqualification is affirmed.

SO ORDERED.
DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: January 29, 2024