COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Lisa Hresko,
Petitioner

v. Docket No. DET-23-0336

Department of Unemployment Assistance,
Respondent

Appearance for Petitioner:

Lisa Hresko, *pro se*

Appearance for Respondent:

Philip Ross, Esq.

Administrative Magistrate:

Melinda E. Troy

Summary of Decision

Former employee of the Department of Unemployment Assistance is not eligible for unemployment because she did not prove that she separated from service for "good cause" attributable to DUA or because she had an urgent, compelling and necessitous reason to resign her position. She was advised when she was hired that her position was a remote position but could change to a hybrid position and there was no change in personal circumstances during her tenure that would have required her to resign. She also did not take sufficient steps to preserve her employment.

DECISION

Lisa Hresko, a former employee of the Department of Unemployment Assistance ("the Department" or "DUA"), appeals the Department's May 24, 2023 denial of her request for unemployment benefits following her separation from service. Because Ms. Hresko is a former employee of the Department, it referred the matter to the Division of Administrative Law Appeals for a hearing.

At the request of the parties, I held a hearing via the Webex platform on August 10, 2023 which I digitally recorded. I admitted sixteen exhibits offered by the Department. Ms. Hresko testified on her own behalf but offered no additional exhibits. One witness testified for the Department: Jacqueline Santos-Silva, a DUA Program Coordinator III whose responsibilities include overseeing Ms. Hresko and other staff in Ms. Hresko's position. The record closed at the conclusion of the hearing.

Findings of Fact

Based on the testimony and exhibits presented at the hearing and reasonable inferences drawn from them, I make the following findings of fact:

1. Lisa Hresko began her employment with the DUA on May 17, 2021. She was employed as a "Job Services Representative I (Limited Duration)," also known as an adjuster.
2. Ms. Hresko resides in Belchertown, MA and has resided there for all relevant times during this appeal.
3. Ms. Hresko's position required her to determine an applicant's eligibility for unemployment benefits on disputed claims - gathering the necessary information, issuing

notices of determination and performing related work. Exhibit 10. Ms. Hresko described her duties as providing customer service, such as helping claimants open new claims and assisting them with related issues. Exhibit 2.

4. DUA offered employment to Ms. Hresko via letter dated April 29, 2021. The offer letter stated in pertinent part, "Currently your position is fully remote. However, your position could be moved to a physical office which may/may not be public facing at a later date." Exhibit 11.
5. As part of her training, Ms. Hresko attended an onboarding session at DUA's Boston office. Testimony, Hresko, Testimony, Santos-Silva; Exhibit 11.
6. As part of the onboarding process, DUA presented new employees with a PowerPoint presentation that advised the employees that the positions for which they had been hired were at that time fully remote, with a chance to return to an office location at some future point. Testimony, Santos-Silva.
7. The PowerPoint included a slide entitled "Human Resources FAQs." One question on the slide asked, "Where am I working?" and the answer was, "Currently, you will be working remotely. A hybrid work schedule will be implemented in near [sic] the future." Exhibit 12.
8. After attending that onboarding session, Ms. Hresko began working remotely for DUA from her home in Belchertown.
9. Even when Ms. Hresko was working at home, DUA considered her position to be hybrid. Exhibit 7.

10. Belchertown is approximately 97 miles from Boston. Ms. Hresko estimates that the commute between Boston and Belchertown would take approximately two hours each way. Testimony, Hresko; Exhibit 4.

11. When she started, Ms. Hresko did not know the location of the DUA offices where she might have been assigned to when her position became hybrid. Testimony, Hresko. She recalls asking about hybrid work starting about a year after she began working at DUA. Id. She was informed that employees would eventually transition to a hybrid work schedule but she was not initially provided with a date on which that transition might occur. Testimony, Hresko.

12. In August 2021, the Commonwealth's Human Resources Division ("HRD") issued its "Telework Policy for Executive Department Agencies", which provided in part,

> It is the policy of the Executive Department for Agencies to promote a hybrid work model consisting of a combination of telework and in-office work…Agencies will implement telework practices that align the widespread use of telework in conjunction with in-office work for collaboration and other tasks best suited for in-person interaction as determined by the Agency. Exhibit 13.

13. In or around September 2022, Ms. Hresko began reporting to Ms. Santos-Silva at DUA. Testimony, Santos-Silva. She had previously had other supervisors. Testimony, Hresko.

14. On September 19, 2022, Ms. Hresko signed and returned a copy of the DUA's telework acknowledgment, which designated a place of work for her as being the Boston office. Exhibit 16.

15. The acknowledgment provided that:

> Changes in…telework assignments may be made at the Agency's discretion… The Teleworker may be required to report to their officially-designated work location or to another work location specified by the Agency. Advance notice of such requirements will be given to the extent possible and in accordance with the Telework Policy. Id.

16. In or around April 2023, DUA informed its affected employees that it would be transitioning to a hybrid work model and employees would be expected to report to their designated office one day per week at first and that it would be likely that they would be expected to report two days per week beginning sometime in the fall. Testimony, Santos-Silva.

17. For the position that Ms. Hresko held, the possible office locations at which employees could work were either in Boston or Brockton, as other offices closed before the pandemic. DUA does not have an office in Springfield where Ms. Hresko could work. Testimony, Santos-Silva.

18. At some point after the announcement of the initiation of a hybrid work schedule, Ms. Santos-Silva spoke with Ms. Hresko, who inquired what she could do about the situation. Testimony, Santos-Silva.

19. Ms. Hresko was concerned about the length of the commute, but she enjoyed her job and would have been willing to work hybrid in an office closer to her home, such as in Springfield. Testimony, Hresko.

20. Ms. Santos-Silva referred Ms. Hresko to DUA's Office of Diversity, specifically the Director of that office, Dennis Johnson. Testimony, Santos-Silva.

21. Ms. Hresko testified[1] that she deals with various health issues, including arthritis, fibromyalgia, and anxiety. She did not obtain a note from her physician about these conditions and never requested any kind of reasonable accommodation from DUA for any of these conditions while she was employed there. Testimony, Hresko. She did not mention these conditions to Mr. Johnson when she spoke with him. Id. She did not identify as a person with a disability when she applied for unemployment benefits. Exhibit 1.
22. DUA had made accommodations for certain employees who had requested them when DUA determined that the requested accommodations were appropriate. Testimony, Santos-Silva.
23. If it were not for the long commute to Boston that hybrid work would have required, Ms. Hresko would have continued working at DUA. Testimony, Hresko.
24. Ms. Hresko's personal circumstances were the same during her entire tenure with DUA, and there were no significant changes to them while she was employed there. Testimony, Hresko.
25. Ms. Hresko voluntarily resigned her position with DUA on April 28, 2023, to be effective May 12, 2023. For the last few days of her employment, she utilized accrued time and was not working. Exhibit 7.
26. Ms. Hresko sought unemployment benefits following her resignation.

[1] I find that Ms. Hresko did not prove that she had been diagnosed with any medical condition because there are no medical records or other evidence to support her assertion.

27. DUA sought additional information about the application from Ms. Hresko and her employing unit. Exhibit 1; Exhibits 3-5.

28. Ms. Hresko responded that she had originally been working in a remote role and her job "changed" in that she was told she would need to work in the office one day per week. She quit because the "commute was too difficult". Exhibit 2. Ms. Hresko also stated that she believed that this would be "beyond reasonable commuting distance" and her departure "should be determined to be for good cause attributable to my employing unit." Id.

29. DUA issued a "Notice of Disqualification" on May 24, 2023 and Ms. Hresko timely appealed that determination. Exhibits 8 and 9.

Discussion

An employee may not normally obtain unemployment benefits if she "left work . . . voluntarily unless the employee establishes by substantial and credible evidence that [s]he had good cause for leaving attributable to the employing unit or its agent." G.L. c. 151A, § 25(e). Ms. Hresko didn't focus her oral argument on whether she resigned for "good cause" attributable to DUA, but notes that issue briefly in the application materials she submitted. An applicant can show "good cause" by demonstrating that work exposed the applicant to intolerable conditions, which have been described as "factors which may contribute to the physiological discomfort or demise of exposed employees", but do not include "general and subjective dissatisfaction with working conditions." Sohler v. Director of the Div. of Employment Security, 377 Mass. 785, 789

(1979). Ms. Hresko made no showing that she left DUA's employment for good cause attributable to it.

The evidence in the record demonstrates that Ms. Hresko resigned her employment because she was unhappy that the position would require her to periodically commute a significant distance from her home in Belchertown. She stressed in her application and argument that her position had "changed" and therefore DUA's actions should entitle her to benefits. Ms. Hresko's argument is unavailing. In the offer letter, DUA clearly stated that the position was "currently fully remote" but that it could be moved to a physical location in the future. The same information is repeated in DUA's onboarding slides. The August 2021 "Telework Policy for Executive Department Agencies" states, in relevant part,

> It is the policy of the Executive Department for Agencies to promote a hybrid work model consisting of a combination of telework and in-office work…Agencies will implement telework practices that align the widespread use of telework in conjunction with in-office work for collaboration and other tasks best suited for in-person interaction as determined by the Agency.

The telework acknowledgment form that Ms. Hresko signed on September 19, 2022 includes a statement that DUA may require its workers to report to a physical location, with appropriate notice given, and noted that the office location was Boston. In this instance, although it permitted Ms. Hresko to work remotely for a period of time, DUA was always clear that her position could and would transition to a hybrid position when that became possible and that the decision to do so would be at DUA's discretion. Ms. Hresko cannot establish that she left employment at DUA for good cause attributable to DUA as her employing entity and is not entitled to benefits on that basis.

However, this is not the only way in which Ms. Hresko can demonstrate that she is entitled to benefits. The statute provides, in pertinent part,

> An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary. G.L. c. 151A, § 25(e).

Id. It is on this latter ground that Ms. Hresko focused the argument she made at the hearing that she is entitled to unemployment benefits. She maintains that she had an "urgent, compelling and necessitous" reason to leave her remote position at DUA because, while she was aware that the position might at some point transition to a hybrid position, she was not advised where those positions might be located and once she was advised, she found the length of the commute that would be required would be untenable.

Unlike some other states, Massachusetts does not require that an employee's reasons for leaving employment be work-related. Instead, it has recognized a "wide variety of personal circumstances" as compelling reasons to leave employment. Reep v. Commissioner of Dept. of Unemployment and Training, 412 Mass. 845, 847-848 (1992) (woman left her job when her long-term partner, to whom she was not married, relocated). See also Norfolk County Retirement System v. Director of the Dept. of Labor and Workforce Development, 66 Mass. App. Ct. 759, 769-770 (1992) (availability of childcare a relevant factor in determining eligibility for benefits.)

Whether a person left work for urgent, compelling and necessitous reasons must be evaluated on a case-by-case basis. Id. at 768; see e.g. Uvello v. Director of the Div. of Employment Security, 396 Mass. 812 (1986) (employee's refusal to accept a work shift ending at 6:00 p.m. because she needed to make dinner for adult family member was not a compelling

reason). The employee seeking benefits bears the burden of proving she had an urgent, compelling and necessitous reason for leaving employment. Crane v. Commissioner of the Department of Employment & Training, 414 Mass. 658, 661 (1993). The evaluation of the employee's reasons must be made in light of the general purposes of the unemployment statute. As described by the Appeals Court:

> The unemployment compensation statute in general, and the element of voluntariness included in G.L. c. 151A, § 25(e)(1), in particular, serve the purpose of "avoiding temporary disqualification for persons who for compelling personal reasons are forced to give up an otherwise available position.... The grant of benefits to unemployed persons is not premised on the concept of employer fault." Raytheon Co. v. Director of Div. of Employment Security, 364 Mass. 593, 596, 307 N.E.2d 330 (1974). "The broader purpose of the law 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." Ibid. The "dominant policy of the statute ... is simply to allow benefits to an employee who is unwillingly out of work and without current earnings and unable to find work appropriate to his employment capacity." Director of the Div. of Employment Security v. Fitzgerald, 382 Mass. 159, 164, 414 N.E.2d 608 (1980). The statute itself provides that it 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, inserted by St.1949, c. 290. Reep v. Commissioner of the Dept. of Employment & Training, 412 Mass. 845, 847, 593 N.E.2d 1297 (1992).

Norfolk County, 66 Mass. App. Ct. at 764. A consequence of this approach, when it comes to the evaluating whether an employee's reason for leaving employment were sufficiently compelling, is that:

> 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." Director of the Div. of Employment Security v. Fingerman, 378 Mass. at 464, 392 N.E.2d 846. Benefits are not to be denied to those "who can prove they acted reasonably, based on pressing circumstances, in leaving employment." Reep v. Commissioner of the Dept. of Employment & Training, supra at 851, 593 N.E.2d 1297.

66 Mass. App. Ct. at 766.

Even with these principles in mind, I find that Ms. Hresko has not met her burden to show that she was required to leave her employment at DUA for an "urgent, compelling and necessitous reason" as is required for her to be entitled to benefits. First, Ms. Hresko's personal circumstances were unchanged from May 2021 when she accepted the position to May 2023 when she resigned, which she candidly admitted during her testimony. She did not relocate or articulate a personal reason for resigning beyond her dissatisfaction with the length of the periodic commute that she would have had. She also did not assert that any of her claimed illnesses had worsened to the extent they would impact her ability to commute. As such, her claim is different than most successful similar claims because typically the successful applicant is able to show that some new life circumstance has arisen since the inception of his or her employment that made it impossible for the applicant to continue it and it is this circumstance that is found to be the "urgent, compelling and necessitous reason" for their separation from service. Reep, *supra.*; Norfolk County, *supra.* Ms. Hresko made no showing that a new reason developed in or around April or May 2023 that required her to leave her position at DUA.

Nevertheless, her claim must still be further evaluated. When evaluating an employee's reasons for resigning, the relevant inquiry is whether the employee *reasonably* believed that her reasons for resigning her employment were "urgent, compelling and necessitous." Ms. Hresko's claim does not meet that standard. Ms. Hresko was informed in DUA's offer letter, as well as at the time of her orientation and onboarding and on multiple occasions during her employment, that her position was initially a remote position but it would become a hybrid position at some point in the future. Her superiors at DUA never represented to her anything to the contrary.

When DUA made further inquiries to Ms. Hresko to determine her eligibility for benefits, Ms. Hresko responded that her position had "changed" to a hybrid position. She modified her argument at the hearing and did not meaningfully dispute that she knew her position was hybrid. Instead, Ms. Hresko now argues that she was never told that the two offices to which she might be assigned were either in Boston or Brockton, which she appears to suggest misled her in some way. However, she at all times knew that she would be expected to work a hybrid schedule when DUA transitioned to that work model. She was periodically advised during her tenure that her position would become a hybrid position rather than remain a fully remote position. She even signed an acknowledgment in September 2022 that informed her of the location of the two DUA offices to which she might be assigned. Consequently, even if Ms. Hresko believed that the transition to hybrid work physically located in Boston or Brockton was a an "urgent, compelling and necessitous" reason for her to resign, under these circumstances, her belief was not a reasonable one. Therefore, she is not entitled to benefits on this basis.

Ms. Hresko suggested that her ability to travel to Boston or Brockton to work would have been impacted by her physical and emotional conditions and testified that in her opinion, long commutes would be difficult for her. In certain circumstances, an employee who terminates employment because she reasonably believes that a work-related health condition requires her to do so is entitled to unemployment benefits. See, e.g., Carney Hospital v. Director of the Div. of Employment Security, 382 Mass. 691 (1981) (finding that the record contained substantial evidence employee was suffering a recurrent, severe skin infection, that she was "not unreasonable" in her belief that the infection was caused by her work environment, and that she

had attempted to secure a transfer, so she was entitled to benefits.); Director of the Div. of Employment Security v. Fitzgerald, 382 Mass. 159, 160 (1980) (pregnant employee who provided medical documentation that she was unable to safely perform her job while pregnant entitled to benefits.) However, in each of the cases, there was substantial evidence in the record establishing that the individual had a diagnosed medical condition that negatively impacted her ability to work. In contrast, in this case, Ms. Hresko has not proven that she has been diagnosed with any of the conditions she referenced in her testimony (which included anxiety, arthritis and fibromyalgia). She also has not proven that if she had been so diagnosed, any such condition(s) would have negatively impacted her ability to commute as she would have been required to do in her hybrid position. While she was employed, she never provided DUA with any medical documentation to support any need for accommodation based on any physical or emotional condition and she never requested any such accommodation. She provided no medical records or other records to DALA to support any claim that she had been diagnosed with the condition(s) that she claims to have, or whether or how those may have impacted her ability to work in this hybrid role. She therefore failed to demonstrate that any physical or emotional condition was the "urgent, compelling and necessitous" reason that she left DUA because she provided no evidence to support that contention. Fergione v. Director of the Div. of Employment Security, 396 Mass. 281, 285-286 (1985) (reviewing board not obliged to consider applicant's medical problems, because there was no substantial evidence that she left work due to physical ailments that she reasonably believed were so urgent, compelling, and necessitous as to require her to resign.) See also Ferreira v. Department of Unemployment Assistance, 14P-423 (Memorandum of Decision

and Order published pursuant to Rule 1:28 June 9, 2015). (Claimant not entitled to benefits when primary care physician did not instruct him to leave his job for health reasons.)

Finally, in order to qualify for benefits, a claimant who resigns must also show that she has "taken such reasonable means to preserve [her] employment" so as to indicate her "desire and willingness to continue" it, or that doing so would have been futile. Norfolk County, 66 Mass. App. Ct. at 766; Kowalski v. Director of the Div. of Employment Security, 391 Mass. 1005, 1006 (1984) ("...the claimant has the burden of proving a reasonable attempt to correct those conditions of employment which he now claims justified his leaving his employment, unless he can show that such an attempt would have been futile.") Despite Ms. Hresko's testimony that she would have liked to continue to work as noted above, I find that she left her position without trying to preserve her employment. Before resigning, she did not attempt to work the hybrid schedule, which would have required only a once-weekly commute at the outset, to determine if it were feasible or determine what accommodations she might need to request. Although she suggested during her testimony that she may not be able to tolerate the commute due to her physical and emotional conditions, she drove to Boston for her DUA onboarding, and she did not identify as a person with a disability on her application for unemployment benefits or provide DUA with any medical documentation or requests for accommodation in order to try to continue to work. She did not request a leave from her position or a modification of her schedule before resigning. As such, I find that Ms. Hresko did not undertake reasonable efforts to preserve her employment. She also did not show that any effort to do so would have been futile, as Ms. Santos-Silva testified that other DUA employees had been granted accommodations when DUA

determined that their requests were adequately supported.

For the foregoing reasons, Ms. Hresko has not proven that she resigned her employment for "good cause" attributable to DUA or for any "urgent, compelling and necessitous" reason that arose as a result of her personal circumstances. She also did not prove that she undertook reasonable efforts to preserve her employment before resigning or that any effort to do so would have been futile. The DUA's decision to deny her request for unemployment benefits is therefore affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy
Administrative Magistrate

Dated: October 2, 2023