BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

LEILA A CHRISTENSEN	:	
	:	HEARING NUMBER: 09B-UI-11820
Claimant,	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
ALS CORNER OIL CO	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Leila Christensen (Claimant) was employed by Al's Corner Oil (Employer) from January 9, 2008 until July 17, 2009. (Tran at p. 2; p. 4; p. 12-13). She was hired as a regular employee and became store manager on January 9, 2009. (Tran at p. 3; p. 12-13). The Claimant had been absent from work for about two and one-half weeks due to medical problems beginning June 25, 2009. (Tran at p. 3). She provided the employer with a release on July 15, 2009, which did not impose any restrictions, allowing her to return to work effective July 20, 2009. (Tran at p. 4; p. 7-8; p. 17-18).

Around the day the Claimant provided the note to the employer, Supervisor Teresa Augustus talked to her about stepping down as store manager and becoming a regular employee. (Tran at p. 3; p. 4; p. 18).

The Employer had not been satisfied with the progress the Claimant was making in learning and performing

her managerial duties. (Tran at p. 4-5; p. 6; p. 9; p. 15). With the extended medical leave, the Employer was concerned about the stress of the job being a contributing factor and asked the Claimant to step down. (Tran at p. 5-7; p. 9). The Claimant asked for more training in the manager's duties but this was declined, as Ms. Augustus had been continuing her training for the past seven months. (Tran at p. 11-12).

The Claimant's choice was to step down to a regular employee or be discharged. (Tran at p. 3, ll. 6-9; p. 13). She did not have the choice of staying in her management job. (Tran at p. 3, ll. 6-9; p. 6 ll. 18-20; p. 13-14; p. 15; p. 16-17; p. 21-22). As a result the Claimant quit rather than accept the demotion. (Tran at p. 13; p. 15). We do not find credible the Employer's testimony that the Claimant had the option of staying in the management job. We also are dubious of the Claimant's testimony that she was specifically told she would be fired. We do agree, however, that the implication was quite clear, especially the threat to bring in a team member whose job entails attending terminations. When weighing the evidence we find that the Employer did not intend to give the Claimant the option of staying as a manager, and that this was clearly communicated to the Claimant although not stated in so many words.

A regular employee made $8.75 per hour. (Tran at p. 3). As a manager the Claimant received a weekly salary and a commission on sales. (Tran at p. 11). The Claimant made over $2,000 for the pay period ending June 22. (Tran at p. 11-12; p. 17). This represented pay for June 8 through June 14. (Tran at p. 17). To move to a regular employee the Claimant had to take a substantial cut in pay. (Tran at p. 12).

REASONING AND CONCLUSIONS OF LAW:

Background: Iowa Code Section 96.5(1) states:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(1) provides:

> The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifying issue. This would include any change that would jeopardize the worker's safety, health, or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine of the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988); O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Substantial Change: In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. The Court in Dehmel cited cases from other jurisdictions that had held wage reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. We are aided in resolving this issue by the observation in Dehmel that the determination is subject to no "talismatic percentage figure" but must be judged in consideration of the individual case. Dehmel at 703. All that is required is that a reasonable person would have quit under the circumstances. See O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

Here the first issue was whether the Employer was even imposing a change on the Claimant. The Administrative Law Judge found that the Claimant assumed the change was mandatory, and that the Claimant failed to show a factual basis for her assumption. We find that a reasonable person in the Claimant's position would believe she was facing the choice of taking the demotion or losing her job. In reaching this conclusion we, first of all, look to the nature of the request. If the Employer had said to the Claimant "do you want to take a pay cut, or just keep doing what you are doing" what else would the response have been but "no pay cut?" It just doesn't make sense that this would have been the options presented. Moreover, the Employer made clear that no further training was available for the manager job. When coupled with the Employer's clearly expressed belief that the Claimant couldn't do the manager job the most reasonable conclusion was that the Claimant did not have the option of staying in management. After all, why would the Employer asked her to step down, and give as an option to stay in management yet deny any training? The denial of training is clearly the Employer saying "we don't think you can do the management job and we don't think you can be trained to do it." This being the case a reasonable person would take the demotion offer as an alternative to being fired – not as an alternative to staying in a job the Employer thought the Claimant had no chance of succeeding in. We hold that the Employer gave the Claimant the choice of accepting the demotion or look for other work.

This choice given the Claimant would have required her to accept substantially less pay and responsibility or be terminated. Her wage cut was over a 50% reduction, which is far in excess of the range of the cuts cited in Dehmel. Also the Claimant's loss of her management duties is significant. She would lose not only her management duties but her career prospects were significantly affected. This is a drastic change in responsibility and constitutes a substantial change in the contract of hire. See Van Meter Industrial v. Mason City Human Rights Commission, 675 N.W.2d 503 (Iowa 2004)(finding constructive discharge where complainant was placed in a position with "no reasonable likelihood of advancement").

DECISION:

The administrative law judge's decision dated September 2, 2009 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit for good cause attributable to the employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

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John A. Peno

_____
Elizabeth L. Seiser

RRA/fnv

DISSENTING OPINION OF MONIQUE KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

RRA/fnv