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

MEGHNA AMEEN	:	
	:	**HEARING NUMBER:** 10B-UI-18483
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
DILLARD'S INC	:	
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: 96.5-1A

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 Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Meghna Ameen, was employed by Dillard's, Inc. in October of 2006 and rehired beginning August 31, 2007 through October 2, 2009 (Tr. 2-3), initially, as a part-time office associate. (Tr. 2-3) The claimant requested more hours (Tr. 8) and a raise since she hadn't gotten one in the years that she'd work there. (Tr. 6-7) She made it clear that she wanted to continue working in the Customer Service area. (Tr. 6-7) as she enjoyed the type of work she did, i.e., "…paperwork, gift-wrapping, sales, sending the merchandise to the customer and solving the customer's…problem…" (Tr. 5) Ms. Ameen eventually became full-time in May of 2009. (Tr. 12, 16)

On October 2, 2009, the employer informed her that she was being reassigned as a sales associate in the kids' shoe department starting October 4, 2009. (Tr. 3, 9, 13) The claimant told the employer she did not want to move and reiterated that she wanted to stay in customer service. (Tr. 3, 5, 7-8, 9) Working as a sales associate meant that she had certain goals that had to be met, or she would get a pay cut; and if she failed to reach her goals altogether, she could get terminated. (Tr. 5, 15) Ms. Ameen believed being a sales associate involved very different work and was too stressful. (Tr. 5) The employer gave her 24 hours to make a decision. The claimant decided to quit rather than be forced into the new position.

REASONING AND CONCLUSIONS OF LAW:

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). The touchstone in deciding whether a delay in resigning will disqualify the Claimant from benefits is whether his "conduct indicates he accepted the changed in his contract of hire." Olson at 868.

Here, there is no dispute that the claimant was originally hired as an office associate working in the customer service area where she worked for the majority of her employment with Dillard's. Although the employer argues that as a sales associate Ms. Ameen would work the same hours with the potential for more pay, the claimant rejected that assertion with what we consider to be a cogent argument. As a sales associate, Ms. Ameen would be subject to maintaining certain goals, which if not met to the employer's satisfaction, could negatively impact her pay as well as lead to termination. This new position was a goal-oriented sales job that came with no wage guarantee. In contrast, her current position as office associate, had no such goal requirements; and the job description entailed a broader spectrum of responsibilities in her daily work with a reasonable certainty and consistency of wages.

The record establishes that she told the employer, upfront, that she did not want the new position. (Tr. 3, 5, 7-8, 9) The employer was unrelenting in their decision to 'reassign' (Tr. 13), and it was clear that if she didn't willingly accept the change within 24 hours, she would be forced to work or quit. Ms. Ameen reasonably believed that she had no choice in the matter, and quit rather than accept what we see would have been a substantial change in her job duties and pay conditions. Based on this record, we conclude that the claimant satisfied her burden of proving that the quit was with good cause attributable to the employer.

DECISION:

The administrative law judge's decision dated January 22, 2010 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, she is allowed benefits provided she is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. 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

AMG/fnv