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

JUSTIN CHRYSTAL Claimant, and TM1 STOP LLC Employer.	:	HEARING NUMBER: 09B-UI-06482 EMPLOYMENT APPEAL BOARD DECISION

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 Employment Appeal Board AFFIRMS as to the timeliness issue, and **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Justin Chrystal, worked for TM1 Stop, LLC from February 5, 2007 through March 2, 2009 as a full-time reporting and analysis employee. (Tr. 4, 9) The claimant's original hours were from 8:00 a.m. – 5:30 p.m. until approximately February of 2008. (Tr. 4, 6) Mr. Chrystal was originally hired in a salary exempt sales position (Tr. 10) from which he was moved to the reporting agent and business analyst position some time in June. (Tr. 11) As a salaried employee, the employer paid Mr. Chrystal by the hour based on a 40-hour week. Although the claimant was not required to work overtime, there may have been repercussions if he didn't complete a project. (Tr. 19, 22) Upon completion of a project, the claimant was to receive commission (also referred to as compensation). (Tr. 17) If the claimant did not complete a project when due usually by the end of the month, he received no

compensation and possibly could be issued a corrective action. (Tr. 17, 19-20) There was no discussion about his compensation in light of the increasing amount of overtime he had to work.

By December 2008, the claimant's workload increased (Tr. 12) and his hours were changed to early morning (5:00 p.m.-3:00 a.m.) and changed, again, from about noon until 10:00 p.m. (Tr.6, 9, 6) Mr. Chrystal complained to his supervisor about not receiving additional compensation for the overtime (55-70 hours/weekly) that he was required to work to keep up with his heavy workload. (Tr. 8, 13, 22, 26) Additionally, he was having difficulty meeting his deadlines given the increased workload, which involved new clients that required additional attention. (Tr. 6, 12, 18, 26)

During the last couple of months (January and February of 2009), Mr. Chrystal regularly worked approximately 55-70 hours a week. (Tr. 8) He complained frequently to his supervisor, Camron Gadford, about not being paid for the amount of work he performed. (Tr. 8, 11, 13, 22) Mr. Gadford told him everybody had the same problem and that everything would get better. (Tr. 14) Mr. Chrystal also spoke with Heather Hoyt (Human Resources Manager- Tr. 2-3) who told him that as a salaried employee, he didn't get overtime; however, she indicated that she would look into the matter. Ms. Hoyt never got back to the claimant. (Tr. 13)

Finally, at approximately 1:13 a.m. on March 1, 2009, Mr. Chrystal e-mailed the employer indicating that he resigned effective immediately. (Tr. 5) He quit because he wasn't receiving any compensation for the overtime he was required to put in. (Tr. 10, 16, 22)

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.

The claimant provided unrefuted testimony that his hours increased from a 40-hour workweek to 55-70/hours weekly. Although he initially accepted the change in positions, there was never any discussion about the change in his compensation given the increased workload he started to experience. Mr. Chrystal's numerous complaints to key personnel about his lack of compensation essentially fell on deaf ears. While Mr. Gadford argued that as a salaried employee, the claimant wasn't entitled to compensation for overtime (Tr. 17), Mr. Gadford also acknowledged that the claimant did have an increase in clients that significantly impacted his ability to complete projects by their deadlines which could have lead to compensation.

The employer's argument that no one was required to work over 40 hours a week is somewhat gratuitous, as the claimant's heavy workload routinely necessitated many hours of overtime as acknowledged by Mr. Gadford. The claimant was constantly being placed in a catch-22. Even though he wasn't forced to work beyond an 8-hour day, he could be sanctioned if he didn't complete a project. On the other hand, he wasn't receiving compensation anyway when he worked overtime, nor when he worked and failed to meet a deadline. Thus, Mr. Chrystal was effectively, as a matter of course, precluded from his being paid for the services he rendered. This inherently unfair predicament was not a part of his original contract of hire. (Tr. 11) When he obtained no relief from his complaints to Mr. Gadford and Ms. Hoyt who failed to get back to him, he felt he could no longer tolerate his employment situation without being paid. His decision to quit was justified as it was within the employer's authority to rectify the matter for which he put them on notice, and yet they chose to do nothing with regard to paying him compensation for his overtime. For this reason, we conclude that the claimant satisfied his burden of proving that his quit was due to a substantial change in his contract of hire.

DECISION:

The administrative law judge's decision dated June 8, 2009 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, he is allowed benefits provided he is otherwise eligible.

_____
John A. Peno

_____
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.

_____
Monique F. Kuester

AMG/fnv