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

STEVEN H SPEIGHT	:	
	:	**HEARING NUMBER:** 15B-UI-08785
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
MELISSA ANDERSON	:	
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: 96.3-7, 24.10

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. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Steven H. Speight, worked for Mark Birdnow, Inc. from June 23, 2014 through March 31, 2015 as a full-time general manager and sales manager at the Jessup store, which had only one franchise (Chevrolet). (9:45-10:28; 14:18-14:25; 17:36-17:38; 22:57-23:09) A general manager is 'like the figure head of the dealership' whose primary responsibilities include managing finance, service and parts. (17:10-17:30) He oversaw in excess of $2,000,000 in inventory. (39:03)

On March 31, 2015, Mark Birdnow (the owner) held a meeting with Mr. Speight in which the Employer informed Speight that he was going in a different direction and intended to place the Claimant in a sales position at the Oelwein location under that general manager's supervision. (12:30-13:53; 15:55-16:18; 16:38-16:45; 18:32; 25:44-26:00) No one else was present at this meeting. (7:12-7:17; 39:42-40:14; 42) At the Oelwein location, there were several franchises and just as many sales managers. When Mr. Speight

asked about the pay as a sales manager, the Employer told him he wouldn't be earning the same as he was as a general manager. (18:38-18:45) The Claimant was not satisfied with this new arrangement, as he was not able to accept a position at a lower pay so he quit his employment. (20:31-20:34; 20:50; 22:09-22:32; 23:19-23:20)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. 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 change in his contract of hire." Olson at 868.

Both parties provided contradicting versions of the Claimant's separation. However, the findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. We would also note that the Employer's case consisted primarily of hearsay testimony, which we acknowledge is generally admissible in administrative proceedings and *may* constitute substantial evidence to uphold a decision of an administrative agency (Gaskey v. Iowa Dept. of Transportation, 537 N.W.2d 695 (Iowa 1995).

In the instant case, however, Mr. Speight starts off vehemently denying that his March 31st meeting with the Employer involved anyone else, but Mark Birdnow, who was not at the hearing (42:35-42:44), and who was the only person who could provide firsthand testimony to refute the Claimant's testimony. We would also note that according to the Employer's testimony, Mark Birdnow who appeared at the Fact-finding Interview, was now out of state and unable to make use of a cell phone for the hearing. According to Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976), where, without satisfactory explanation, relevant evidence within control of a party whose interests would naturally call for its production is not produced, it may be inferred that that evidence would be unfavorable.

Based on the Claimant's testimony, the Employer's offer of sales manager at the Oelwein location was an undeniable demotion. Although the record does not specify how much of a pay cut he would experience, it can be reasonably inferred that going from a 'figure head position' at Jessup to one of many subordinates under another general manager's supervision would have undoubtedly involve a substantial pay cut. In addition, his job responsibilities would no longer be the same given his demotion. Mr. Speight's decision to forego the change in his contract of hire, which we conclude to be significant than what he was originally hired for, was justifiable. Based on this record, we conclude that the Claimant satisfied his burden of proof.

DECISION:

The administrative law judge's decision dated August 27, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit with good cause attributable to the Employer. Accordingly, he is allowed benefits provided he is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

_____
James M. Strohman

AMG/fnv