

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

JAZMINE YOUNG

Claimant

: **APPEAL NUMBER:** 23B-UI-01733

: **ALJ HEARING NUMBER:** 23A-UI-01733

:

and

:

EMPLOYMENT APPEAL BOARD

:

DECISION

PALMER COMPANIES INC

:

:

Employer

:

NOTICE

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: 96.5-2-A, 96.5-1

DECISION

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:

Jazmine Young (Claimant) began working for Palmer Companies (Employer) on August 8, 2022. The Employer is a temporary employment firm. Claimant had one assignment, at Venerable, that ended on January 30, 2023. Venerable asked that the Claimant's assignment end due to Claimant's attendance issues. The Employer learned this directly from Venerable, and thus the Employer was notified within three days that the Claimant's latest assignment had ended. When the Employer told the Claimant that her assignment had ended over attendance issues, the Employer also told the Claimant that it did not feel comfortable placing her in a full-time job. The Employer told Claimant that it would only be interested in her working part-time or if there was a remote position available. Claimant informed the Employer that she was not interested and would not be requesting any further assignments from them. The Employer had no part-time or remote assignments at the time in any event, and they are relatively rarer than full-time in-person positions.

REASONING AND CONCLUSIONS OF LAW:

Legal Standards: This case involves a voluntary quit. 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.

Under Iowa Administrative Code 871-24.26:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable 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 on the job would not constitute a change of contract of hire.

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.* Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer". *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989)(citing *Taylor v. Iowa Department of Job Service*, 362 N.W.2d 534 (Iowa 1985)).

"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).

Under *Barber v. EAB*, No. 0-820 (Iowa App. 11/24/2010) "a notice of intent to quit is not required when the employee quits due to a change in the contract of hire...." *Barber*, slip op. at 9.

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. The Court in *Dehmel* pointed out that the determination is subject to no “talismanic 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 Claimant was hired for a full-time job, and was seeking only fulltime assignments. The Employer made clear that the Claimant would in future only be assigned to part-time or remote work. The evidence at hearing does not establish that this change was prompted by misconduct by the Claimant. The evidence does establish that remote work was relatively rare. Under the circumstances of this case, and pursuant to *Dehmel*, we find a substantial change in the contract of hire was the reason for the Claimant’s quit. Since the Claimant quit for good cause attributable to the Employer the fact that she did not request reassignment is not relevant. Requesting reassignment within a reasonable period is an *exception* to disqualification based on quitting a temporary employer without good cause attributable to the employer. *Sladek v. EAB*, 939 N.W.2d 632, 638 (Iowa 2020). Since the Claimant quit the temporary employer, but *with* good cause attributable to the Employer, she has no need of the exception to avoid a quit disqualification.

Notably, 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). In *Olson* the claimant was told to either accept a 40% pay cut or take a new position. Mr. Olson took the new position. *Olson* at 866. Mr. Olson quit in November of 1987 and “contended he had received inadequate training and support to perform the job.” *Olson* at 866. The Court of Appeals refused to recognize a “trial basis” exception. Instead, the Court found that Olson’s “conduct indicates he accepted the changes in his contract of hire, and he cannot now be heard to have quit because of changes implemented by his employer seven months before he quit.” *Olson* at 868. Thus, the Claimant here did not have the option under the Employment Security Law to keep under contract with the Employer while looking for other work. Had she done so the law would have deemed her to have acquiesced in the change to part-time/remote. Under our law a prompt quit avoids a finding of acquiescence, and claimants are not expected to “stick it out” and see what happens.

DECISION:

The administrative law judge’s decision dated March 8, 2023 is **REVERSED**. The Employment Appeal Board concludes that the claimant was quit for good cause attributable to the employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

James M. Strohmman

Ashley R. Koopmans