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

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| **WILLIAM E TRIDLE** | : | |
| | : | **HEARING NUMBER:** 10B-UI-18762 |
| Claimant, | : | |
| | : | |
| and | : | **EMPLOYMENT APPEAL BOARD DECISION** |
| **AGRILAND FS 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:** 96.5-1, 24.26-1

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer 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:**

William E. Tridle (Claimant) worked for Agriland FS Inc. (Employer) as a full-time propane sales and delivery specialist from November 10, 1991 until he quit on November 13, 2009. (Tran at p. 2). The Claimant was paid on a commission pay plan. (Tran at p. 19). He was paid a base draw, a commission, and then a margin bonus that would vary based on what the margin ended up being. (Tran at p. 3; p. 13-14; p. 19; p. 21-22; p. 29). The margin was calculated on how much profit the company earned on each gallon. (Tran at p. 28; p. 29; p. 32-33). Because changes in market prices and other outside factors could affect this, this bonus necessarily varied from year to year, although the method of its calculation did not. (Tran at p. 28; p. 33). The Claimant's contract had not changed over the last year of his employment. (Tran at p. 22; p. 29). Both the commission rate, and the calculation of the margin remained unchanged since September 2008. (Tran at p. 12; p. 29-30; p. 35). It was in September 2008 that the Claimant starting splitting customers, and that the contract changed. (Tran at p. 30; p. 31; p. 34).

This was the contract still in force when the Claimant quit. (Tran at p. 22; p. 29; p. 31; p. 32, ll. 14-15). The Claimant was aware, at least since April 2009, that the margin bonuses would be reduced that year. (Tran at p. 15).

The evidence establishes that the Claimant quit over the lower pay, and that he would not have quit over his health concerns alone. The Claimant has not established that those health problem are work related within the meaning of the Employment Security Law.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). 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). On the issue of whether a quit is for good cause attributable to the employer the Claimant has the burden of proof by statute. Iowa Code §96.6(2).

We can assume for our purposes that the Claimant has shown a substantial change occurred. The problem is when the change took place. This is because acquiescence to the change is the key to this case.

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. 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.

This case falls squarely under the rule of *Olson*. Like Mr. Olson the Petitioner was forced to work under a change in compensation. As in *Olson* things have not worked out under the change as well as the Claimant hoped. Finally, the Claimant took just as long as Mr. Olson to decide to quit. The fact that the Claimant had not yet seen the bottom line result of the change for 2009 until shortly before resigning alters nothing. There was no change in November of 2009 in how the margin was calculated. It's just that when that calculation was run – based on the already established contract – the result disappointed. But the Claimant did know that conditions under which he was to be paid had changed, and he worked under those changed conditions for well over seven months (as in *Olson*) before quitting. What he wants to do is try out the conditions for a while, see how it affects him, and then quit. This is exactly the sort of trial period *Olson* does not allow. Just as the claimant in *Olson* the Claimant acquiesced in the change in his contract and cannot justify his quit by that change.

**DECISION:**

The administrative law judge's decision dated May 4, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)"g".

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

RRA/fnv