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

REBECCA J LEEK	:	
	:	**HEARING NUMBER:** 11B-UI-05500
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
MONGOOSE 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

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 majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Rebecca Leek (Claimant) worked for Mongoose, Inc. (Employer) most recently as a full-time shift manager until she quit on February 15, 2011. (Tran at p. 2). When she was promoted to shift manager, the Claimant was to work full-time (32 hours or more) at $7.75 per hour. (Tran at p. 4; p. 7). She was to work every other weekend, when she did not have custody of her children. (Tran at p. 3; p. 4).

Around the last week in January, Store Manager Christina Yarbro reduced claimant's hours to 26 hours per week. (Tran at p. 2; p. 3; p. 4). Ms. Yarbo assigned weekend hours without regard to whether the Claimant had custody of her children. (Tran at p. 3; p. 4-5). Ms. Yarbo gave the Claimant two hour shifts knowing she lived a half hour away. (Tran at p. 3). Ms. Yarbo told the Claimant that all this was done with the knowledge of the regional manager. (Tran at p. 2). Because of this substantial change in

the

contract of hire, in the most recent job, the Claimant quit. (Tran at p. 3). As it turns out, the changes were without the approval of the regional manager, and the Claimant returned to work for the Employer on April 16, 2011. (Tran at p. 2; p. 5; p. 6).

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).

Substantial Change: The Claimant quit over the changes in her scheduling. The Claimant was to work at least 32 hours, and instead was scheduled for 26. On her second go around, the Claimant worked from 36 to 38 hours. The reduction is thus at least a 19% (26 compared to 32) reduction and is perhaps as high as a 31% (26 compared to 38) reduction. 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 "talismatic percentage figure" but must be judged in consideration of the individual case. *Dehmel* at 703. Here the Claimant had more than just the hours reduction. She also was being required to drive an hour just to work two. Also she was being required to work weekends when she had custody. As we noted "the Iowa Courts look at the impact on the claimant, rather than the employer's motivation" when assessing the magnitude of a change. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). When the 19% (minimum) reduction in wages is added to these other changes this is, in our opinion, a substantial change in the Claimant contract.

Notice: Finally, we appreciate the point that had the Claimant gone over her supervisor's head, she might have found out that, in fact, the changes were not authorized by higher management. But this is no reason to disqualify. 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...." *Baber*, slip op. at 9. Despite *Barber* there *may be* a duty to complain about the proposed changes, even though one need not threaten to quit. But here the Claimant was certainly justified in taking her supervisor at her word, when she said that the regional manager knew of the changes. Since the supervisor knew of the changes, and that the Claimant objected to the changes, (Tran at p. 3), this is adequate notice that the Claimant objected to the change. One must finesse *Barber* to even find a duty to object, and whatever such a duty looks like it certainly would not require the Claimant to tell everyone in her chain of command about her objections.

Benefits are allowed.

DECISION:

The administrative law judge's decision dated May 19, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit for good cause attributable to the employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE 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

RRA/kk