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

CATHERINE A JOHN Claimant, and DAVIS COUNTY DAY CARE CENTER INC Employer.	:	HEARING NUMBER: 09B-UI-04364 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: 96.3-7

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 in its entirety. The Employment Appeal Board AFFIRMS as to the timeliness issue, and **REVERSES** on the separation issue as set forth below.

FINDINGS OF FACT:

The claimant, Catherine A. John, worked for Davis County Day Care Center, Inc. from August 2, 2003 through August 15, 2008 as a full-time preschool/lead teacher for 4-year olds. (Tr. 2, 5-6) The claimant earned $8.50/hour on a weekly basis that generally consisted of 36-40 hours. (Tr. 7) Sometime in June of 2008, the employer received a school grant which specified that " … the 4-year old preschool must be taught by a teacher that is licensed through the Department of Education… " (Tr. 4) Ms. John had no such licensing. (Tr. 4) On August 5, 2008, the employer met with the claimant to discuss the possibility of a reassignment to the 'Before and After School Program' to which Ms. John indicated that she would think about it. (Tr. 5, 6) The 'Before and After School Program' required her to work less

hours (up to 27 hours weekly) even though it paid the same wages per hour. (Tr. 7, 8)

The following day (August 6, 2008), Ms. John tendered her written resignation to become effective on August 15, 2008, as she couldn't accept the reduction in hours. (Tr. 4, 7-8, Exhibit 1)

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 employer does not dispute the claimant's testimony that she generally worked full-time hours (36-40 hours weekly). However, the new grant requirements rendered Ms. John unqualified to remain in her full-time position as the 4-year old preschool teacher. The employer's decision to reassign her to a part-time position represented a substantial change in not only her hours, but signified a reduction in hours and consequent pay as well. The claimant is not obligated to accept these new terms and was justified in quitting. See, Dehmel, supra. The claimant denies that she ever accepted the employer's reassignment to the Before and After School Program. Rather, she credibly testified that she requested time to consider the change (overnight) and ultimately opted not to accept the very next day. Since the conditions upon which the claimant decided to sever her employment relationship were within the employer's control, her quit was with good cause attributable to the employer.

DECISION:

The administrative law judge's decision dated April 15, 2009 is AFFIRMED, in part, and **REVERSED, in part**. The Board agrees that the employer's appeal was timely. However, as to the separation, the claimant voluntarily quit her employment with good cause attributable to the employer. Accordingly, she is allowed benefits provided she is otherwise eligible.

_____
John A. Peno

_____
Elizabeth L. Seiser

AMG/ss

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/ss