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

ANGELA D HANSON	:	
	:	**HEARING NUMBER:** 11B-UI-05283
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
ECONO LODGE	:	
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, 24.25-20

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 Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Angela D. Hanson, worked for Econo Lodge beginning September 1, 2007 and last worked as a full-time manager/desk clerk on March 26, 2011. (Tr. 2, 5) Sometime around mid-March, the Employer told Ms. Hanson that she "…was going to be moved to second shift because…[his daughter-in-law]…would only work first shift…" (Tr. 7, 8) This was not an option for the Claimant because she had a 12-year old son whom she didn't want to leave alone at night. (Tr. 7) The Employer also informed her that her pay would be cut from $550/week to $350/week plus 1% commission beginning April 1, 2011. (Tr. 7, 9) Ms. Hanson told Mr. Patel that she couldn't work the second shift because of her son and it would be difficult to accept the cut in pay. (Tr. 8) The Employer indicated that he had no choice because he couldn't afford to pay her current wages.

About a week later, Ms. Hanson's husband called the Employer at 10:30 p.m. to tell that the Claimant's father had a massive heart attack and that they were on their way to Des Moines. (Tr. 2, 4, 5, 6) The Claimant's husband told the Employer that her Saturday shift would have to be covered. (Tr. 2, 6) Ms. Hanson did not work on Sundays. (Tr. 6) The Claimant did not return to work on Monday or any day thereafter. (Tr. 3, 5) On Wednesday, the Employer received a letter on Wednesday, March 30th, indicating she had filed for unemployment. (Tr. 2-3)

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 record establishes that the Employer informed the Claimant of some upcoming changes, which the Claimant was unable to agree to. (Tr. 7, 8) Although she expressed her inability to accept said changes, the Employer nonetheless told her he had no choice based on what appears to be a downturn in his business. The Employer disputes the changes as the Claimant understood them. 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.

Given the Employer's inflexibility on the alleged necessary changes in both the Claimant's shift and pay (a $200 reduction) beginning April 1st, it was not unreasonable for the Claimant to surmise that she would have to quit her employment. Her providing the Employer with notice of her intention would have made no difference to the outcome, as she had already expressed her discontentment with his decision. The fact

that her father suffered a heart attack requiring her immediate attention just a week after learning of the Employer's intended changes merely served as a catalyst for her decision to sever her employment relationship at that time. Based on this record, we conclude that the Claimant would have experienced a substantial change in her contract of hire within the meaning of the statute.

DECISION:

The administrative law judge's decision dated May 20, 2011 is **REVERSED**. The Claimant voluntarily quit with good cause attributable to the Employer. Accordingly, the Claimant is allowed benefits provided she is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

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.

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Monique F. Kuester

AMG/fnv