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

ARTHUR A CROWTHERS	:	**HEARING NUMBER:** 16B-UI-08860
Claimant	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
GRAY TRANSPORTATION 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, 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. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Arthur Crowthers, worked for Gray Transportation, Inc. from September 1, 2011 through July 22, 2016 as a full-time local truck driver who drove almost exclusively back and forth from Waterloo to Allison, Iowa, 'all day long,' (5:50-6:35; 8:02-8:44; 29:00-29:05; 29:31-29:33), which is approximately 40 miles one-way (36:10-36:20) for the Employer's John Deere account. (29:40) The Claimant's duties consisted of pre- and post-stripping his truck trailers; maintaining all ten trucks in his fleet for inspection, licensing, insurance, and tags, inter alia, (6:45-7:13; 29:38-30:11) earning $15.00 an hour. (38:14-38:54) He was also responsible for picking up loads from shipping houses up to Allison, Iowa with painted product and delivering the loads to predetermined destinations. (7:15-7:30) He usually worked from 6:00 a.m. until 6:00 p.m. when the schedule was full. (9:03-9:13) Although the Claimant was not guaranteed a certain number of hours, he worked the unspoken mandatory 50 hours with overtime pay thereafter. (14:52-15:31; 16:16-16:41; 42:55-43:11) Mr. Crowthers' average work week was between 57-60 hours weekly. (15:54-16:03; 30:29-30:31)

On July 16, 2016, the Employer called a meeting with his city drivers on all the different routes to present a proposal to them. (10:25-10:35; 26:43-26:52; 32:40-33:20) The Employer lost the John Deere account, which was ending on July 22, 2016 (34:04-34:32; 54:26), and included the Allison route that Mr. Crowthers had been servicing since the beginning of his employment. (9:22-9:35; 22:04-22:36; 31:28-32:28) The Employer was expanding their Menard's account, which involved picking up loads in Shell Rock, Iowa to be delivered to various distribution centers and stores (Eau Claire, WI; Shelby, IA; Valley, NE; Plano, IL; Terre Haute, IN; Rochester, MN, and other Iowa routes) some of which were 200-400 miles away. (10:38-12:18; 34:50-35:46; 35:54-36:09) This new account would involve over-the-road driving that would sometimes include overnight driving, which the Claimant had not done. For example, if a driver picked up a load in Shell Rock to be delivered in Eau Claire, and there was no load to pick up and return, that driver should be prepared with pillows and blankets to stay the night so as not to waste resources returning with no load. (54:42-55:40) Some of the routes involved hourly rates of pay, while others were mileage-based pay. Mr. Crowthers had only worked at an hourly rate for close to five years as a local city driver, which was what he had originally applied for so that he could be at home with his family. (12:42-12:46; 13:22-13:26; 20:39-20:42; 21:08-21:26; 48:56-49:07) He had never used a log book to track his mileage. (17:45-17:52)

The Claimant inquired about having a similar route as the Allison route, but the Employer expressed that no driver would be specifically assigned to a particular route; that all drivers would be rotated through all routes, and there were no set hours. (18:25-19:26; 43:55-44:54; 58:26-58:46) The Employer had no other position comparable to the Allison route. (17:06-17:39; 1:01:49) After considering the proposal and discussing it with his wife, Mr. Crowthers could not agree to the new terms and told the Employer he quit. (9:40-10:16; 20:48-21:12; 30:50-30:58; 46:29-46:40; 48:15-48:23; 1:04:07)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
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> 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 change in his contract of hire." Olson at 868.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

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. Both parties agreed that Mr. Crowthers drove the Allison route the entire duration of his employment (nearly five years) with Gray Transportation. According to the Claimant's testimony, his daily schedule for the most part consisted of the same start time with a somewhat variable end time for which he generally accumulated a little over 50 hours weekly. He returned home to his family every evening. The Employer did not dispute these facts.

The Claimant had every intention of continuing his employment until the Employer lost the John Deere contract. With this new Menard's contract, the Claimant would no longer be a city/local truck driver, as the new routes (200-400 miles away) were significantly farther away than the Allison route (only 40 miles away). This would alter the Claimant's position to becoming an over-the-road driver with the potential of having to stay overnight far away from home should there be a delay in load exchanges at a given location. The reason Mr. Crowthers accepted the job in the first place was to be home every night, which his previous route allowed him for five years. The options available with this new contract not only presented a substantial change in his working hours (his schedule would fluctuate based on deliveries), he would experience a change in his manner of pay, i.e., going from hourly rate to mileage rate. While the Employer argues that the drivers could potentially earn more, that potential is speculative, at best. This new contract would also involve a significant change in the Claimant's location of employment, as he would no longer being going to and from Allison and Waterloo, Iowa, but experiencing over-the-road routes to several destinations both inside and outside of Iowa.

The Claimant attempted to maintain his employment when he requested a route that was similar to the Allison route, i.e., Rochester route, which the Employer counters with the argument that he didn't ask soon enough. Based on this record, we conclude that the Claimant was justified in quitting his position. The changes he was asked to accept were significantly different from what he was originally hired to work. For this reason, we conclude that the Claimant satisfied his burden of proving that his quit was with good cause attributable to the Employer.

DECISION:

The administrative law judge's decision dated September 7, 2016 is **REVERSED**. The Claimant voluntarily quit with good cause attributable to the Employer. Accordingly, the Claimant is allowed benefits provided he is otherwise eligible.

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Ashley R. Koopmans

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James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

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Kim D. Schmett

The Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Claimant was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

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