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

MATTHEW A GRAY	:	
	:	**HEARING NUMBER:** 11B-UI-00404
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
TARGET	:	

Employer.

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

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FINDINGS OF FACT:

A hearing in the above matter was held initially on February 15, 2011 and completed on February 21, 2011 in which the issues to be determined were whether the claimant was discharged for misconduct; whether the claimant voluntarily left for good cause attributable to the employer; and whether the claimant was able and available for work. During the hearing, claimant's schedule changed from full-time (40 hours/week) to a 36-hour shift. The employer testified that the claimant was "…offered a dollar shift differential to make that difference up from [his position] not being 40 hours…" (Tr. 7, lines 21-22) The claimant quit due to this change in his schedule that occurred after his return from a medical leave of absence.

The administrative law judge's decision was issued February 23, 2011, which determined that the claimant was not eligible for benefits based on a voluntary quit without good cause attributable to the employer. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) provides:

> 4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has

> been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. While we know that the claimant's full-time schedule changed after his return, we also note that the employer made other changes, i.e., benefits package, etc., to supplement the claimant's schedule change to a 36-hour shift, which may have a bearing on whether the change was substantial or not. As the Iowa Court of Appeals noted in *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise.

Since we have little evidence on the impact of the job change on the claimant's benefits package as it related to his overall compensation after his return to work, the Board must remand this matter for the taking of additional evidence of the same.

DECISION:

The decision of the administrative law judge dated February 23, 2011 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

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Elizabeth L. Seiser

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Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge by finding that the claimant quit due to a change in his contract of hire when he lost his reinstatement rights after returning to work from a medical leave of absence. In addition, the change in his schedule from working Tuesdays through Fridays to working every weekend was substantial in nature.

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.

More importantly, the claimant was not returned to full-time employment; rather, he was returned to seasonal, part-time work with the potential for full-time work based on his performance. (Tr. 7, lines 9-13) The claimant was also told that if he missed any more work, he would be 'administratively terminated.' (Tr. 22, lines 9-13) Based on this record, I would conclude that the new conditions of his employment constituted a substantial change in his contract of hire for which he had good cause attributable to the employer to quit. Benefits should be allowed provided he is otherwise eligible.

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John A. Peno

AMG/kk