BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

TEONA L FOSTER

HEARING NUMBER: 17BUI-00981

Claimant

and : EMPLOYMENT APPEAL BOARD : DECISION

TWIN CITY TANNING WATERLOO LLC

Employer

NOTICE

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

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. Except as it may be inconsistent without modification the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The keys to this case are the change in the contract of hire by cutting hours, the promise that the Claimant would return to full time, and the fact that the Claimant was not returned to full time. The change, as found by the Administrative Law Judge, was substantial since it was a 20% reduction in pay. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700, 703 (Iowa 1988). The Claimant did not acquiesce in this change even though she worked the reduced hours for several months. This is because she had been promised an increase and kept working in consideration of that promise. She quit once it became clear that the promised increase was not promptly forthcoming. We thus agree with the Administrative Law Judge that the Claimant's quit was timely and that she did not acquiesce. *See Olson v. Employment Appeal Board*, 460 N.W.2d 865, 868 (Iowa Ct. App. 1990). The subjective motivations behind the reduction do not alter

our conclusion of a substantial change in the contract of hire that was not acquiesced in. "Awarding benefits when there is a substantial pay reduction is consistent with the remedial nature of this legislation, even when the reduction was due to poor economic conditions." *Dehmel* at 703. Thus even if the Employer were solely motivated by economic conditions still we would allow benefits under *Dehmel*.

Finally, we note for the edification of the parties, that "[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States." lowa Code §96.6(4)(emphasis added). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise. See also lowa Code §96.11(6)(b)(3)("Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A...).

Ashley R. Koopmans		

DISSENTING OPINION OF KIM D SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. I find that the Employer did not retaliate against the Claimant, and that the Claimant quit in order to take another job, not over the temporary cut in hours. If the Claimant did in fact work full-time for the new employer after her quit then perhaps she could collect benefits under lowa Code §96.5(1)(a), but even if that were so this Employer would not be charged.

RRA/fnv