

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DARCI L KEPHART
Claimant

APPEAL NO. 06A-UI-11974-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TDK ENTERPRISES INC
DAIRY QUEEN
Employer

OC: 11/12/06 R: 02
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.19-38 – Definition of Unemployed

STATEMENT OF THE CASE:

TDK Enterprises, Inc. filed a timely appeal from an unemployment insurance decision dated December 7, 2006, reference 01, that allowed benefits to Darci L. Kephart. After due notice was issued, a telephone hearing was held December 27, 2006 with Ms. Kephart participating. Owner Trish Kummer participated for the employer. The administrative law judge takes official notice of agency benefit payment records.

ISSUE:

Did the claimant leave work with good cause attributable to the employer?

Does the claimant still meet the definition of being unemployed?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Darci L. Kephart was employed by TDK Enterprises, Inc. from February 14, 2005 until she resigned November 15, 2006. She last worked as manager of a Dairy Queen operated by the employer, a full-time position which paid an annual salary of \$30,000.00. On November 11, 2006, Owner Trish Kummer advised Ms. Kephart that she would be removing her as manager and giving her a position that paid \$9.75 per hour for 30 to 40 hours of work per week. This reduced Ms. Kephart's annual wages by approximately one-third. She resigned.

Ms. Kephart is now employed part time. She reports her wages weekly when she files her unemployment insurance claims. Her weekly earnings at her new job are less than the sum of her weekly benefit amount plus \$15.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation from employment was a disqualifying event. It was not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

An individual may receive unemployment insurance benefits if the individual resigns because of a substantial change in the conditions of employment. See 871 IAC 24.26(1). In determining whether a substantial change has occurred, the administrative law judge may consider only the impact on the employee, not the employer's rationale for making the change. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). The evidence in this record establishes that the employer proposed to reduce Ms. Kephart's earnings from \$30,000.00 to approximately \$20,280.00 (\$9.75 times 2,080 hours). The administrative law judge concludes that a reduction of approximately one-third is substantial. No disqualification is imposed.

The remaining question is whether Ms. Kephart continues to qualify as a partially unemployed individual. She does. Iowa Code section 96.19-38 defines a partially unemployed individual as one who works fewer than 40 hours per week and earns less than the sum of the individual's weekly benefit amount plus \$15.00. The claimant's testimony and information in agency benefit payment records establishes that Ms. Kephart's hours and earnings are low enough that she continues to meet the definition of being partially unemployed.

DECISION:

The unemployment insurance decision dated December 7, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs