

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LINDSAY DUNPHY
925 S 29TH ST
FORT DODGE, IA 50501**

**FORT DODGE OHM LLC
822 CENTRAL AVE #400
FORT DODGE IA 50501**

**WILLIAM THATCHER
ATTORNEY AT LAW
PO BOX 1413
FORT DODGE IA 50501-1413**

**Appeal Number: 05A-UI-05333-A
OC: 04-24-05 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Fort Dodge Ohm (Ohm) filed a timely appeal from an unemployment insurance decision dated May 12, 2005 reference 01 which allowed benefits to Lindsay Dunphy. After due notice was issued, a hearing was held in Fort Dodge, Iowa on August 2, 2005 with Ms. Dunphy participating. William Thatcher, Attorney at Law, appeared on behalf of the employer. Co-Owners Mahesh Kumar and Jay Thakor testified. Exhibits A through J were admitted into evidence. This matter is considered on a consolidated record with appeals 05A-UI-05332-A; 05A-UI-05334-A; and 05A-UI-05335-A.

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: Lindsay Dunphy was employed as a part-time cashier by Ohm from January 2005 until she resigned April 20, 2005. The final incident leading to her decision to resign occurred when Co-Owner Jugal Raval called the store late in the evening, intoxicated, and threatened to fire Ms. Dunphy and her co-worker because his son had told him of rumors at the local high school that they were selling cigarettes to minors. The store had just received a letter of commendation from the Governor because it had successfully handled a sting operation in which law enforcement officials had sent an underage person into the store to try to purchase cigarettes. The employees had not sold cigarettes to the minor.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant resigned with good cause attributable to the employer. It does.

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.

The claimant has the burden of proof. Her testimony was corroborated by her co-worker, Colleen Eastwood, the claimant in one of the companion cases. It is significant that while the employer brought two of the co-owners to testify, they did not call Mr. Raval. The testimony of the two claimants is unrefuted. By calling late at night while intoxicated and threatening the employment of two employees who had recently received a commendation for not selling cigarettes to a minor, the employer created intolerable and detrimental working conditions. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 12, 2005 reference 01 is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

sc/pjs