

**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**

**CORA A OHM
202 - 5TH ST S
DAKOTA CITY IA 50529**

**HARDEES OF SIOUX CENTER INC
660 MAIN AVE
SIOUX CENTER IA 51250**

**Appeal Number: 05A-UI-01703-HT
OC: 01/098/05 R: 01
Claimant: Appellant (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 – Quit

STATEMENT OF THE CASE:

The claimant, Cora Ohm, filed an appeal from a decision dated February 7, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 7, 2005. The claimant participated on her own behalf and with witnesses Sadie Linke and Pat Stein. The employer, Hardees, participated by Assistant District Manager Autumn Hartwig.

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: Cora Ohm was employed by Hardees from June 3, 2003 until January 13, 2005. She was a part-time supervisor.

On January 2, 2005, the claimant received a call from Iva, one of the assistant managers, regarding a remark made by a crew person, Sadie Linke. It involved an allegation that Ms. Ohm had requested prescription pain medication from Ms. Linke's mother. The claimant and Ms. Linke were both upset. Iva told the claimant not to come in to the store that day, that any problems could be sorted out the next day by Manager Pat Stein and Assistant District Manager Autumn Hartwig.

The claimant came into the store around 11:00 a.m. ostensibly for food. She could have used the drive up rather than disobey the directive from the assistant manager. While in the store, she saw Ms. Linke in the break room and indicated she was angry with her but would talk about it later. The claimant then made a remark to another supervisor that she "needed [her] job so [she] couldn't beat her ass." The comment referred to Ms. Linke, whose comments had caused the problem.

On January 3, 2005, the claimant was notified by Ms. Stein and Ms. Hartwig that she was being suspended for a week as a disciplinary action. This was for disobeying the instruction not to come into the store the day before and for making the remark about beating Ms. Linke's ass. It was considered inappropriate conduct for a supervisor, who is in a position of authority regarding the crew members.

On January 5, 2005, the claimant gave a two-week notice indicating she thought it was unfair that she was disciplined and Ms. Linke was not, and that she wanted to leave on "decent terms" rather than when she was upset "with enemies." Continuing work was available to her had she not quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

The claimant elected to quit when she received a disciplinary action from the employer. She felt Ms. Linke should have also been disciplined for the events of January 2, 2005, but Ms. Linke was not a supervisor, had not disobeyed a direct order from a manager and had not mentioned "beating" anyone's ass. The claimant decision to quit because of the reprimand is not good cause attributable to the employer under the provisions of the above Administrative Code section and she is disqualified.

DECISION:

The representative's decision of February 7, 2005, reference 01, is affirmed. Cora Ohm is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/sc