

## Texas Workforce Commission

J. BRYANT, Hearing Officer  
PO BOX 15544  
AUSTIN TX 78761-5544

### Appeal No. 1854078-1

**Claimant: SSN: xxx-xx-6265  
633907-5**

AUSTIN L JOHNSON  
10144 EASTWOOD DR  
DALLAS TX 75228-3243

**Employer: PI Account: 01-**

JAMES M ORR  
J MURPHYS CLUB  
2353 OATES DR  
DALLAS TX 75228-3832

### CLAIMANT'S BRIEF IN SUPPORT OF ELIGIBILITY DETERMINATION

**ISSUE:** Whether the claimant was separated from the last work as a result of a discharge based on work-connected misconduct or a voluntary quit without work-connected good cause.<sup>1</sup>

1. Section 201.012 of the Texas Unemployment Compensation Act defines misconduct as the "mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and safety of employees." *Tex. Labor Code §201.12*;
2. Through his own and witness statements, Orr portrays Mr. Johnson as a problematic employee, but ultimately attributes Johnson's termination to his unwillingness to sign a written acknowledgment form: "*After repeatedly asked to sign the acknowledgement of schedule and policies, I told him without compliance to these policies and schedule, termination was eminent. (sic) Then asked once more, he was terminated.*" Undated, written statement by James Orr. (italics added);
3. Johnson reports being unable to recall the content of Orr's proposed acknowledgment form, but indicates that it was written and was to be signed in pencil;
4. Johnson contends that he refused to sign the referenced acknowledgment form because it was written and was to be signed in pencil. It is reasonable for an employee to refuse signing an employment related document so susceptible to unauthorized alteration;
5. "A legitimate complaint about one's working conditions cannot be considered work-related misconduct." *See, Appeal No. 87-1108-58-10-062987, Texas Appeals Policy And Precedent Manual, §45.20*;

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<sup>1</sup> Apparently "(a)n employer has twelve days to file an appeal from (the day he receives) a determination charging his account". *Cf., Appeal No. 1583-CA-71.* Hearing Officer Bryant confirmed that the Employer's June 13, 2014 appeal herein is timely given a May 30, 2014 determination, although twelve calendar days from that date takes us to June 11, 2014.

6. Orr suggests that Johnson is known for having an offensive body odor at work due to some form of negligence or intentional wrongdoing on his part. Johnson indicates that the problem was an unfortunate incident of him walking to work. Witness Matt Okorowski affirms that the hygiene problem was caused by Johnson walking to work in hot weather. *See, Undated Okorowski Statement;*
7. The evidence fails to establish that Johnson displayed a blatant disregard of hygiene at work. While repeatedly emitting an offensive body odor at work undoubtedly causes problems, Johnson apparently addressed the situation well enough to remain employed by Orr even longer than his seven (7) months of working satisfactorily with Matt Okorowski;
8. Two or three witnesses (*Ercanbrack, Lindsey, and there appears to be a handwritten, unsigned witness statement*) in addition to Orr, suggest that Johnson is generally combative, belligerent, and insubordinate whereas witnesses Adams, Okorowski, and Crenshaw-Logal (especially the latter two) apparently perceive Johnson as an agreeable, pleasant person. *See, Undated Okorowski Statement, and July 14, 2014 Statement by Zena Crenshaw-Logal;*
9. To credit Orr's account of Johnson, we must believe that for \$3.50 an hour plus tips, Johnson walked to work as of early 2013 to May 3, 2014 — *an effort strenuous enough to cause hygiene related issues for both Okorowski and Orr* — at times (shortly before his termination) without being scheduled to work, despite his supposedly well-publicized plans to quit (per Orr and Ercanbrack), primarily to be insubordinate and clash with customers as of sometime post August 22, 2013;
10. This depiction of Johnson is simply implausible. It certainly should not be credible enough to sustain the current employer appeal;
11. Clearly Johnson was fired, but Orr fails to clearly establish that the termination was “based on work-connected misconduct or a voluntary quit without work-connected good cause”. *Cf., Tex. Labor Code §201.12;*

For the foregoing reasons, the claimant Austin L. Johnson respectfully requests that the May 30, 2014 determination of his eligibility for unemployment benefits be sustained and for any and all other relief just and proper upon the premises.

Respectfully Submitted,

Austin L. Johnson, Claimant

by:

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Zena Crenshaw-Logal, Esq.\*

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Seventh Circuit Court of Appeal*

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