

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS JOHNSON
Claimant

APPEAL NO. 09A-UI-17684-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/01/09
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Thomas Johnson filed an appeal from a representative's decision dated November 20, 2009, reference 01, which denied benefits based on his separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on January 5, 2010. Mr. Johnson participated personally. The employer participated by Todd Narber, Store Director, and David Scott, Manager of Store Operations. The employer was represented by Derek Holland of Unemployment Insurance Services.

ISSUE:

At issue in this matter is whether Mr. Johnson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Johnson was employed by Hy-Vee, Inc. from May 22, 2004 until October 8, 2009. He was last employed full time as an assistant manager, a position he assumed approximately one year prior to this separation.

On October 8, 2009, Todd Narber received a telephone call from the mother of a 16-year-old employee by the name of Ashley. She complained that Mr. Johnson was sending numerous text messages to her daughter's cell phone, some of which were of a sexually suggestive nature. She also complained that he was sending inappropriate messages to her daughter in "Facebook." The mother stated that Mr. Johnson was calling her daughter's phone right then as she was speaking to Mr. Narber. After the call, Mr. Narber and David Scott met with Mr. Johnson to advise him of the complaint and to place him on suspension while an investigation was conducted. Mr. Johnson admitted to some of the messages related by Ashley's mother but indicated that others were taken out of context.

Before Mr. Johnson left the meeting on October 8, he was asked if he had been truthful and whether there was anything else he wanted to tell the employer. He was told he would not have a job if the investigation revealed that he had been less than honest with the employer during

the meeting. He was not at any point told that he was being discharged. Shortly after leaving the store following the meeting, Mr. Johnson called the store and spoke to Mr. Scott. He indicated he had checked his text messages and "Facebook" and may have made other inappropriate statements. He indicated he was saving the employer the time of an investigation and quitting. His resignation was not requested and no decision had been made by the employer regarding his continued employment.

REASONING AND CONCLUSIONS OF LAW:

Mr. Johnson denied that he called Mr. Scott and quit his job on October 8. However, based on the demeanor of the witnesses, the administrative law judge found Mr. Scott a more credible witness. Therefore, the separation shall be considered a voluntary quit. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). It appears that Mr. Johnson quit in anticipation of being discharged.

The employer did not have a chance to conduct an investigation before Mr. Johnson quit. Therefore, the administrative law judge cannot conclude that there was a clear likelihood he would have been discharged if he had not quit. By quitting, Mr. Johnson preempted the employer's investigation and, consequently, any decision it would have had to make regarding his continued employment. Having taken the position that he was discharged, Mr. Johnson did not offer any reason he would quit his job. The evidence of record does not suggest any good cause attributable to the employer for the quit. As such, benefits are denied.

DECISION:

The representative's decision dated November 20, 2009, reference 01, is hereby affirmed. Mr. Johnson quit his job with Hy-Vee, Inc. for no good cause attributable to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css