

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DALE W NEFF
Claimant

APPEAL NO. 18A-UI-02091-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOADY'S LLC
Employer

**OC: 01/14/18
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Mr. Neff, the claimant, filed a timely appeal from the representative's unemployment insurance decision dated February 1, 2018, reference 01, which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on October 28, 2017 by failing to report for work for three consecutive days and not notifying the employer of the reason. After due notice was provided, an in-person hearing was held in Council Bluffs, Iowa, on March 16, 2018. Claimant participated. Participating as witnesses for the employer were Ms. Aby Binderup, Human Resource Manager; and Mr. Brenden Sheckler, Operations Manager. Claimant's Exhibit A was admitted into the hearing record.

ISSUE:

The issue is whether the claimant is considered to have voluntarily quit employment by failing to report or provide notification to the employer for three consecutive work days in violation of company policy.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Dale W. Neff began employment with Toady's, LLC d/b/a Sonic on March 28, 2017. Mr. Neff was employed as a full-time cook and was paid \$10.00 per hour. The employer concluded that Mr. Neff had quit his employment with the restaurant after Mr. Neff had failed to report for scheduled work and provided no notification of the reason on October 28, 29, and 31, 2017. It appears that the employer waited an additional two days and when the claimant did not provide notification on November 1 and 2, 2017, his employment with the company came to an end.

Company policy requires employees who are going to be absent from work to notify their immediate supervisor by telephone at least four hours before the beginning of their work shift. Mr. Neff was aware of the policy and had generally followed it in the past.

In the week leading up to the last day that Mr. Neff reported for work, Mr. Neff had called off work on one occasion and had been sent home because he was ill on two occasions by the operations manager. On or about October 25, 2017 when the manager sent Mr. Neff home

because he was ill, the claimant stated that he was sick and might be hospitalized. Mr. Sheckler did not dispute the claimant's statement, but reminded the claimant of his obligation to call in by telling Mr. Neff that he must keep Mr. Sheckler informed of what was occurring.

Mr. Neff failed to report for scheduled work and did not notify the employer of the reason. Beginning October 28, 2017, the store manager attempted to contact Mr. Neff via telephone to determine his status and to determine why the claimant was not reporting for scheduled work. Mr. Sheckler, the manager, left voice messages, they were not returned by the claimant. After Mr. Neff had failed to report for scheduled work for five consecutive work shifts without notification and had not responded to the employer's calls, the employer reasonably concluded that Mr. Neff had quit his job with the company. The claimant never returned to work and never contacted the company again.

It is Mr. Neff's position that he was ill for one month period and was house-bound. The claimant attributes his medical condition to a hernia which blocks his intestinal track, causing a buildup of waste products and further illness. Mr. Neff was aware of the requirement that he notify the employer each day that he was absent, but did not do so. Mr. Neff asserts his telephone had been shut off and he did not have the funds to pay his telephone bill and have the service restored.

It is the claimant's belief that because he told Mr. Sheckler that he might be hospitalized, that the company was placed on notice that he might be absent from work due to illness and further notification on a daily basis was not required.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant relinquished his job position by failing to report for scheduled work and not notifying the employer of the reason for three or more consecutive work days in violation of company policy. It does.

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

No aspect for the contract of employment is more basic than the right of the employer to expect employees will report for work on the hour and day agreed upon, or in the alternative, provide reasonable notification that the employee will be absent and the reason for it.

Under the provisions of the Iowa Administrative Code, there is a presumption that an employee who has not reported for work for three or more consecutive work days and has not provided notification in violation of company policy, has relinquished his position with the employer.

In this case, Mr. Neff was aware of the company's requirement that employees notify their manager personally or by telephone call prior to the beginning of each work day if the employee is not able to report for work. The claimant was also aware that if he failed to report or notify the employer of the reason for three consecutive work days, he would be considered to have quit employment. In addition to the handbook requirement of notification, the claimant's immediate supervisor, Mr. Sheckler, specifically reminded Mr. Neff of his obligation to keep the manager "informed" if the claimant was going to be absent. The employer took the extra step of trying to contact Mr. Neff during this time by telephone in an effort to save Mr. Neff's employment with the company. The claimant's cell phone took messages and seemed to be operable. Although sympathetic to the claimant's plight, the evidence establishes that the claimant was not hospitalized during this time and it was the claimant's responsibility to provide notification in some form to the employer of the absence each day and the reason he was being absent.

The administrative law judge finds the claimant's testimony to that he was totally home-bound for 30 days with no way to provide notice to the employer to strain credibility. Mr. Neff testified that although he had absolutely no contact with the outside world for 30 days, he had sufficient food and drink already stocked up to sustain him for 30 days without any contact with the outside world. The administrative laws judge notes that Mr. Neff's testimony appears to strain credibility.

For these reasons, the administrative law judge concludes that the claimant left employment by failing to report for scheduled work for three or more consecutive days without notification to the employer in violation of established company policy. Accordingly, benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated, February 1, 2018, reference 01, is affirmed. Claimant left employment by failing to report for scheduled work for three or more consecutive work days without providing notification to the employer in violation of company policy. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs