

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DON E KOLT**  
Claimant

**APPEAL NO. 09A-UI-18957-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**Original Claim: 11/19/09  
Claimant: Appellant (1)**

Iowa Code section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Don Kolt filed a timely appeal from the December 17, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2010. Mr. Kolt participated. Christy Sullivan, Executive Team Leader of Human Resources, represented the employer.

**ISSUE:**

Whether Mr. Kolt separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Don Kolt was employed by Target as a full-time overnight logistics worker. Mr. Kolt started the employment in 2007 and last performed work for the employer on June 10, 2009. Mr. Kolt was approved for a period of vacation to end on June 15, 2009 and was scheduled to return to work on June 16, 2009. Mr. Kolt became incarcerated in Sarpy County, Nebraska, and did not return to the employment. Mr. Kolt was absent without notifying the employer on June 16, 17, and 18, 2009. Mr. Kolt was unable to notify the employer of the absence because he lacked jail phone privileges necessary to contact the Ankeny Target from the jail in Nebraska. Mr. Kolt contacted a coworker and asked the coworker to apprise the employer of the incarceration. The employer's written attendance policy required that Mr. Kolt notify the employer at least two hours prior to the scheduled start of his shift if he needed to be absent. The employer's written policy deemed three consecutive days of absence without notifying the employer to be job abandonment. Mr. Kolt was aware of the no-call, no-show policy, which was contained in the employee handbook. During his incarceration, Mr. Kolt received word from a friend/co-worker that the employer deemed the employment terminated. The employer never heard from Mr. Kolt again. Mr. Kolt continued to be incarcerated until November 10, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the

employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Where a person's employment comes to an end because the person has become incarcerated, the separation from the employment is deemed a voluntary quit and is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(16).

Where a person is absent from work for three days without giving notice to the employer in violation of a company rule, the person is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

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 weight of the evidence in the record indicates that Mr. Kolt voluntarily quit the employment by means of an extended period of incarceration. The weight of the evidence indicates that Mr. Kolt was absent three days without notifying the employer and then never returned. The evidence indicates a voluntary quit without good cause attributable to the employer. Accordingly, Mr. Kolt is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Kolt.

**DECISION:**

The Agency representative's December 17, 2009, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw