

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA K COOK**  
Claimant

**SWAN HOME HEALTH LLC**  
Employer

**APPEAL NO. 13A-UI-12044-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/22/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated October 16, 2013, reference 01, that held the claimant was not discharged for misconduct on September 26, 2013 and benefits are allowed. A telephone hearing was held on November 19, 2013. The claimant participated. Angela Gross, Wellness Director, and Scott Rausch, Facility Director, participated for the employer. Employer Exhibit 1 (Pages 5, 12, 13) was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time PSA/Medication manager from January 25, 2012 to September 20, 2013. The claimant received the employer attendance policy that includes a provision for no-call/no-show to work. The call must be made two hours from the start of a shift to the supervisor. A failure to report (no-call/no-show) is considered a voluntary resignation.

Claimant had worked a second shift schedule up to September, and it was modified to include days on Thursdays from 5:30 a.m. to 1:00 p.m. She was visiting an ill relative in Wisconsin and forgot she was to report for the Thursday shift on September 26 at 5:30 a.m. When she realized her mistake, she contacted the employer near the noon hour as she was preparing to report for what she thought was a 2:00 p.m. start time.

Although claimant explained her mistake in failing to call and report at 5:30 a.m. on September 26 to the employer, it considered the error as a violation of policy that is considered a voluntary resignation. Although the employer submitted evidence of past claimant attendance issues, it chose to stand on the voluntary resignation employment separation.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on September 26, 2013, for excessive "unexcused" absenteeism.

The employer policy is not controlling on the issue whether claimant's employment separation disqualifies her from receiving unemployment. The employer has the right to terminate based on its policy.

Claimant gave no advance notice she intended to quit September 26, and her act of contacting the employer that day stating she made a mistake about her report to work time shows she did not intend to voluntarily quit by resignation. The employer decision to treat it as a voluntary quit is not consistent with claimant's intent and actions. She wanted to continue employment.

The employer decision to terminate claimant is considered a discharge pursuant to the Iowa employment security law. Since it stood on its no-call/no-show voluntary resignation policy, job disqualifying misconduct is not established for this single incident of absenteeism.

**DECISION:**

The decision of the representative dated October 16, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on September 26, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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