IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

BENJAMIN PECHER
Claimant

DECKER PLASTICS INC
Employer

APPEAL NO. 19A-UI-00196-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/16/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Decker Plastics (employer) appealed a representative's January 7, 2019, decision (reference 01) that concluded Benjamin Pecher (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 24, 2019. The claimant participated personally. The employer participated by Sherry Decker, President, and Mike Decker, Sales Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 24, 2017, as a full-time extrusion operator. The claimant signed for receipt of the employer's handbook on November 7, 2017. The employer updated the handbook on May 16, 2018. The claimant did not receive a copy of the new version. It is unknown whether the attendance policy allowed for fifteen or five attendance points before termination. The updated handbook stated, "**If an employee exceed** (sic) **fifteen (5)** (sic) **points, they may be terminated.** The point system carries over from one year to the next". The previous handbook may have indicated fifteen points. The employer thought fifteen was too high and wanted to change it to five. The new handbook stated that warnings would be issued at three and four points and an employee may be terminated at five points. The employer did not issue the claimant any warnings for attendance. It did not have information about past absences.

The claimant always reported his absences to his lead. The claimant kept in touch with his supervisors by telephone and text message. On November 7, 2018, an hour or two prior to the start of his shift, the claimant sent a text to his lead indicating he could not work. The claimant's

two-year-old son was having trouble breathing and he thought he might have to take him to the hospital. Twice before, the child had been taken to the hospital for breathing issues. The claimant called the doctor and gave his son breathing treatments. During this time on November 7, 2018, the president left the claimant a message terminating him for his absence.

The claimant filed for unemployment insurance benefits with an effective date of December 16, 2018. The employer participated personally at the fact finding interview on January 4, 2019, by Sherry Decker and Mike Decker.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The employer did not have information about the claimant's past absences. The claimant's final absence was to care for his two-year-old son who was having difficulty breathing. A parent's presence with their child for what might be a trip to the hospital has no wrongful intent. The claimant had no history of unexcused absences.

While it is true that an employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work, it is also true that the employer should gather that information for determination regarding whether the absences are excused. It is also true that an employer should provide clear rules for employees to follow. The employer did not provide sufficient evidence to prove misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 7, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs