IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

ANGEL M SELF
Claimant

CAPTIVE PLASTICS LLC
Employer

APPEAL NO. 18A-UI-06155-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/13/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Angel Self (claimant) appealed a representative's May 30, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Captive Plastics (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 21, 2018. The claimant participated personally. The employer participated by Sara Miller, Human Resources Manager, and Rick Bond, Shift Supervisor.

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 August 30, 2015, as a full-time inspector/packer. Her shift was from 6:50 p.m. to 7:15 a.m. The claimant electronically signed for receipt of the employer's handbook on October 22, 2017, which included the employer's attendance policy. The attendance policy indicated that employees would be terminated if they accumulated nine attendance points in a rolling twelve-month period or if they were absent for a non-Family Medical Leave absence while on a ninety-day probation. Occasionally, the employer would send employees home on voluntary lay off (VLO) when work was slow. Points rolled off one year after they occur.

On May 6, 2017, the claimant properly reported her absence and the employer did not record the reason for the absence. On May 24, 2017, the employer issued the claimant a written warning for having accumulated 7.5 attendance points. The employer notified the claimant that further infractions could result in termination from employment.

On August 8, 2017, the claimant properly reported her absence due to a contagious illness and provided the employer with a doctor's note. On August 21, 2017, the employer issued the claimant a written warning for having accumulated 8.5 attendance points. The employer notified the claimant that further infractions could result in termination from employment.

The claimant's attendance record did not indicate she was absent again but the employer issued her a written warning and ninety-day probation on September 28, 2017. The claimant refused to sign this because the employer gave her the warning for her absences for undocumented V.L.O.'s. The claimant successfully completed the ninety-day period with no further absences.

On February 6, 2018, the claimant properly reported her absence due to illness and provided the employer with a doctor's note. On February 14, 2018, the employer had her sign a written warning and ninety-day probation. It did not give the claimant a copy of the warning. The employer notified the claimant that further infractions could result in termination from employment.

In April 2018, the claimant met with her shift supervisor and asked him when her ninety-day probation period came to an end. The shift supervisor told the claimant it ended on May 11, 2018. Some points had rolled off. On May 11, 2018, the claimant told her shift supervisor she had to leave early. The supervisor said, "Okay". He asked her to tell him when she was leaving. He did not warn her that leaving would cause her to be terminated. At about 1:00 a.m. the claimant told the shift supervisor she was leaving. The claimant's mother was the claimant's child care provider. Her mother was leaving the claimant's home for an out-of-town doctor's appointment. The claimant knew she would accumulate one-half point, for a total of five points on May 11, 2018. On May 14, 2018, the employer terminated the claimant for being absent during her ninety-day probation period.

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. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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).

In the claimant's last year of employment she was absent four times. The incidents of absence on August 8, 2017, and February 6, 2018, were for properly reported illness. These absences do not amount to job misconduct because they were properly reported. Therefore, the employer terminated the claimant for her absences on May 6, 2017, and May 10, 2018.

The employer did not inquire as to the reason for her absences. The employer argues that they may discharge employees under the rules they create. The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309 (Iowa 1986). The employer may discharge employees for any number of reasons but the issue at hand is whether the claimant was discharged for disqualifying misconduct.

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 information for determination regarding whether the absences are excused. If an employer chooses to institute a no fault attendance policy, the employer incurs potential liability for unemployment insurance benefits related to the separation. There is no information about the reason for the absence on May 6, 2017.

In this case, the employer argues that the claimant's two properly reported absences one year apart are excessive. The employer has not provided sufficient evidence that the claimant's absences were excessive. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 30, 2018, decision (reference 01) is reversed. 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