

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENT D LONG**  
Claimant

**APPEAL NO. 06A-UI-11488-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA ROTOCAST PLASTICS INC**  
Employer

**OC: 10/22/06 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Iowa Rotocast Plastics (employer) appealed a representative's November 27, 2006 decision (reference 01) that concluded Kent Long (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2006. The claimant participated personally. The employer participated by Greg Lewey, Director of Operations; Linus Barloon, Shipping Manager; and Aaron Kulish, Laborer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**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 April 5, 2005, as a full-time laborer. The claimant received the company handbook which contained a no tolerance policy regarding fighting. The claimant received six written warnings regarding attendance during his employment.

On October 20, 2006, the claimant and a young coworker were working together. The two got along well and during the day the claimant punched the coworker in the arm in a horseplay type gesture. The coworker said that his grandmother could punch harder than that and began to harbor ill will toward the claimant. The coworker repeatedly criticized the claimant's performance. The claimant was confused by the coworker's comments and did not understand why he was being mean.

After work the claimant pulled his car in behind the coworker's car, walked up to the coworker's window and asked why the coworker was treating him poorly. The coworker got out of his car and pushed the claimant with both hands on the claimant's shoulders. The claimant hit the coworker in self-defense. The two wrestled to the ground. A foreman stopped the two from continuing.

The coworker's mother complained about the claimant's actions. The employer took both workers' statements. The employer terminated the claimant on October 23, 2006, but retained the coworker.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The coworker's testimony differed from his statement and he could not remember what had happened.

**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:

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has proven that despite the fact that fighting is not allowed in the handbook, fighting in the workplace is tolerated depending on which employee is fighting. The coworker was allowed to retain his job but the claimant was not. The employer has failed to provide sufficient evidence of misconduct. Benefits are allowed.

**DECISION:**

The representative's November 27, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css