

IN THE COURT OF APPEALS OF IOWA

FILED

APR 30 1985

CLERK SUPREME COURT

CRAIG R. RUMMELHART,)

Petitioner-Appellant,)

vs.)

**IOWA DEPARTMENT OF JOB SERVICE and)
BUILDING MAINTENANCE SERVICE, INC.,)**

Respondent-Appellee.)

312

Filed April 30, 1985

5-106
84-1141

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan,
Judge.

Petitioner appeals from district court's affirmance of agency's action
denying him unemployment benefits. REVERSED AND REMANDED.

David Dorff, Des Moines, for petitioner-appellant.

Blair Dewey, Walter F. Maley, and Joseph L. Bervid, for respondent-appellee
Iowa Department of Job Service.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

OXBERGER, C.J.

The petitioner appeals from the court's ruling upholding the decision of Job Service denying his unemployment benefits. We reverse and remand.

Petitioner, Craig Rummelhart, was employed by Building Maintenance Service, Inc., (B.M.S.). Rummelhart performed janitorial services. He was terminated from his job for allegedly calling his supervisor a "no-good-son-of-a-bitch" while being reprimanded. Rummelhart maintained that he was told he was fired for poor job performance.

Rummelhart filed a claim for unemployment benefits. He was awarded benefits after the claims officer determined that B.M.S. had failed to establish that Rummelhart was guilty of misconduct. B.M.S. appealed.

A telephone hearing was scheduled and then rescheduled after the hearing officer was unable to contact B.M.S. On the morning of the hearing, Rummelhart requested a continuance because he had a job interview scheduled at the same time as the hearing. The request was denied.

During opening remarks, the hearing officer stated in the record that he believed that Rummelhart did not intend to participate. The officer found that Rummelhart was fired for misconduct and reversed the decision of the claims officer. Rummelhart appealed. The agency affirmed the decision. Rummelhart's subsequent application for rehearing was denied.

Rummelhart filed a petition for judicial review. The agency answered and then filed a special appearance challenging the court's subject matter jurisdiction of the case on the ground that Rummelhart had failed to comply with the statutory mailing requirements, specifically Iowa Code section 17A.16(2). The special appearance was denied on the basis that it was filed after the agency had generally appeared, i.e., filed an answer. Then the agency filed a motion to dismiss challenging the court's jurisdiction on the same grounds as the special appearance.

The trial court found that it had jurisdiction and that there was substantial evidence to support the determination that Rummelhart was discharged for misconduct. The agency's action was affirmed. Rummelhart has appealed.

On appeal the agency again raises the special appearance issue. The agency merely argues that the special appearance was proper, but neither cites authorities nor presents an argument why the appearance was proper. We find no reason with the facts before us to reverse the trial court's decision that it had jurisdiction.

The petitioner claims it was an abuse of discretion for the hearing officer to refuse to continue the hearing. One extension had already occurred because the employer was not available. Despite the fact Rummelhart told the officer he could not participate in the hearing because of a job interview, the continuance was denied and the agency also refused his application to present additional evidence concerning the request to postpone. We agree with the petitioner that it appears to be a "Catch-22" situation where the agency refuses additional evidence of the reason for the postponement request and yet states, "It has not been established by the record that the claimants specifically requested a continuance of the hearing officer for the purpose of attending a job interview. . ." The transcript of the hearing shows the hearing officer stated Rummelhart needed the extension for "personal reasons." No elaboration was made. As a result, the evidence before us does not contain Rummelhart's version of the events leading to his dismissal.

We find the agency abused its discretion in not allowing additional evidence regarding the reason for the postponement, in denying the request when petitioner claims he had a job interview at that time, and when one continuance had already occurred because the employer could not be contacted. Pursuant to Iowa Code § 17A.19(8)(g)(1985), we remand to the agency for another hearing.

REVERSED AND REMANDED.