FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RUDOLPH R. ROSSMANITH,)
Petitioner-Appellant,)
vs.)
IOWA DEPARTMENT OF JOB SERVICE,)
Respondent-Appellee.)

Filed January 6, 1984

3-443
83-850

Appeal from the Iowa District Court for Greene County on change of venue from Polk - Dale E. Ruigh, Judge.

Petitioner employee appeals from district court ruling on judicial review affirming respondent agency's action in disqualifying him from receiving unemployment benefits due to misconduct. REVERSED.

David L. Wornson, Decorah, for petitioner-appellant.

Blair H. Dewey, Walter F. Maley, and Edmund Schlak, Jr., Iowa Department of Job Service, for respondent-appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

PER CURIAM

The only question for our determination in this case is whether the district court correctly applied the law in finding that petitioner was discharged for misconduct. Amana Refrigeration, Inc. v. Iowa Department of Job Service, 334 N.W.2d 316, 318 (Iowa Ct. App. 1983). We conclude that it did not. It is undisputed that petitioner was discharged because he lost a bag of promotional items while delivering newspapers and because he was four or five bundles of newspapers short out of a total of over seventy bundles to be delivered by him. It is also undisputed that petitioner offered to pay for the lost promotional items and relied on the past accuracy of the newspaper shipping department in giving him the correct number of bundles to deliver. The administrative definition of misconduct states in part that "... inadvertancies or ordinary negligence in isolated instances ... are not to be deemed misconduct within the meaning of the statute." 370 I.A.C. § 4.32(1)(a). At most, petitioner was guilty of two isolated instances of ordinary negligence and nothing more; in no way can he be charged with an "intentional and subsequent disregard of the employer's interests ...." Id. Because he was not guilty of misconduct as defined in the administrative rules, petitioner is entitled to receive unemployment benefits. The district court erred in affirming the agency's ruling that petitioner was not entitled to such benefits.

REVERSED.