BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

JONATHAN A GARCIA	
	HEARING NUMBER: 20BUI-01642
Claimant	
and	EMPLOYMENT APPEAL BOARD
CITY OF WHITTEMORE	DECISION
Employer	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a request for a REHEARING is filed with the Employment Appeal Board within 20 days of the date of the Board's decision or, (2) a PETITION TO DISTRICT COURT IS FILED WITHIN 30 days of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is AFFIRMED.

Ashley R. Koopmans

DISSENTING OPINION OF JAMES R. STROHMAN:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. I would find the Employer terminated the Claimant for refusing to partake in alcohol treatment and anger management classes, and *not* for taking the company truck home without authorization which was the sole basis his supervisor was bringing to the attention of the Mayor and city council for some sort of discipline. The last incident involving the Claimant's intoxicated behavior happened while off duty and off company property. Additionally, it occurred over a month prior to his termination; thus, his termination for refusing to get treatment was not predicated on a current act. Finally, the Mayor and Council members were aware of several off duty alcohol issues with the Claimant but had excused his off duty behavior. If they wished to discharge him for improper use of a city vehicle, they should have done so. Discharging him for failing to accept a demand to attend alcohol and anger management counseling is not related to the incident for which he was called to a council meeting for apparent discipline. The Mayor, when demanding he attend counselling and when the claimant balked, stated, "I will make this very easy, you're fired." The two issues are not connected.

871 IAC 24.32(8) provides:

Past acts of misconduct. While past acts and warning can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For this reason, I would conclude the Employer has failed to satisfy its burden of proving jobrelated misconduct and benefits should be allowed.

James M. Strohman

AMG/fnv