



01642

**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 job-related misconduct and benefits should be allowed.

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James M. Strohmman

AMG/fnv