



AMG/fnv

Monique F. Kuester

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer discharged the claimant for 'relieving' himself beside a chipper by his truck in a small town. A witness from the community reported the incident to MidAmerican Energy and the city council. The employer's witness, Cory Edward, who is the claimant's supervisor, indicated that he had done the same thing, but not in town. Although the employer does not tolerate urinating in public, the record establishes that in some cases the rule has not been enforced. I would conclude that the claimant's behavior, at worst, was an isolated act of poor judgment that didn't rise to the legal definition of misconduct. Benefits are allowed provided the claimant is otherwise eligible.

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John A. Peno

AMG/fnv