

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. Mr. Lowery intentionally started a fire on September 5, 2007. He provided testimony that he was formerly the Assistant Street Superintendent until the time he started the street fire. The claimant admits that the supervisor asked about the fire and asked that the fire be put out. (Tr. 39, lines 7– 14) The claimant admitted painting a few tires with marking paint, which would constitute more than a single act.

Exhibits 1-4 demonstrated that the claimant tried to undermine the authority of the current supervisor by disregarding any direct orders. The supervisor testified that Mr. Lowery was trying to avoid him when he was trying to explain why they could not continue to start and leave fires burning in city streets. (Tr. 12, lines 2 – 5). Mr. Lowery challenged why the verbal statements of putting out the fire were not in the write up with a verbal volley of questions, but admitted in later testimony that he was told to put out the fire. It is also clear that Mr. Lowery knew his job was in jeopardy and that he was held at a higher standard than those whom he supervised. Yet, he failed to alert his supervisor to the fact that it would not be in management's best interest to grade the alleys after a two-day rain. (Tr. 41, lines 8– 34; Tr. 44, lines 31-34)

Nevertheless, since Mr. Lowery was a supervisor for which he is held to a higher standard, his past acts and oral warnings signified an intentional and substantial disregard for the employer's interests. See, Ross v. Iowa State Penitentiary, 376 N.W.2d 642 (Iowa App. 1985). The street fire incident did rise to a level of willful conduct directed against the employer's interests and constituted a material breach of the duties and obligations of the claimant's job as the street supervisor. Mr. Lowery's intentional disregard to the employer's directives showed more than unsatisfactory conduct since he was an employee of over twenty years with the knowledge and experience to carry out each instructions to the utmost of his ability. Considering all the acts together, this board member can reach no other conclusion than there being a willful violation of the employer's oral directives to the claimant even after a series of warnings. Considering the testimony of the employer's witnesses, I believe there was sufficient support in the record for reversing the Administrative law Judge's findings and conclusion. Thus, I would deny benefits.

Mary Ann Spicer