

Having reviewed all of the evidence in the record, the administrative law judge finds: Kip Sheetz was employed by the Jefferson County Sheriff's Office as a full-time correctional officer from June 4, 2001 until August 1, 2005, when Assistant Jail Administrator Phil Stocks discharged him for misconduct.

The final incident that prompted the discharge occurred on July 28, 2005. During Mr. Sheetz's shift, a Fairfield police officer brought to the booking room of the Jefferson County Jail a prisoner arrested on a Wapello County warrant. Mr. Sheetz was the only correctional officer working in the booking area. Jefferson County did not have any charges pending against the arrestee. The arrestee was to be detained at the Jefferson County Jail for a short time until the Wapello County authorities arrived to transport the arrestee to Wapello County or until other arrangements for transport were made. The arrestee was alert, oriented, and cooperative. The arrestee was not in any way agitated. The arresting officer did not convey to Mr. Sheetz any concerns he had about the arrestee based on his contact with the prisoner since the arrest. Mr. Sheetz was in immediate contact with the arrestee on multiple occasions in the booking area. While the arrestee's hands were still cuffed behind his back, Mr. Sheetz was in immediate contact with the arrestee while he checked the arrestee's pockets. Mr. Sheetz was again in immediate contact with the arrestee as he retrieved the arrestee's personal property from the arrestee. Mr. Sheetz was again in immediate contact with the arrestee while he performed a standard pat-down search of the arrestee. Mr. Sheetz was subsequently in immediate personal contact with the arrestee for other purposes. During most if not all of Mr. Sheetz's immediate contacts with the arrestee, the arrestee's hands, wrists, and arms were clearly visible to Mr. Sheetz, so that Mr. Sheetz would have been able to notice any suspicious marks or scars. When Mr. Sheetz was not immediate contact with the arrestee, he was standing at the booking room desk on the side closest to the arrestee. Mr. Sheetz asked the arrestee whether he had any medical conditions and the arrestee advised, "I just had open-heart surgery." Mr. Sheetz asked the arrestee whether he was on medication and the arrestee indicated he was. Mr. Sheetz asked the arrestee whether he would be okay without the medication for a short while and the arrestee indicated he would. While Mr. Sheetz was at the booking room desk, he asked the arrestee a series of questions from a checklist. One of the questions concerned whether the arrestee was suicidal. Another question concerned whether the arrestee had any marks or scars on his body. At the moment Mr. Sheetz asked these questions, he was standing at the booking desk, approximately 10 to 15 feet away from the

arrestee. Mr. Sheetz contacted the dispatcher by radio to see whether the Wapello County authorities had been notified. The arrestee requested a telephone call to alert a family member about something to take place the following day. Mr. Sheetz advised the arrestee he would not be at the jail very long and asked whether the call could wait until the arrestee arrived in Wapello County. In all, Mr. Sheetz spent approximately 20 minutes with the arrestee before he placed the arrestee in a holding cell. The holding cell had a windows in the door and an additional window.

Assistant Jail Administrator Phil Stocks concluded that Mr. Sheetz acted negligently and/or carelessly and violated establishes procedures in connection with the intake of the arrestee by failing to look at his arms for indications of past suicide attempts, needle injection marks et cetera at the time Mr. Sheetz asked the questions from the checklist. Mr. Stocks also concluded Mr. Sheetz acted negligently and/or carelessly in violation of established procedures by failing to document the arrestee's medical circumstances, including possible need for prescription medication, and by failing to advise other jail staff of the arrestee's medical circumstances. Nothing relating to the arrestee's medical circumstances transpired while the arrestee continued in the jail's custody.

On August 1, Mr. Stocks met with Mr. Sheetz to discuss the alleged negligence and/or carelessness relating to Mr. Sheetz's interaction with the arrestee. Mr. Stocks also discussed with Mr. Sheetz prior reprimands Mr. Sheetz had received. At the time of this meeting, Mr. Sheetz advised that he had passed along to his supervisor, Sergeant Schmidt, information regarding the arrestee's medical circumstances, including the fact that the arrestee was on prescription medication. During the meeting, Mr. Sheetz provided a response concerning the prior reprimands. Though Mr. Sheetz had not received any reprimands during the period of July 15, 2004 to July 15, 2005. Mr. Stocks tape-recorded the conversation with Mr. Sheetz. The audiotape of the discussion is no longer available. Mr. Stocks proceeded to discharge Mr. Sheetz for recurrent negligence and/or carelessness in violation of established procedure. Shortly after Mr. Sheetz was discharged, Sgt. Schmidt was demoted and subsequently quit the employment.

Prior to being discharged, Mr. Sheetz received a reprimand for refusing to "change out" an inmate on or about July 12. Mr. Sheetz was in street clothes scrubbing the floor when his sergeant asked him to "change out" the inmate. Mr. Sheetz believed he would be reprimanded

by the jail administration if he “changed out” the inmate in his street clothes and did not want to change into his uniform. Other officers were available to change out the inmate. The sergeant whose directive Mr. Sheetz refused did not complain or report Mr. Sheetz for the incident. Instead, Mr. Stocks decided at some later point to reprimand Mr. Sheetz for the incident after reviewing surveillance videotapes.

On July 18, Mr. Sheetz had applied for eight weeks’ leave under the Family and Medical Leave Act. The employer had not responded to the request prior to discharging Mr. Sheetz on August 1.

#### REASONING AND CONCLUSIONS OF LAW:

The question in this matter is not whether the employer was justified in discharging Mr. Sheetz. The question is whether the evidence in the record establishes that Mr. Sheetz was discharged for misconduct in connection with his employment that disqualifies him for unemployment insurance benefits. It does not.

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Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act to misconduct, a discharge her misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a

party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge has considered all of the evidence, including the videotape provided by the claimant. The weight of the evidence in the record fails to support a conclusion that Mr. Sheetz was either negligent and/or careless in connection with the final incident that prompted the discharge. The evidence presented is insufficient to corroborate the allegation of misconduct. In the absence of a current act of misconduct, the administrative law judge cannot conclude that Mr. Sheetz was discharged for misconduct that would disqualify him for benefits. Even if the administrative law judge had concluded there was a final incident of negligence or carelessness, the evidence presented by the employer was insufficient to establish a pattern of recurrent negligence and/or carelessness that amounted to a willful and wanton disregard of the employer's interests. The employer failed to provide testimony from individuals with first hand knowledge of the final incident or prior incidents, but chose instead to rely upon hearsay evidence. The employer had the power to provide more direct and satisfactory evidence than was presented and the administrative law judge infers that such evidence would have exposed deficiencies in the employer's case.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Sheetz was discharged for no disqualifying reason. Accordingly, Mr. Sheetz is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Sheetz.

DECISION:

The Agency representative's decision dated September 16, 2005, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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