

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEFANI M GERST
Claimant

APPEAL NO. 08A-UI-00013-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIER 1 IMPORTS INC
Employer

**OC: 12/02/07 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Pier 1 Imports, filed an appeal from a decision dated December 21, 2007, reference 02. The decision allowed benefits to the claimant, Stefani Gerst. After due notice was issued, a hearing was held by telephone conference call on January 16, 2008. The claimant participated on her own behalf. The employer participated by Store Manager Brenda Brunzman. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Stefani Gerst was employed by Pier One from October 18, 2006 until October 19, 2007, as a part-time assistant manager. Pursuant to an agreement with Store Manager Brenda Brunzman, the claimant did not take maternity leave and in exchange she would be allowed to leave the store to either breast feed her newborn or deliver expressed breast milk. The manager believed she had made it clear this was to be done only when there was another manager on duty, but the claimant believed she could leave the store on her breaks.

On October 17, 2007, an associate came to Ms. Brunzman and said she had been left alone in the store while the claimant left on three occasions, and that Ms. Gerst had left the store keys with her while she was gone. Another employee asserted the same thing had happened to her as well. Another assistant store manager told Ms. Brunzman the claimant had confessed to her at some social event that she had left associates alone in the store.

The employer did not investigate by interviewing the claimant but discharged her. The reason given to the claimant at the time was that she left associates alone in the store, but at the hearing the reason was given that she had “failed to maintain possession of store keys.” Ms. Gerst had received a copy of the handbook, but it does not contain any specific policy that prohibits an associate being left alone in the store. In addition, the policy regarding the keys

states that failure to maintain possession of keys can lead to disciplinary action up to and including discharge. Nothing exists that specifically states what that means.

Ms. Gerst denies leaving the keys with any associate, though she admitted to leaving them alone in the store while she went to tend to her newborn. One associate was in training for a management position and had her own set of keys.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The written statement from Cala Regel only stated she had been left alone, not that she had been given any keys. The second statement is unsigned, and undated, and cannot be given much evidentiary weight, but states the last time the claimant left the store on duty there were three other employees working, so the associate was not left alone. Both individuals who wrote the statements are still employees of Pier One but did not participate in the hearing. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of December 21, 2007, reference 02, is affirmed. Stefani Gerst is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw