

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY J DEMERS**  
Claimant

**APPEAL NO. 08A-UI-06431-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPECTRA HEALT CARE INC**  
Employer

**OC: 06/15/08 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kelly Demers filed an appeal from a representative's decision dated July 9, 2008, reference 01, which denied benefits based on her separation from Spectra Health Care, Inc. (Spectra). After due notice was issued, a hearing was held by telephone on July 29, 2008. Ms. Demers participated personally. The employer participated by Sue Morrow, Administrator.

**ISSUE:**

At issue in this matter is whether Ms. Demers was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Demers was employed by Spectra from January 31, 2006 until June 12, 2008 as a full-time aide. The employer has a written work rule, of which Ms. Demers was aware, that provides for discharge if an individual is absent two consecutive days without notice. Ms. Demers was scheduled to report to work at 10:30 p.m. on both June 10 and June 11, 2008. She did not report for work or contact the employer on either date. No one acting on her behalf contacted the employer on either date. She was notified of her discharge when she contacted the employer on June 12.

Ms. Demers was able to contact other parties on June 10 and 11. She was in contact with her mother, an uncle, and her therapist. She called the therapist on June 11 to request an excuse for her absences of June 10 and 11. The employer did not accept the excuse.

Ms. Demers was struck by a resident on June 9 but did not sustain any injury and was able to complete her shift. When she left work after the shift, she did not indicate she would not be returning to work for the next two days. She was in the process of getting a divorce from her spouse at the time her employment ended and was looking for other housing. Her mother, who lives in Missouri, was ill from a liver condition that had been diagnosed approximately four years earlier. The above matters contributed to Ms. Demers' decision not to report for work on June 10 and June 11.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Demers was discharged because she was absent two consecutive days without notice to the employer. There was no physical reason she could not work on either date. It appears that she felt unable to work because she was upset over certain personal issues. Ms. Demers may well have had good cause for not being at work on June 10 and 11. However, the absences are unexcused because they were not reported to the employer.

Ms. Demers did not establish any good cause for not reporting her absences of June 10 and 11. She had access to a telephone to call her mother on the evening of June 9 and could have called the employer at that time to report she would be absent. She had a vehicle and could have driven to a pay telephone to call the employer. She lived only three miles from work and could have driven to the workplace to explain why she was not coming to work. She was able to call her therapist on June 11 and could have also called the employer at that time. Ms. Demers worked in a residential setting where staff members are present around-the-clock. Therefore, she was not limited to reporting absences during day hours.

Ms. Demers accumulated two consecutive unexcused absences. The fact that she had a doctor's excuse for both days does not alter the fact that she did not tell her employer she would be absent. She knew from the employee handbook that she could be discharged if she was absent for two days without calling in. Her failure to contact the employer for two days in spite of having the ability to do so constituted a substantial disregard of the standards the employer had the right to expect. For the above reasons, benefits are denied.

**DECISION:**

The representative's decision dated July 9, 2008, reference 01, is hereby affirmed. Ms. Demers was discharged by Spectra for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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