

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: Mr. Lopez began working for Swift on March 26, 2002 as a full-time production employee. He last performed services on July 1, 2005 and was off work thereafter to undergo surgery to his foot. On July 8, he was given a release to return to work on July 26. A copy of the release was provided to the employer. The release indicated that Mr. Lopez was to be re-evaluated on July 22.

When Mr. Lopez was re-evaluated on July 22, he was told he could not return to work until August 1. He believed the doctor was going to notify the employer that he would not be returning to work until August 1. Mr. Lopez' belief was based on the fact that the doctor's office had provided such notification to the employer in the past. He reported to work at his scheduled time on August 1 with his release to work. The employer had already presumed him to have quit when he failed to return to work on July 26. He had been removed from payroll as of July 29.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lopez was separated from employment for any disqualifying reason. The employer considered him to have abandoned his job when he failed to report to work on July 26 and the two workdays following. However, he was off work because his doctor advised him to remain off work until August 1. It was not Mr. Lopez' intent to leave his employment and he had a good-faith belief that the employer had been notified by his doctor that he was unable to return on July 26. In the past, the doctor had kept the employer advised of his status. The prior reports from the doctor to the employer were based on the fact that the condition being treated was work-related. Mr. Lopez' condition in July of 2005 had not been designated as work-related. The administrative law judge does not believe Mr. Lopez had the ability to make the distinction as to when the doctor would contact the employer and when it was his responsibility to make the contact. For the above reasons, the administrative law judge concludes that Mr. Lopez did not voluntarily quit his employment or abandon his job.

It was the employer's decision not to allow Mr. Lopez to return to work. Because the separation was initiated by the employer, it is considered a discharge. 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). Mr. Lopez was discharged because he failed to report his absences beginning July 26. As discussed above, he had a good-faith belief that his doctor had notified the employer that he would be returning to work on August 1 rather than July 26. Therefore, he had good cause for not personally reporting the absences. At most, his conduct represented an error in judgment. While the employer may have had good cause to discharge Mr. Lopez, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983).

For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated August 29, 2005, reference 01, is hereby reversed. Mr. Lopez was discharged by Swift but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs