

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARICELA GARZA**  
Claimant

**APPEAL NO. 10A-UI-02220-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOC SERVICES LLC**  
Employer

**OC: 01/10/10**  
**Claimant: Appellant (4)**

871 IAC 24.1(113) – Other Separations  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Maricela Garza filed a timely appeal from the February 4, 2010, reference 01, decision that denied benefits based on an Agency conclusion that she had voluntarily quit the employment without good cause attributable to the employer. After due notice was issued, a hearing was held on March 29, 2010. Ms. Garza participated. Sarah Frank, Benefits and Training Supervisor, represented the employer. Exhibits One, Two, and A were received into evidence. The record was left open so that the claimant could provide a doctor's note releasing her to work without restrictions. Ms. Garza provided the note on March 31, 2010 and it was received into the hearing record as Exhibit B.

**ISSUE:**

Whether the claimant separated from the employment for a reason that makes her ineligible for unemployment insurance benefits.

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Marcela Garza was employed by IOC Services, L.L.C., as the full-time housekeeping supervisor from 1991 until January 7, 2010. Ms. Garza last performed work for the employer on October 31, 2009. Ms. Garza then began an approved leave of absence under the Family and Medical Leave Act (FMLA). Ms. Garza needed the leave of absence so that she could undergo and recover from surgery on her ankle. The ankle issue was non-work-related. At the time the employer approved the medical leave of absence, Ms. Garza's doctor estimated she would need to be off work for six to 10 weeks. This information was provided to the employer. The employer sent Ms. Garza a letter that indicated her approved FMLA leave would expire on January 6, 2010. On December 17, Ms. Garza had a six-week follow-up appointment with her doctor and the doctor indicated Ms. Garza would indeed need to be off work for the final four weeks of the approved leave period. Ms. Garza provided this information to the employer.

On December 31, Sarah Frank, Benefits and Training Supervisor, mailed a letter to Ms. Garza, indicating that the FMLA leave was set to expire and that if Ms. Garza did not return to work on January 7, 2010 employment may be terminated at that time.

On January 4, 2010, Ms. Garza contacted Ms. Frank and requested an additional week off so she could finish therapy. Ms. Garza had not yet been released by her doctor to return to work. On January 5, 2010, Ms. Frank advised Ms. Garza that her request for additional leave time was denied. On January 6, Ms. Garza asked her doctor for an early release so that she could return to the employment. The doctor refused to provide a full release and indicated that he was only willing to release Ms. Garza to work half-shifts until she got her ankle strength back. Ms. Garza immediately provided this partial release to the employer, but Ms. Frank indicated the partial release was unacceptable. Ms. Frank told Ms. Garza that she would have to appear for her regular duties on January 7 or be deemed separated from the employment.

Ms. Garza established a claim for unemployment insurance benefits that was effective Sunday, January 10, 2010. On Thursday, January 14, 2010, Ms. Garza's doctor released Ms. Garza to work without restrictions.

#### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113), provides as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. **Layoffs.** A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. **Quits.** A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. **Discharge.** A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. **Other separations.** Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record fails to establish a voluntary quit. At no time, did Ms. Garza express to the employer an intention to separate from the employment or take affirmative steps to indicate such an intent. Instead, Ms. Garza petitioned her doctor to allow her to return to the work prior to completing the healing process in an attempt to satisfy the employer's requirement. The weight of the evidence establishes a separation that falls under

the category of "other separations." Ms. Garza separated from the employment, not because she wanted to, but because she could not meet the physical demands of the employment by the date the employer required her to return to the employment at the end of the approved leave of absence. A separation from employment for this reason would not disqualify Ms. Garza for unemployment insurance benefits and Ms. Garza would be eligible for benefits, provided she met all other eligibility requirements. The employer's account may be charged for benefits since there was neither a disqualifying quit nor a discharge for misconduct. See Iowa Code section 96.5(1) and (2)(a).

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The remaining issue is whether Ms. Garza has been able and available for work since she established her claim for benefits on January 10, 2010. The weight of the evidence indicates that Ms. Garza was still under the care of her doctor and had not been released to return to full-time work until Thursday, January 14, 2010. Thus, Ms. Garza would not meet the work ability and availability requirements for the week that ended January 16, 2010. Ms. Garza is not eligible for benefits for the week that ended January 16, 2010. But Ms. Garza would meet the work ability and availability requirements beginning with the week of January 17-23, 2010. Effective January 17, 2010, Ms. Garza is eligible for benefits, provided she is otherwise eligible.

**DECISION:**

The Agency representative's February 4, 2010, reference 01, decision is modified as follows. The claimant neither quit nor was discharged from the employment. The claimant's separation falls into the category of "other separations" and was due to her inability to meet the physical requirements of the employment. The separation would not disqualify the claimant for benefits and the claimant would be eligible for benefits, provided she met all other eligibility requirements. The employer's account may be charged. The claimant was not able and available for work during the week that ended January 16, 2010 and is not eligible for benefits for that week. Effective January 17, 2010, the claimant was able and available for full-time work and was eligible for benefits, provided she was otherwise eligible.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs