

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**MARIA SALAZAR  
4530 S 12<sup>TH</sup> ST  
OMAHA NE 68107**

**HARVEYS CASINO RESORTS  
2701 – 23<sup>RD</sup> AVE  
COUNCIL BLUFFS IA 51501**

**Appeal Number: 05O-UI-07927-CT  
OC: 05/01/05 R: 01  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Maria Salazar filed an appeal from a representative's decision dated May 25, 2005, reference 03, which denied benefits from May 1 through May 21, 2005 on a finding that she was not able to work. Pursuant to the appeal, a telephone hearing was held on June 23, 2005. The June 27, 2005 decision of the administrative law judge affirmed the disqualification. Ms. Salazar filed a further appeal with the Employment Appeal Board which, on July 28, 2005, remanded the matter for a new hearing because Ms. Salazar had not received timely notice of the prior hearing.

Pursuant to the Employment Appeal Board's remand, due notice was issued scheduling the matter for a telephone hearing on August 23, 2005. Ms. Salazar participated personally. The

employer participated by Carrie Buckley, Employee Relations Representative, and April King, Human Resources Coordinator. Ike Rocha participated as the interpreter.

#### 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. Salazar began working for Harvey's Casino Resorts on January 17, 2000, and last performed services on January 6, 2005. She did not return to work after January 6, because her doctor recommended that she work in a smoke-free environment. The issue of her separation from the employment was adjudicated in a representative's decision dated May 25, 2005. The determination became final in the absence of an appeal.

On April 26, 2005, the employer was provided a doctor's statement releasing Ms. Salazar to return to work without restrictions. She subsequently submitted a doctor's statement dated May 24, 2005 to Workforce Development indicating she could work without restrictions. The May 24 document was submitted at the request of Workforce Development. Ms. Salazar filed a claim for job insurance benefits effective May 1, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Salazar satisfied the availability requirements of the law when she filed her claim effective May 1, 2005. In order to receive unemployment insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Ms. Salazar's doctor indicated on April 26, 2005 that she was able to work without restrictions. There was no evidence that she was unable to work between April 26 and the date of the next doctor's statement, May 24. The release given on May 24 was solely at the request of Workforce Development and not because Ms. Salazar had been again taken off work after April 26.

For the above reasons, the administrative law judge concludes that Ms. Salazar was able to and available for work when she filed her claim for job insurance benefits. Accordingly, no disqualification is imposed. However, benefits are not payable to Ms. Salazar at this time as there is an outstanding disqualification on her record regarding her separation from a different employer.

#### DECISION:

The representative's decision dated May 25, 2005, reference 03, is hereby reversed. Ms. Salazar satisfied the availability requirements of the law effective May 1, 2005. Benefits are allowed, provided she satisfies all other conditions of eligibility and provided there are no other disqualifications on her claim.

cfc/kjw