

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RIKKI C SALDIVAR**  
Claimant

**APPEAL NO. 13A-UI-05170-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT COMMUNITY SCH DIST**  
Employer

**OC: 03/31/13  
Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 24, 2013, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on June 6, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Jabari Woods participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked for the employer as a food service cook 36 to 37 hours per week from August 2007 to December 21, 2012. She broke her ankle off the job in September 18, 2012. She was required to wear a boot and continued to work.

In January 2013, the claimant's doctor advised her that she needed surgery on her ankle, which caused the claimant to take off time from work. As of mid-January 2013, the claimant had not had the surgery yet but knew she would need to take time off after the surgery. She put in her written resignation to be effective February 1 that stated she was resigning due to medical issues and hoped to be return to the school district.

The claimant had her surgery on January 28. She filed for unemployment insurance benefits effective March 31, 2013. From March 31 to the date of the hearing, the claimant had not been released to return to her full-time job as a cook without restrictions. She was restricted to part-time, sit-down work. She has not offered to return to work with the employer because of her restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that individual is qualified to receive benefits if she: (1) left employment because of illness or injury or with the advice of a licensed and practicing physician, (2) notified the employer that she needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but her regular work or comparable suitable work was not available. Iowa Code Section 96.5-1-d.

The evidence establishes the claimant left work due to an injury with doctor's advice and notified the employer that she needed to be absent. But she is not eligible for benefits because she has not been released to return to her job with the employer and has not offered to return to work.

The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount or has been released and offered to work for the employer but her regular work or comparable work was not available.

**DECISION:**

The unemployment insurance decision dated April 24, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount or has been released and offered to work for the employer but her regular work or comparable work was not available.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs