

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RIKKI C SALDIVAR
Claimant

APPEAL NO. 13A-UI-05171-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 24, 2013, reference 02, that concluded she was not able to and available for work. A telephone hearing was held on June 6, 2013. The claimant participated in the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the Davenport School District 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 issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b.

The claimant is only able to work part time in a sit-down job. Her wage credits for her claim are based on working 36 to 37 hours per week in a job requiring standing for extended periods of time. She is not able to work for the purposes of the unemployment insurance law.

DECISION:

The unemployment insurance decision dated April 24, 2013, reference 02, is affirmed. The claimant is ineligible for unemployment insurance benefits effective March 31, 2013, and continuing until she refiles for benefits and establishes she is able to and available for suitable work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs