

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

KURT D ZIRBEL
1518 N JEFFERSON AVE
MASON CITY IA 50401

OPPORTUNITY VILLAGE
1200 N 9TH ST W
PO BOX 622
CLEAR LAKE IA 50428-0622

AMENDED

Appeal Number: 05A-UI-04362-S2T
OC: 12/05/04 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Opportunity Village (employer) appealed a representative's April 20, 2005 decision (reference 05) that concluded Kurt Zirbel (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2005. The claimant participated personally. The employer participated by Monica VerHelst, Team Administrator, and Tammy Rodningen, Team Leader.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from February 8, 2005, to the present. The

claimant was hired as a full-time personal assistant. On April 6, 2005, the claimant requested to work part-time hours for personal reasons relating to the job assignment. The claimant wanted to return to receiving unemployment insurance benefits rather than working with the profoundly handicapped.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(7) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

When an employee requests and is granted time off, he is considered to be unavailable for work. The claimant requested a reduction of his hours and the employer granted his request. The change in hours was initiated by the claimant. He is considered to be unavailable for work from April 6, 2005. The claimant is disqualified from receiving unemployment insurance benefits from April 6, 2005, due to his unavailability for work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$1,790.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's April 20, 2005 decision (reference 05) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with the employer. The claimant is overpaid benefits in the amount of \$1,790.00.

bas/sc