

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

VICTOR W KUPER  
1815 – 8<sup>TH</sup> AVE SW  
CEDAR RAPIDS IA 52404

BISTRO ON 1<sup>ST</sup> INC  
401 – 1<sup>ST</sup> ST SE  
CEDAR RAPIDS IA 52401-1821

Appeal Number: 05A-UI-04640-CT  
OC: 03/27/05 R: 03  
Claimant: Appellant (1)

**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:

Victor Kuper filed an appeal from a representative's decision dated April 28, 2005, reference 02, which denied benefits effective April 3, 2005 on a finding that he was not available for work. After due notice was issued, a hearing was held by telephone on May 17, 2005. Mr. Kuper participated personally. The employer participated by Frank Bowman, Owner.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Kuper was last employed by Bistro on 1st, Inc. on March 30, 2005. He had given 30 day's notice on March 23, 2005 that he was quitting to start

his own business. Subsequent to his March 30 separation, he was devoting his time and efforts to starting his new business. Approximately two days after his separation, he checked with Crown Plaza Hotel to see if there were any positions available to work as a cook. He has not sought work thereafter. He stopped looking for work because he did not feel anyone would hire him because he was not intending to become a long-term employee given his plans to start his own business.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Kuper has satisfied the availability requirements of the law since filing his claim effective March 27, 2005. In order to receive job insurance benefits, an individual must be available for work and must be actively and earnestly seeking work. Iowa Code section 96.4(3). Mr. Kuper denied that he had spent any substantial amount of time starting his own business during the month following his separation. This contention is dubious. However, by his own admission, Mr. Kuper was not seeking work after the week ending April 2, 2005. He had sound reasons for not continuing to seek work. However, those reasons are not sufficient to qualify him for job insurance benefits.

Where an individual's availability is limited because the individual is waiting to go to work for a specific employer, the individual is not considered available for work. 871 IAC 24.23(20). Inasmuch as Mr. Kuper was not seeking work because he was starting his own business, he is not considered available for work. Where an individual fails to make an effort to find employment during a week for which he claims benefits, he is ineligible for benefits for that week. 871 IAC 24.23(27).

Mr. Kuper worked three days during the week ending April 2, 2005 and made one job contact during the week. Given his work activity during the week, he is relieved of the work search requirements for that week. Because he did not make job contacts thereafter, he is disqualified from receiving benefits effective April 3, 2005.

#### DECISION:

The representative's decision dated April 28, 2005, reference 02, is hereby affirmed. Mr. Kuper is disqualified from receiving job insurance benefits effective April 3, 2005 as he was not actively and earnestly seeking work.

cfc/sc