

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY W ALLENDER**  
Claimant

**APPEAL NO. 11A-UI-02956-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHUSTER GRAIN CO INC**  
Employer

**OC: 02/06/11**  
**Claimant: Appellant (4)**

Section 96.4-3 – Eligibility for Benefits

**STATEMENT OF THE CASE:**

Jerry W. Allender filed a timely appeal from an unemployment insurance decision dated March 1, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 29, 2011, with Mr. Allender participating. Human Resources Director Erica Wenzel participated for the employer, Schuster Grain Company, Inc. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Is the claimant presently eligible to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jerry W. Allender was hired as an over-the-road truck driver by Schuster Grain Company, Inc. on May 6, 2010. He was taken out of service on December 31, 2010. Mr. Allender is diabetic. He was taken out of service because of a spike in his blood sugar. Mr. Allender is currently receiving medical treatment and hopes to be released to return to work on or about May 1, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The real question in this case does not concern separation from employment. It is clear from the evidence that Mr. Allender did not voluntarily leave employment. It is also clear from the evidence that Schuster Grain Company cannot allow him to drive in his present medical condition. The ultimate resolution of Mr. Allender's status with the company will be determined by his success in bringing his diabetes under control.

The issue, then, is whether Mr. Allender is eligible to receive unemployment insurance benefits at this time. He is not.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

In order to receive unemployment insurance benefits, an individual must be medically able to work. The evidence establishes that Mr. Allender is not, at this time, medically able to work as an over-the-road truck driver. It also establishes that he desires to return to his primary occupation. For the moment, then, Mr. Allender is not eligible to receive unemployment insurance benefits. If, upon release to return to work, Schuster Grain Company has no work available for Mr. Allender, he should contact the Agency. On the other hand, if his diabetes cannot be brought under control to the extent necessary for him to resume his career as an over-the-road driver, he should contact the Agency for a determination of his eligibility for benefits while he pursues another career.

**DECISION:**

The unemployment insurance decision dated March 1, 2011, reference 01, is modified. The claimant is presently ineligible for unemployment insurance benefits.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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