

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JAMES T TONEY**  
Claimant

**SCHUSTER CO.**  
Employer

**APPEAL 21A-UI-12167-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On May 5, 2021, Schuster Co. (employer/appellant) filed an appeal from the April 29, 2021 (reference 03) unemployment insurance decision that allowed benefits beginning May 17, 2020 based on a finding claimant was able and available for work.

A telephone hearing was held on July 23, 2021. The parties were properly notified of the hearing. The claimant participated personally. Schuster Co. (employer/respondent) participated by Safety Director Krystin Sitzmann. Claimant's Exhibit 1 and Employer's Exhibit A were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time over the road driver. Claimant's first day of employment was July 17, 2019. The last day claimant worked on the job was January 9, 2020. Claimant separated from employment on April 9, 2020. Claimant was discharged on that date.

Claimant was discharged due to being medically unable to return to work. Claimant was out of work beginning on approximately January 9, 2020 due to a work-related injury. Claimant's physician related to that injury released him to return to work without restrictions on March 5, 2020. However, another physician claimant was seeing during this same timeframe had prescribed him medication which prevented him from driving. Claimant informed employer that he could not drive while taking this medication. Employer nonetheless insisted claimant return to work. Claimant was discharged approximately a month later due to not returning to work as requested. Claimant did not tell anyone at employer that he was resigning and he had no intention of doing so. He has not worked elsewhere since.

Claimant stopped taking the medication and so was able to drive again around June 1, 2020. However, claimant began caring for his children during the day at the beginning of April 2020.

This was due to the children being out of school because of the pandemic. Claimant continued to be unavailable for work for this reason until approximately May 2021.

Claimant filed a claim for benefits each week from the benefit week ending May 23, 2020 through the benefit week ending July 17, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the April 29, 2021 (reference 03) unemployment insurance decision that allowed benefits beginning May 17, 2020 based on a finding claimant was able and available for work is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

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".

Claimant stopped taking the medication which prevented him from driving and so was able to drive again around June 1, 2020. However, claimant began caring for his children during the day at the beginning of April 2020. This was due to the children being out of school because of the pandemic. Claimant continued to be unavailable for work for this reason until approximately May 2021.

The administrative law judge finds that while claimant was medically able to work beginning around Jun 1, 2020, he was not available for work from the first week filed and continuing through the benefit week ending May 1, 2021. This is because during this time he was caring for his children during the day. A person who is at home caring for their children during the school day is not an active participant in the labor market and does not meet the availability requirements to be eligible for benefits. He is therefore ineligible for benefits during this period. However, he is eligible for benefits from the benefit week ending May 8, 2021 and continuing from that date, as he was no longer required to be at home and caring for his children during the school day from that time.

While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.

**DECISION:**

The April 29, 2021 (reference 03) unemployment insurance decision that allowed benefits beginning May 17, 2020 based on a finding claimant was able and available for work is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.



---

Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

July 30, 2021  
Decision Dated and Mailed

abd/mh

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.