

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAMUS A BROWN
Claimant

APPEAL NO. 08A-UI-03610-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDINAL GLASS INDUSTRIES INC
Employer

OC: 04/04/08 R: 03
Claimant: Respondent (2)

Section 96.4-3 – Able to and Available for Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Cardinal Glass Industries, Inc. (employer) appealed a representative's April 4, 2008 decision (reference 02) that concluded Shamus A. Brown (claimant) was eligible to receive benefits because he was able to and available for work as of March 13, 2008. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2008. The claimant participated in the hearing. Lori Ramsey, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 2005. The claimant works as a full-time factory laborer. On February 22, 2008, the employer placed the claimant on a temporary layoff.

While skating on February 21, 2008, the claimant fell and broke his shoulder. On March 13, 2008, the employer called the claimant and asked him to report to work on March 17, 2008. The claimant indicated he had limited abilities because his doctor had not yet released him to return to work. The employer understood the claimant was unable to do any work at that time. The employer sent the claimant paperwork to complete because he broke his shoulder.

On March 28, the claimant's doctor examined the claimant and completed paperwork the employer had sent to the claimant. The claimant's doctor indicated the claimant was totally disabled from February 21 through March 31, 2008. The claimant's doctor released the

claimant to return to work on March 31, 2008, with a five-pound weight restriction. (Employer Exhibit One.)

The claimant contacted the employer on March 31, 2008 about returning to work. The employer did not have any jobs for the claimant to do at that time. If the employer would have had a job opening, the claimant could have returned to work. The employer did not have a job opening for the claimant until April 22. The employer recalled the claimant and he returned to work on April 22, 2008.

The claimant established a claim for unemployment insurance benefits during the week of February 17, 2008. The claimant filed claims for the weeks ending March 1 through 29, 2008. The claimant received his maximum weekly benefit amount of \$347.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not able to work when a medical report submitted by a physician states an individual is not currently able to work. 871 IAC 24.23(6).

The evidence (Employer Exhibit One) established the claimant was not able to or available to work February 25 through March 31. Even when a claimant is on a temporary layoff, he must remain able to and available for work so when the employer calls him back, he can return to work. Based on the evidence, the claimant is not eligible to receive benefits from February 24 through March 29, 2008, because he was not able work.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 1 through 29, 2008. The claimant has been overpaid \$1,735.00 in benefits he received for these weeks.

DECISION:

The representative's April 4, 2008, decision (reference 02) is reversed. Based on a physician's statement, the claimant was not able to work February 25 through March 31, 2008. As a result, the claimant is not eligible to receive benefits for the weeks ending March 1 through 29, 2008. The claimant has been overpaid and must repay a total of \$1,735.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw