

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAMUS A BROWN**  
Claimant

**APPEAL NO. 08A-UI-03609-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARDINAL GLASS INDUSTRIES INC**  
Employer

**OC: 04/04/08 R: 03**  
**Claimant: Respondent (1)**

Section 96.5-3-a – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Cardinal Glass Industries, Inc. (employer) appealed a representative's April 4, 2008 decision (reference 01) that concluded Shamus A. Brown (claimant) was qualified to receive benefits even though he declined the employer's offer to return to work on March 17, 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.

The parties agreed the issues noted on the hearing were not correct. The issue the employer appealed was whether the claimant refused to return to work when recalled to work on March 17, 2008. The parties waived legal notice as to what issue(s) would be covered at the hearing. 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.

**ISSUE:**

Did the claimant decline an offer to return to work on March 17, 2008, for reasons that qualify him to receive 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.)

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work without good cause. Iowa Code § 96.5-3-a. Before a claimant can be disqualified under Iowa Code § 96.5-3-a he must be able to and available for work. 871 IAC 24.24(4). 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. Since the claimant was not able to return to work as of March 17, a disqualification under Iowa Code § 96.5-3-a cannot be imposed. Therefore, the claimant is not disqualified from receiving benefits for not returning when the employer recalled him to work on March 13, 2008.

The issue of whether the claimant is able to and available for work and whether he has been overpaid any benefits will be addressed in the decision for appeal 08A-UI-03610-DWT.

**DECISION:**

The representative's April 4, 2008, decision (reference 01) is affirmed. The claimant cannot be disqualified from receiving benefits for refusing an offer of work when he is not able to work. The claimant remains qualified to receive benefits as of March 13, 2008, provided he meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw