

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENT A DAVIS**

Claimant

**APPEAL NO. 09A-UI-07002-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARDINAL CONSTRUCTION INC**

Employer

**OC: 01/25//09**

**Claimant: Respondent (1/R)**

Section 96.5-3-a – Refusal of Recall to Work

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 30, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 2, 2009. Claimant participated. Employer participated through Angie Joerger and Rick Lehman.

**ISSUE:**

The issue is whether the claimant refused a recall for work and was able and available.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a construction laborer in January 2007. He was laid off on January 23, 2009. The claimant obtained other employment as a bus driver. On March 16, 2009 the employer offered him his job back. The offer was for the same hours and rate of pay. The claimant turned down the offer as he was working in another job.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.23(23) provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual.

In this case the claimant started employment with a new employer. He did not refuse a suitable job offer because he was employed at the time a job offer was made.

The record is not clear as to whether a determination of whether the claimant has been able and available has been made. The matter of whether the claimant was able and available is remanded to the Claims Section.

**DECISION:**

The decision of the representative dated April 30, 2009, reference 01, is affirmed. The claimant did not refuse a suitable job offer. This matter is remanded to the Claims Section to determine the weeks the claimant is able and available.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/pjs