

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY J MCKEVITT**  
Claimant

**APPEAL NO. 14A-UI-00683-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 12/08/13**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available/Active Search for Work

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the representative's decision dated January 15, 2014, reference 02, which required the claimant to actively seek work by contacting two perspective employers each week that he claimed unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 11, 2014. The claimant participated. Participating as a witness for the claimant was Ms. Kim Johnson, On-Site Supervisor, Doherty Staffing Solutions.

**ISSUE:**

At issue in this matter is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Cory McKevitt was previously employed by Great Lakes Concrete, Inc. Mr. McKevitt was separated from his employment with Great Lakes Concrete, Inc. in July 2013 and began employment with Doherty Staffing Solutions shortly thereafter. Mr. McKevitt requalified for benefits after earning ten times his weekly benefit amount following his separation from Great Lakes Concrete, Inc.

Mr. McKevitt continues to be employed by Doherty Staffing Solutions at the time of hearing. Mr. McKevitt has been assigned to work by Doherty Staffing Solutions at the Polaris facility since the date of his hire. The claimant is permanently assigned by Doherty Staffing Solutions to work at the Polaris job assignment. On December 10, 2013, Mr. McKevitt, as well as some other workers assigned to the employer's assignment, were temporarily laid off by Doherty Staffing Solutions pending some production line updates by the Polaris company. Mr. McKevitt was assured by the Doherty company that he would be recalled to work for Doherty Staffing Solutions and he would resume his long-term assignment at Polaris upon being recalled. The claimant, in the meantime, made contact with Doherty Staffing Solutions throughout the period of his temporary layoff and the claimant was repeatedly assured that he would be recalled to work with that company. On January 30, 2014, the claimant was informed by Doherty Staffing

Solutions that he would be recalled to his regular job assignment effective February 3, 2014. The claimant was recalled effective that date and has resumed his job assignment at Polaris at the time of the hearing on this matter.

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

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was temporarily unemployed with Doherty Staffing Solutions and was therefore not required to actively seek work by contacting other perspective employers each week that he claimed benefits. It does.

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".

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

In the case at hand the evidence in the record establishes that Mr. McKevitt had been temporarily laid off by Doherty Staffing Solutions without prejudice to Mr. McKevitt because of production changeovers taking place at Polaris Industries, the work location where Mr. McKevitt was assigned by Doherty Staffing Solutions. The claimant had been specifically told that he would be recalled by Doherty Staffing Solutions and Mr. McKevitt maintained contact with his employer throughout the period of layoff and he was repeatedly assured that he would be called back to work. Mr. McKevitt has been called back to his regular work with Doherty Staffing Solutions at the Polaris Industries location at the time of hearing.

The administrative law judge concludes that the claimant was on a temporary layoff from Doherty Staffing Solutions and remained attached to that employer as of January 15, 2014. Mr. McKevitt therefore was not required to contact other perspective employers each week that he claimed unemployment insurance benefits based upon his temporary layoff and ongoing attachment to Doherty Staffing Solutions during this time.

**DECISION:**

The representative's decision dated January 15, 2014, reference 02, is reversed. The claimant was temporarily unemployed and attached to Doherty Staffing Solutions. Therefore, the claimant is not required to actively seek employment by contacting other perspective employers each week that he claims unemployment insurance benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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