

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RYAN A MCCOSHUM
3875 LINK CT
CASTRO VALLEY CA 94546-3003**

**GAINNEY TRANSPORTATION
6000 CLAY AVE SW
GRAND RAPIDS MI 49548**

**Appeal Number: 06A-UI-06891-HT
OC: 06/04/06 R: 12
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Gainney Transportation (Gainney), filed an appeal from a decision dated June 20, 2006, reference 01. The decision allowed benefits to the claimant, Ryan McCoshum. After due notice was issued a hearing was held by telephone conference call on July 27, 2006. The claimant participated on his own behalf. The employer participated by Director of Human Resources Steve Mott, Dispatcher Larry Denhoff and Director of Driver Relations Thurman Taylor and was represented by Consultech in the person of Sue Coppola.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ryan McCoshum was employed by Gainey from October 10 until December 24, 2005. He was a full-time team over the road truck driver.

On the morning of December 23, 2005, the claimant and his driving partner, Beverly Smith, were returning from a delivery when she became ill. Gainey was notified via the Qualcomm communication system around 5:00 a.m. California time, that they were headed home. A series of messages passed between the truck and the dispatch office in Michigan and the employer was notified the claimant was ill.

Mr. McCoshum and Dispatcher Larry Denhoff and Director of Driver Relations Thurman Taylor had a conference call. The claimant agreed to take a solo dispatch at 4:00 p.m. California time that day, after he had taken his required break. The employer had made arrangements for him to be returned to his home by some other means than him driving the company truck so he could be home for the Christmas holiday without going over the number of hours he could drive.

Because of the tension generated by the situation the employer wanted to make sure Mr. McCoshum took the dispatch as agreed and checked on the location of his truck at 5:00 p.m. that day. It had not moved from the location near his home where he had parked it. In the early morning hours of December 24, 2005, Gainey repossessed the truck because it considers a failure to dispatch to be a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant quit work for reasons which would disqualify him from receiving unemployment benefits.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was considered a voluntary quit because he did not take the dispatch at the time he had agreed. This is a no-call/no-show for scheduled work. Although the employer's policy is that this a voluntary quit after one incident, the determination here is under the provisions of Iowa law. The administrative law judge does not doubt the claimant failed to take the dispatch as agreed but his failure to do so is only one incident of no-call/no-show to work. Under the provisions of the above Administrative Code section, there must be three no-call/no-shows before an employee is considered to be a voluntary quit without good cause attributable to the employer.

DECISION:

The representative's decision of June 20, 2006, reference 01, is affirmed. Ryan McCoshum is qualified for benefits, provided he is otherwise eligible.

bgh/pjs