

**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**

**NICHOLAS J LAVENZ
5836 INDIAN CREEK RD
WATERLOO IA 50701**

**DOLLAR TREE STORES INC
500 VOLVO PKWY
CHESAPEAKE VA 23320-1604**

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**Appeal Number: 05A-UI-02519-CT
OC: 02/06/05 R: 03
Claimant: Appellant (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)d – Separation Due to Illness
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Nicholas Lavenz filed an appeal from a representative's decision dated March 4, 2005, reference 01, which denied benefits on a finding that he refused recall to work with Dollar Tree Stores, Inc. After due notice was issued, a hearing was held by telephone on March 29, 2005. Mr. Lavenz participated personally and was represented by Jay Roberts, Attorney at Law. Exhibits A through E were admitted on Mr. Lavenz' behalf. The employer participated by Brad Kline, Manager. The hearing record was left open pending receipt of additional evidence from Mr. Lavenz. The additional evidence has been received, marked as Exhibits F and G, and admitted to the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Lavenz began working for Dollar Tree Stores, Inc. in June of 2002. He was a part-time stocker and cashier working from 30 to 35 hours each week. Mr. Lavenz last performed services on August 16, 2004. He sustained a work-related injury on July 21, 2004, which caused him to be off work beginning August 17.

Mr. Lavenz was initially released to return to work on August 23 but the date was extended to September 7. On September 7, he was told that he could not return to work until pending litigation between him and the employer was resolved. However, he was notified on September 10 that he could return without waiting for the litigation to conclude. He was told he would need a release from his doctor in order to return. Mr. Lavenz saw his doctor on September 23 and was released to light-duty work with lifting of no more than 20 pounds. He saw his doctor again on September 24 and was taken off work until October 4. He did not advise the employer of the September 23 and September 24 releases.

On September 26, Mr. Lavenz was admitted to Mercy Medical Center in Cedar Rapids. Upon admission, he was found to be "oriented times three." He was able to provide some historical data at the time of admission. He made reference to injuries at work and the fact that he had not worked since August. He was placed in a secured mental health unit at Mercy Medical Center, where he remained until discharged to Cedar Valley Ranch on October 20. According to the social worker who saw Mr. Lavenz at Cedar Valley Ranch, he was not mentally stable enough to contact his employer until a few weeks before his discharge on February 1, 2005. Mr. Lavenz contacted the employer on January 27, 2005 and was advised that he no longer had employment with Dollar Tree Stores, Inc.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lavenz was separated from employment for any disqualifying reason. He left the employment on August 16, 2004 because of a work-related injury and immediately notified the employer of the need to be absent. However, he did not return to work when released by his doctor. He last spoke to the employer on or about September 10 and knew that his job was available for him. Although he received a release on September 23, he did not notify the employer of the release. Although he was released on September 24 to return on October 4, he did not advise the employer of the release and did not return to work.

Mr. Lavenz was hospitalized in a mental health unit on September 26. This factor raises the question of whether he was capable of acting to protect his job between September 26 and when he contacted the employer on January 27. The medical evidence establishes that he was mentally able to contact the employer regarding his situation. The admission notes from Mercy Medical Center indicate that he was "oriented times three," meaning he was oriented as to person, place, and time. Inasmuch as he was able to relate some history concerning his employment, the administrative law judge must presume that he was aware that he had employment with Dollar Tree Stores, Inc. The social worker at Cedar Valley Ranch was of the opinion that Mr. Lavenz was mentally stable enough to contact the employer a few weeks before his discharge on February 1. However, Mr. Lavenz did not contact the employer until a few days before his discharge. The evidence as a whole failed to establish that Mr. Lavenz had good cause for not contacting the employer for almost four months. The fact that he was

undergoing mental health treatment does not, in and of itself, establish incapacity to the extent that he was not able to act to protect his job.

The administrative law judge concludes from all of the evidence that Mr. Lavenz abandoned his job. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any good cause attributable to the employer for Mr. Lavenz' separation. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 4, 2005, reference 01, is hereby affirmed as to result. Mr. Lavenz quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs