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REPORT ON THE IMPACT OF DOMESTIC ABUSE AND CHILD CARE ISSUES WITHIN MINNESOTA'S UNEMPLOYMENT INSURANCE SYSTEM

FEBRUARY 1994

DEPARTMENT OF JOBS AND TRAINING

Pursuant to 1993 Minn. Laws Chap. 270
Sec. 1 Subd. 2

The 1993 Session of the Legislature directed the Department of Jobs and Training to conduct a study of domestic abuse issues and child care issues and their treatment under the unemployment insurance system in Minnesota.

Under current Minnesota law, the Department has limited ability to resolve these issues. That is due primarily to the issue of employer fault, which is the underlying concept upon which the unemployment insurance system is built.

It is undisputed that the composition of the workforce has changed in today's world, and that issues such as these which were not factors when the unemployment insurance program was established are now a part of the workplace.

Even so, the unemployment insurance system generally does not pay benefits to individuals where personal circumstances, as for example transportation problems, are interfering with the genuine business demands of their employer's need for a reliable workforce. Moreover, the system does not pay benefits to individuals who quit their jobs to relocate with a spouse because this separation cannot in any way be seen as the fault of the employer, though compelling personal cause is apparent.

The Department was aided in its effort to examine these issues by its Unemployment Insurance Advisory Council.

The Advisory Council determined that input should be obtained from groups who had first-hand knowledge of both domestic abuse and child care issues in today's work place. A meeting was scheduled in early December to allow these groups to present their concerns and recommendations to the Department and the council.

FOCUS GROUP PARTICIPATION

The following individuals representing several organizations were a part of this meeting:

Senator Ellen Anderson	
Representative Kathleen Sekhon	
Polly Kepple	(Child Care Works)
Roegean Goodwin	(Anoka County Resource & Referral)
Vicki Thrasher-Cronin	(Family Resource Anoka-Hennepin)
Amaya Maura	(MN Coalition for Battered Women)

Ellen Ade	(Legal Advocate, MN Coalition for Battered Women)
Aviva Breen	(Director, Commission on the Economic Status of Women)
Hildered Sunbear	(Legal Advocate Eagle's Nest Shelter)
Roseann Eshbach	(Legal Services)
Luli Santaballa	(Director, MN Coalition for Battered Women)
Mazi Johnson	(MN Coalition for Battered Women)

It was reported that according to a 1982 survey on domestic violence, women arrive at shelters with no money. Most battered women hesitate to leave an abusive situation because of fear that they will not be able to provide support for themselves and/or their families. Many of them later end up on welfare because they simply lack appropriate job options.

Many women are compelled to quit jobs simply because the abuser can find them at work. 74% of abusers also abuse or harass the victim in some way at work.

It was reported that battered women who are forced to leave their homes because of abuse must face all of these tough economic issues and more. Studies have shown that there is a high correlation between a battered woman's ability to leave a violent relationship and her ability to support herself after she leaves. A battered woman knows that once she leaves her spouse, she must be able to fill the financial gap to support herself and her children. Even if she goes to a shelter, it is only a temporary solution. By the end of the average 4-6 week shelter stay limit, a woman must find a means to pay her basic living expenses such as rent, food, utilities, medical care, child care, transportation, and clothing. Unless she receives adequate financial support from her former partner, she usually has two options - find a job or turn to the public welfare system.

It was also noted that women at all economic levels and in all levels of employment are represented among the victims. Because of this, the participants felt that where it is appropriate to the situation, and the woman is forced to leave her job, the unemployment insurance system should provide for her.

The Committee was then presented with statistics on the economic status of women in Minnesota. The following points were made:

- 63% of MN women are in the paid labor force, compared to 74% of men. This includes full, as well as part-time workers 16 and over.

- Of women of the usual working age of 16 to 64, 76% are in the labor force. 47% are full-time in the metro area and 37% outstate. 17% are employed full-time, but for only part of the year.

- 75% of women with children are in the labor force. This includes 82% of women with children 6 to 17, and 71% of women with children under 6.

- Only 24% of children in MN live in a two-parent family where the father is the only worker.

- 72% of children living with two parents had both parents in the labor force.

- In mother-only households, 67% of the mothers were in the labor force.

- In father-only households, 89% were in the labor force.

With regard to earnings:

- 50% of women earned under $20,000
- Another 26% earned between $20,000 and $30,000
- Another 20% earned between $30,000 and $50,000
- 3% earned between $50,000 and $75,000
- 0.5% earned between $75,000 and $100,000
- .0003% earned over $100,000.

On the other hand:

- 50% of men earned under $30,000
- 32% earned between $30,000 and $50,000
- 12% earned between $50,000 and $75,000
- 3% earned between $75,000 and $100,000.

It was suggested that many more women would be able to get out of abusive relationships, and get their children away from them as well, if they at least knew they would be eligible for unemployment insurance benefits, although no one has any real estimate of how many might leave jobs if they were eligible.

Finally, the point was made that most women want to stay in the work force and not collect UI benefits. The participants felt that if a person collected benefits, they would not remain in the unemployment insurance program long because it does not provide enough money to live on. Often, self respect is tied to their jobs and it is very important to keep working in order to keep the children.

With respect to the child care issue, Roegean Goodwin presented some significant statistics on child care needs experienced by clients in Anoka County.

- 19% of those seeking employment need child care to enter the workforce.
- Many workers have lost their old provider, often for reasons beyond their control.
- Of child care problems which are directly job-related, it is most often because of job schedule changes, overtime or travel requirements.
- Car troubles or lack of public transportation can contribute to the problem.
- It costs an average of $85.00 per week for infant care.
- Low income and single parents are having more difficulty affording child care.
- 75% of 1-12 year olds are in informal child care arrangements.

The panelists suggested criteria to consider in cases where the individual was forced to separate due to child care problems. These include evidence of:

- Reasonable attempts to obtain new child care.
- Availability of child care in the area.
- Affordability.
- Immediate availability and accessibility (on bus route, or available via public transportation).
- Employer actions which contributed to the problem.
- Actions by others, such as child care providers, that impacted the situation.

In considering any change, we need to touch on the issue of federal conformity as well.

Nothing in federal law requires us to either pay or refrain from paying unemployment benefits in either domestic abuse or child care cases. It does, however, restrict the payment of benefits to individuals who are fully able to work and available for work.

That issue is less of a problem with domestic abuse cases, since the individual facing relocation would generally be ready and eager to begin new employment in that new location.

For child care, or elder care for that matter, the issue is more complex since on its face it raises a question of availability for work. It would be difficult to argue that an individual who separated from employment due to a child care problem was at the same time fully available to accept other work. That would effectively prevent the payment of benefits to individuals who separated due to child care problems until those problems had been resolved.

In addition, the impact of charges to employers under such situations also needs consideration. It is likely that benefits paid as a result of a change in either issue would not be directly charged to employer accounts, since the employer had not caused the problem. This means that the cost would be socialized and, in effect, funded by all employers' minimum rate contribution. While that might resolve the issue for taxpaying employers, under federal law reimbursing employers such as non-profit corporations, local units of government and school districts would have to directly pay for any benefits paid based upon the worker's employment with them.

Historically, unemployment insurance law has had difficulty in attempting to address issues by category. The Courts generally object to presumptive determinations that are not rebuttable. Most notably, this has been an issue with claimants who are also students while earning their wage credits.

For that reason, any benefits paid as a result of a separation due to child care would almost surely have to be based on broader "personal good cause" legislation. The scope of implementing such a provision, and the cost of administering something so subjective would be substantial.

OTHER STATES' APPROACHES

In order to determine the status of these issues in other states, the Department surveyed the other states to determine the disposition of unemployment insurance benefit payments when child care or domestic issues were involved.

I. The following states responded that unemployment insurance benefits would be denied under these circumstances:

Alabama
Colorado
Illinois
Iowa
Kentucky
Michigan
Mississippi
Missouri
New Mexico
North Carolina
South Carolina
South Dakota
Tennessee

II. The following states responded that unemployment insurance benefits would be allowed under these circumstances, but also noted that an able and available issue could result which would ultimately result in a denial:

Alabama
California
Hawaii
Nevada
Washington

III. The following states responded that special provisions exist providing for the payment of unemployment insurance benefits under these circumstances, but also noted that an able and available disqualification could result:

Maine: Allows payment when separation was due to domestic abuse.

New York: Would not disqualify in cases where parent was required to be home with infant. Parent would be considered unavailable, however. In addition, a single parent who quits due to a shift reassignment which precludes spending any time with the child would be found to have good cause. They would not disqualify

on discharge if claimant had advised the employer of the problem and was making good faith efforts to find child care.

A refusal for domestic reasons could be good cause. New York case law includes good cause for refusing a rotating shift job which would force one to leave a 14-year old child at home alone at night.

If child care was an issue, however, all claimants must explain how they will be able to remove the restrictions imposed by the child care problem in order to be able and available. A claimant who cannot secure child care for the hours/days normal for the occupation would be considered unavailable.

Massachusetts: Claimants must be allowed an opportunity to rectify a pressing child care or ill family member care problem without having to lose their job in order to do so. If an individual must leave work to deal with an "urgent, compelling and necessitous" family care issue, then leave should be granted by the employer so that the matter can be dealt with and the individual can return to work. In those instances where the employer refuses to grant leave, thereby forcing the claimant to quit, unemployment insurance benefits would be paid. A claimant does not have to provide substitute care when s/he goes on job interviews or obtains employment, however, a claimant would remain eligible for benefits only until two weeks following a job offer. This two-week period is provided so that appropriate child care/ill family member care provisions can be made upon re-entry into the labor force.

MINNESOTA'S EXPERIENCE

The Department does not maintain data based upon either domestic abuse separations, or separations due to child care. In general, these separations would be disqualifying as separations due to personal problems for which the employer would not be responsible, and counted broadly only as quits or discharges.

To resolve the lack of data, our offices sent copies of all domestic abuse and child care issues to the Central Office for our review. From September through December, a total of 27 cases were submitted. These cases were reviewed, and are summarized without breaching confidentiality in the attachment to this report.

Some general trends are worth noting.

- Domestic abuse cases accounted for only four of the cases during this period. Under the Department's newly adopted policy, it is likely these individuals would qualify for benefits.

- Three of the child care cases involved men.

- Although not a factor in the Department's decisions, and therefore not requested, two of the cases involved individuals who volunteered the information that they were single parents.

- In 8 of the cases, the discharge occurred as a result of a pattern of attendance problems.

- In six of the cases, the discharge occurred after final warnings.

- In 9 of the cases, child care problems were reported to have caused claimants to resign. Problems included cost of daycare, availability of daycare, and in one instance, a resignation for the summer.

- In one instance, an individual discharged for absence due to an ill child was allowed unemployment benefits. This was consistent with court precedent in the McCourtney case.

- Two cases involved a refusal of suitable work due to child care problems. One of these cases was reversed by the Court, and benefits paid.

- Two of the cases involved issues of able and available for work, which are prerequisites under federal law for the payment of unemployment benefits.

The cases are helpful in defining the problems that are present in domestic abuse and child care cases.

In the area of domestic abuse, they were useful in helping to fashion a solution to the problem.

The child care issue is not so easily resolved. It is more prevalent, and the challenge to the longstanding principal of employer fault more far reaching. Because of this, consensus toward resolution is also more elusive.

Minnesota's court system is not unaware that child care is an issue in the work place today. Attached to this report is a chronological summary of relevant court decisions involving the child care question.

Until 1991, the Courts made it clear that employers were not responsible for adjusting business needs to the personal needs of their employees. In 1991, the Appellate Court (with dissent) made an exception in the case of a discharge due to the need to care for a sick child. More recently, the Court of Appeals has declared the controlling Supreme Court cases out of date. This issue is currently before the Supreme Court for clarification since a lower court is generally not empowered to nullify the rulings of a higher court.

DOMESTIC ABUSE POLICY

The Department has been able to obtain general consensus on the issue of separations which result when a worker must quit his or her job to escape a domestic abuse situation by relocating. Accordingly, we have implemented a policy which would view such situations in the context of the Serious Illness provision of current law.

It was concluded that in making such a determination, it must be established by a preponderance of the evidence, that the threat of imminent bodily harm constituted a serious illness requiring separation from employment. In order to establish a threat of imminent bodily harm, the factors to be considered are:

a. An existing restraining order.

b. Police reports.

c. Information furnished by the employer.

d. Observation or reports from a competent professional

e. Other substantial evidence/testimony as to the existence of the abusive situation.

In order to establish that this threat constituted a serious illness requiring separation from employment it must be established that:

1. The decision to leave employment was based upon a need to escape the abuse and was accompanied by the individual's change of residence or location.

2. The individual continued to maintain the separation from the abuser at least up to the time of the initial determination on benefit rights.

3. The claimant made reasonable efforts to retain employment.

It is not anticipated that this issue will arise frequently, and thus this policy should see limited use. As such, it would not result in a tax rate increase for Minnesota's employers. Minnesota's reimbursing employers, however, will be required to pay for any benefits based upon employment with them.

In implementing this policy, steps were taken to allow for tracking these issues separately so that both volume and cost can be monitored.

RECOMMENDATIONS

The Department is pleased to report that the issue of domestic abuse appears to have been resolved to the satisfaction of all parties concerned, and recommends no further action.

The issue of separations due to child care is currently in the process of receiving definition from our court system in the context of current law. We believe it would be unwise to take action until that guidance has been provided by the Courts. Even when that decision is known, it must be remembered that a fundamental basis for unemployment insurance eligibility is the individual's attachment to the labor market. While it is the employer's obligation to work with employees to resolve such problems and accommodate temporary situations, that obligation should not be extended to include funding benefits for individuals separated due to their own or third party actions and/or due to society's failure to provide for all child care needs.

Accordingly, it is our recommendation that no specific action on this issue be taken at this time with the exception of considering a provision which would clear an employer's account of charges when a payable separation that was beyond the control of the employer occurs. In that way, we will be able to implement the effect of the Supreme Court decision that may be handed down in this area without imposing an undue hardship on the employer community.

ATTACHMENT I

Case Number 1 involves a 39-year old woman in southeastern Minnesota with a high school education who was disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work for the 3 p.m. to 11 p.m. shift. The claimant is a single parent with two minor children, age 10 and 2. This job refusal occurred after the claimant had been paid almost $4,000 at the rate of $178 per week.

Case Number 2 involves a 33-year old woman who was disqualified when she resigned from her employment in East Grand Forks to relocate to Cambridge, Massachusetts with her spouse. This claimant has a high school education and worked for a nursing center, which is a reimbursing, rather than taxpaying, employer. This employer has a workforce of 190 employees, and a quarterly payroll of $500,000.

Case Number 3 involves a 32-year old woman in the metropolitan area who was disqualified from her employment for failing to contact her employer when she missed work due to a child care emergency with her 2-year old son after being warned about this the preceding month. She has a high school education and had worked for this employer for 10 months. This employer has a workforce of 90 employees, and a quarterly payroll of $300,000.

Case Number 4 involves a 24-year old man in southeastern Minnesota with a 10th grade education who was disqualified when he resigned from his position to relocate with his fiancee. His employer had a workforce of 47 employees, and a quarterly payroll of $171,000.

Case Number 5 involves a 30-year old man with a high school education in the metropolitan area who was disqualified when he resigned rather than accept an offer of suitable work resulting from restructuring. This position would have required that he work the noon to 8:30 p.m. shift, rather than 9:30 a.m. to 6 p.m. This did not coincide with day care hours provided by his employer, and he chose not to utilize his wife or relatives between 5:45 p.m. and 8:30 p.m. when employer-provided day care was not available. His employer is a health care provider and has a workforce of 3500 employees, and a quarterly payroll of $19.5 million.

Case Number 6 involves a 22-year old woman in southeastern Minnesota with a high school education who was disqualified when she resigned rather than make day care arrangements that would allow her to work until 5 p.m. when needed. Her employer operated a restaurant with a workforce of 45 employees and a quarterly payroll of $135,000.

Case Number 7 involves a 31-year old metropolitan woman with two years of post-high school education who was disqualified when she was discharged for three instances of tardiness which she attributed to child care reasons and traffic. Her employer also cited poor performance, and included a copy of an attendance warning memo issued to her in January, 1993. The employer, a law firm, has a workforce of almost 300 employees, and a quarterly payroll of almost 4 million.

Case Number 8 involves a 29-year old woman in the metropolitan area with a high school education who was disqualified when she was discharged for excessive absenteeism due to day care problems. Her employer operated a restaurant with a workforce of 50 employees and a quarterly payroll of $70,000.

Case Number 9 involves a 37-year old woman with two-years of post-high school education who lives in the metropolitan area. She was disqualified when she resigned her position due to transportation and child care problems with her two children, ages 13 and 7. At the time she resigned she was already on probation due to attendance problems. Her employer is an insurance company with a workforce of over 400 employees and a quarterly payroll approaching 4 million.

Case Number 10 involves a 34-year old woman in the metropolitan area with a 10th grade education who was disqualified after resigning due to child care problems which occurred after her promotion to manager. Claimant is a single parent. The employer operates a restaurant with a workforce of 160 employees, and a quarterly payroll of $300,000.

Case Number 11 involves a 27-year old woman in the metropolitan area with a high school education who was disqualified after resigning by failing to return from a medical leave of absence because she was having difficulty making arrangements for day care in the Stillwater area. The employer has a workforce of less than 25 employees, and a quarterly payroll from $140,000 to $300,000. The business operates on a school-year basis.

Case Number 12 involves a 46-year old woman in the metropolitan area with an 11th grade education who was disqualified after resigning due to day care and transportation problems. Prior to resigning, she had been granted a leave of absence to address those problems. The employer is a health care provider with a workforce of over 300 employees, and a quarterly payroll of $1.2 million.

Case Number 13 involves a 24-year old woman in the metropolitan area with a high school education who was disqualified in accordance with federal requirements for being unable and unavailable for work. This unavailability was due to the threat of harassment by her former husband, even though the claimant has obtained a restraining order.

Case Number 14 involves a 44-year old woman in the metropolitan area with one-year of post high school education who was disqualified after resigning from her Long Prairie employment to relocate to Minneapolis due to an abusive situation brought about by a pending divorce. The employer is a health care provider with a workforce of 235 employees, and a quarterly payroll of $750,000.

Case Number 15 involves a 38-year old woman from the metropolitan area with one year of post high school education who was disqualified when she resigned to move up north to get out of an abusive relationship. She worked as an optician for an employer with a workforce of 4 employees, and a quarterly payroll of $30,000.

Case Number 16 involves a 38-year old woman who voluntarily quit her employment when her daycare costs became excessive. The claimant was employed with this company from 6/12/89 through 9/3/93. Her most recent position was that of a proofreader earning $7.04/hour. Her daycare costs increased due to a change in her residence which caused her to lose assistance for daycare payment. The claimant states she requested a leave of absence and was denied. Her employer states the claimant did request a leave of absence from her immediate supervisor and was referred to the appropriate person at a higher level. The claimant did not approach that person to request a leave of absence. The claimant was subsequently disqualified from receiving unemployment benefits.

Case Number 17 involves a 40-year old woman who was disqualified from receiving unemployment insurance benefits when she voluntarily quit her employment due to summer child care problems. The claimant worked as a temporary part-time employee from September, 1992, through June, 1993. The claimant asked for, but was not granted, a leave of absence prior to quitting. She was told to call when school started to determine the needs of the company at that time.

Case Number 18 involves a 27-year old woman who voluntarily quit her employment when she was unable to find daycare following a 6-week maternity leave. She was disqualified from receiving unemployment insurance benefits as, not only was she unable to find daycare, but was also unable to provide a return-to-work date. She had been employed as an office assistant at a health clinic, a reimbursing, rather than taxpaying, employer. The claimant's dates of employment were 11/16/92 - 9/13/93, earning $1120/month.

Case Number 19 involves a 26-year old woman in Shakopee, Minnesota, who was disqualified from receiving unemployment insurance benefits when she was discharged due to excessive tardiness and absenteeism, which she said was caused by personal child care problems. The claimant was employed from 8/22/92 through 8/2/93 as a cage cashier in a casino, earning $6.50/hour. During her employment, the claimant was absent 10 days and tardy 15 days. She had been warned on numerous occasions and placed on suspension three separate times prior to her termination.

Case Number 20 involves a 37-year old woman who voluntarily quit her employment to relocate due to an abusive domestic relationship. The claimant was employed with this company from 1/1/93 through 9/15/93, earning $8.70/hour. The claimant was disqualified from receiving unemployment insurance benefits.

Case Number 21 involves a 38-year old woman who was disqualified from receiving unemployment insurance benefits when she quit her job due to child care/school problems. The claimant was employed as a cashier in a fast food restaurant from January, 1993 - August, 1993 earning $4.25/hour. The claimant asked the assistant manager if she could change her hours to enable her to be home in the morning until her son went to school. The assistant manager informed the claimant that she would have to discuss it with the manager who was on vacation at the time. The claimant quit prior to receiving an answer.

Case Number 22 involves a 20-year old male who voluntarily quit his employment due to child care reasons. The claimant was employed as a maintenance worker from 3/92 - 5/93. In 5/93, he began a medical leave of absence. He was released to work by his physician on 10/11/93. At that time, the claimant was offered a second-shift position as that was the only shift available at the time. There had been no previous guarantee of hours. The claimant quit, stating he could only work first shift due to child care problems. He was disqualified from receiving unemployment insurance benefits.

Case Number 23 involves a 21-year old woman who was disqualified from receiving unemployment benefits following her discharge due to excessive absenteeism and tardiness. The claimant stated she has two children and they are the reason for her attendance problems. She worked as a painter for this employer from July, 1992 through September, 1993.

Case Number 24 involves a 27-year old woman who voluntarily quit her job when there was a conflict with daycare hours and commuting time due to the company's relocation. The claimant was disqualified from receiving unemployment insurance benefits. She was employed as a production specialist from 3/11/91 through 8/5/93. The company offered the claimant a leave of absence to arrange for alternate daycare, but the claimant opted to resign.

Case Number 25 involves a 32-year old woman who was discharged from her employment during her probationary period due to a variety of reasons. The claimant was warned about poor work habits and excessive absenteeism prior to her dismissal. The claimant missed work due to her illness and that of her daughter. The claimant was employed by this company from 9/13/93 through 11/02/93. She was not disqualified from receiving unemployment insurance benefits.

Case Number 26 involves a 46-year old woman who was disqualified from receiving unemployment insurance benefits for two days as she was unavailable to work on those days due to personal problems. The claimant had been working on call for this employer as a commercial cleaner. Due to personal problems, she was experiencing with her 17-year old son, she did not feel she could accept evening work when called to do so.

Case Number 27 involves a 37-year old woman who was disqualified from receiving unemployment insurance benefits when she refused suitable reemployment with a previous employer because she did not have affordable daycare. The claimant had accepted similar jobs with this temporary employer in the past. The particular assignment which was offered was working on the third shift, however, the claimant was given the opportunity to work whichever shift she wanted.

ATTACHMENT II

BRIEFS OF COURT CASES INVOLVING CHILD CARE

Swanson v. Minneapolis-Honeywell Regulator Co., 240 Minn. 449, 61 N.W. 2d 526 (1954)

Swanson involved a mother of two minor children, who was laid off from a job on the day shift which had started at 8:00 A.M. Swanson had been able to take her youngest child to a nursery at 7:30 A.M. each day on her way to work. Honeywell offered Swanson reemployment at another of its plants, across the city, starting at 7:00 A.M. or 7:30 A.M. Swanson was unable to make satisfactory day-care arrangements and refused the job.

The Court held that Swanson was unavailable for work and thus ineligible for benefits (even though the Commissioner had held Swanson had refused suitable work). The Court stated that there was nothing indicating that the "legislature intended that a claimant might limit her employment to certain hours of the day where the work she was qualified to perform is not likewise limited."

Thompson v. Schraiber, 253 Minn. 46, 90 N.W. 2d 915 (1958)

Thompson, a waitress, was requested by her former employer, a tavern, to come to work on a split shift. Thompson refused because she had minor children which she could not leave at home alone and because it was economically impractical for her to hire a baby-sitter.

The Court indicated that when a person places herself in the labor market for the type of work where it is customary to work in shifts, she must be available for any shift, and where split shifts are an accepted employment practice, the refusal to work split shifts renders the individual unavailable for work. The Court went on to state that:

> We would work a great injustice if we were to subject employers to the task of conducting their business to suit the domestic necessities of each of their employees.

Preiss v. Commissioner, 347 N.W. 2d 74 (Minn. App. 1984)

Preiss, who had previously worked as a secretary/bookkeeper, refused to take a job to which she was referred, in part, because it required night and weekend work that she felt would have interfered with her family life. The Court noted that night and weekend work was not unusual in this type of occupation and citing

Swanson held that Preiss' reasons for refusing to accept the offer of work did not constitute good cause and denied benefits.

Mastley v. Commissioner, 347 N.W. 2d 515 (Minn. App. 1984)

Mastley refused, in part, to apply for suitable work which he had been referred, asserting that his wife would have had to quit her job to take care of their child or they would have to hire a baby-sitter. The Court, citing Swanson, denied benefits and stated:

> Such refusal, because of domestic duties, is insufficient to constitute good cause for failure to apply.

Levens v. Co-Rect Bar & Restaurant Supply, 356 N.W. 2d 774 (Minn. App. 1984)

The base period employer offered Levens reemployment for a night shift position. Levens refused the job because she was concerned about arranging child care. Citing Preiss, the Court stated that:

> Relator's concern about arranging child care was insufficient cause to reject the reemployment offer.

Kampa v. Normandale Tennis Club, 393 N.W. 2d 195 (Minn. App. 1986)

Kampa had a young son with medical problems, requiring her to adjust her schedule to meet his needs. Kampa was late for work on occasion and absent on other occasions and was reprimanded and told that her scheduling problems could not continue. Kampa quit the employment because she was afraid she was going to be discharged. The Court held that Kampa failed to establish good cause attributable to the employer for her voluntary separation and stated:

> Kampa's own scheduling problems did not constitute good cause to terminate her employment.

McCourtney v. Imprimis Technology, Inc., 465 N.W. 2d 721 (Minn. App. 1991)

McCourtney's child, only a few months old, suffered from numerous illnesses and McCourtney was frequently absent from work to care for the child. McCourtney was issued a

warning and told to develop a written plan to solve her child care problem when, because of illness, she was unable to take her baby to the regular baby-sitter. McCourtney determined that she could not afford the hiring of a nanny, and that the only provider which would care for sick infants on short notice would not guarantee a care giver, would not allow her to interview the care giver before the care giver entered the home, and the cost of such care giver was significant. McCourtney continued to be absent to take care of her child, and was discharged. The majority of the Court (the three person panel) found that McCourtney showed substantial evidence to find child care, but was unable to do so and her action, motivated by her child's interests, was not misconduct.

Judge Popovich, in dissent, wrote in part that:

> Under the majority's analysis, an employer becomes a victim of an employee's personal problems with obtaining child care. An employer is forced to (1) put up with the employee's extensive absences or (2) pay for the resulting unemployment at potentially great expense. I do not believe that it was the legislatures intent to force employers into this 'catch 22' position. Rather, as respondents point out, other social welfare programs have been developed to handle the child care issue.

Verdon v. Control Data Corporation (unpublished) (filed January 12, 1993)

Verdon transferred into an area which operated on a 24 a day, 7 day a week basis. Verdon worked for a time on 12 hour shifts, 3 days a week. Verdon's mother cared for her child.

Control Data decided to change to a five day workweek and Verdon was notified that her schedule would be Monday through Friday, 11:00 A.M. to 7:30 P.M. Verdon indicated that she could not work the hours because of child care scheduling problems. The employer offered her a new schedule, Saturday through Wednesday, 2:00 P.M. to 10:00 P.M. Verdon indicated that she could not arrange child care, and would not work the schedule. When the employer told her that nothing further could be done, she became upset and quit the employment.

The Court, citing Swanson, indicated a parent who limits employment to certain hours of the day because of child care is not entitled to benefits. The Court indicated that

under Swanson, they could not rule that the schedule change established good cause attributable to the employer.

Prickett v. Circuit Science, 499 N.W. 2d 506 (Minn. App. 1993)(case presently pending before the Minnesota Supreme Court)

Prickett worked on the first shift, Monday through Friday. A second shift maintenance mechanic bid on a first shift opening. The employer had to assign a maintenance mechanic to the second shift, on a temporary basis, while a new mechanic was trained for the second shift. Prickett, the least senior employee, was assigned pursuant to the union contract to the second shift on a temporary basis. Prickett was unable to work second shift because he was a single parent, and did not have child care available for second shift hours. Prickett was given time off to find child care. Prickett was unable to do so, and after 8 days of missed work, he was discharged because he failed to report for scheduled work.

The Court of Appeals indicated that Swanson and Thompson were decided some time ago, and the rule in those cases "is ill-suited to modern child care reality." The Court held that there was no misconduct to justify disqualification as Prickett made a good faith effort to find child care and no child care was available. The Court stated that given Prickett's situation, his inability to transfer to the new shift did not evince a willful or wanton disregard of the employer's interest, nor did it demonstrate a lack of concern for his job.

Gustavson v. Winona Knitting Mills (unpublished) (filed December 28, 1993)

Gustavson, a single parent who lived in Winona, was referred to a second shift position. Gustavson was unable to obtain day-care and refused the position. The Court distinguished Swanson on the basis that the opinion indicated nothing about the effort to secure child care, and that Swanson was not a single parent. Citing Prickett, the Court held that Gustavson's inability to locate child care during the second shift provided her with good cause for failing to apply for the available job.