

April 9, 2009

Cheryl Atkinson
Administrator
Office of Workforce Security
200 Constitution Avenue N.W.
Room S-4231
Washington, D.C. 20210

RE: Minnesota's Application for Incentive Payment – Part II (applicants seeking only part-time work, and separations from employment due to compelling family reasons)

Dear Ms. Atkinson:

This correspondence is Part II of Minnesota's application for incentive payments totaling \$130,063,620 under section 2003(a) of Public Law 111-5, The American Recovery and Reinvestment Act of 2009. The application is submitted in two parts, Part I addresses the alternate base period (sent under separate cover). This Part II addresses the remaining provisions necessary to receive the incentive payments; applicants seeking only part-time work and separations from employment due to compelling family reasons.

Yesterday, Minnesota's governor, Tim Pawlenty, signed into law a legislative enactment, S.F. 1197, making changes to Minnesota statutes which meet the federal requirements to receive the remaining two-thirds of the incentive payments. That law will be published at Laws 2009, Ch. 15.

That law (copy attached), at section 4, makes changes to the statutory definition of "suitable employment." When read in conjunction with the current requirement found in Minn. Stat. §268.085, subd. 1, that any applicant must be "available for suitable employment" and "actively seeking suitable employment," the federal requirements are met. An applicant who worked part-time during the base-period can limit availability for employment and a search for employment to part-time work. While Minnesota does not specifically define part-time work an applicant who worked, for example, 10 hours a week during the base-period, could limit availability and a search for employment to part-time work of 10 hours per week. Part-time work that is "comparable" to the part-time work performed in the base period, in terms of hours as well as pay level, is suitable employment. But rest assured Minnesota will interpret the part-time work provisions consistent with the federal requirements as is required by section 11 of the new law.

The enactment makes the necessary changes the statutes to meet the "compelling family reasons" requirements. Included is a definition of "immediate family member" which is broader than required in that it includes stepparents and stepsons and stepdaughters. This is found at section 2 of the law.

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Minnesota has for a number of years provided unemployment benefits to applicants who quit due to domestic abuse or are discharged due to conduct resulting from domestic abuse (in most instances absence or tardiness). Minor modifications were made to current law on domestic abuse to meet the federal requirement (broadening it to encompass immediate family members, as opposed to the prior limit to minor children). These minor modifications can be found at sec. 8, page 9, lines 17-30, and at sec. 9, page 10, lines 24-27.

The enactment expands eligibility for applicants who quit employment to provide necessary care because of the illness, injury, or disability of an immediate family member. This eligibility also applies to applicants who are discharged for this reason (only applicants discharged for employment misconduct are ineligible, and this reason is explicitly excluded from the definition of employment misconduct). These changes are found at sec. 8, page 8, lines 32-35, and sec.9, page 10, lines 18-19.

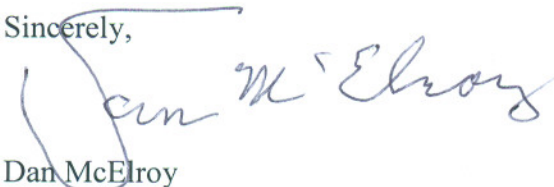
Eligibility for unemployment benefits is expanded to applicants who quit employment in order to accompany a spouse whose job location changed. This change is found at sec. 8, page 9, lines 31 and 32.

As Commissioner of the Minnesota Department of Employment and Economic Development, I can certify that this law is effective August 2, 2009. Additionally, I can certify that these are permanent changes to Minnesota law and are not temporary or subject to discontinuation under any circumstances other than repeal by the legislature.

The changes described above meet the requirements necessary for the Minnesota Unemployment Insurance Trust Fund to receive the remaining two-thirds of the incentive payments. The incentive payments will be used to pay unemployment benefits to unemployed Minnesota workers. The incentive payments will strengthen the trust fund, helping to insure its stability and solvency.

If you have any questions regarding this application please contact Lee B. Nelson at lee.nelson@state.mn.us or at 651-259-7117.

Sincerely,

A handwritten signature in blue ink that reads "Dan McElroy". The signature is written in a cursive style and is positioned above the printed name.

Dan McElroy
Commissioner

CC: Jerry Hildebrand

1.1 A bill for an act
1.2 relating to unemployment insurance; conforming Minnesota law to the
1.3 requirements necessary to receive federal stimulus funds; appropriating money;
1.4 amending Minnesota Statutes 2008, sections 268.035, subdivisions 4, as
1.5 amended, 21a, 23a, by adding a subdivision; 268.07, subdivisions 1, 2; 268.085,
1.6 subdivision 15; 268.095, subdivisions 1, 6.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2008, section 268.035, subdivision 4, as amended by
1.9 Laws 2009, chapter 1, section 1, is amended to read:

1.10 Subd. 4. **Base period.** (a) "Base period", unless otherwise provided in this
1.11 subdivision, means the last four completed calendar quarters before the effective date of
1.12 an applicant's application for unemployment benefits if the application has an effective
1.13 date occurring after the month following the last completed calendar quarter. The base
1.14 period defined in this paragraph is considered the primary base period. The base period
1.15 under this paragraph is as follows:

| | |
|--|-------------------------------|
| 1.16 If the application for unemployment | The base period is the prior: |
| 1.17 benefits is effective on or between these | |
| 1.18 dates: | |
| 1.19 February 1 - March 31 | January 1 - December 31 |
| 1.20 May 1 - June 30 | April 1 - March 31 |
| 1.21 August 1 - September 30 | July 1 - June 30 |
| 1.22 November 1 - December 31 | October 1 - September 30 |

1.23 (b) If an application for unemployment benefits has an effective date that is during
1.24 the month following the last completed calendar quarter, then the base period is the first
1.25 four of the last five completed calendar quarters before the effective date of an applicant's

2.1 application for unemployment benefits. The base period defined in this paragraph is
2.2 considered the secondary base period. The base period under this paragraph is as follows:

| | | |
|-----|---|-------------------------------|
| 2.3 | If the application for unemployment | The base period is the prior: |
| 2.4 | benefits is effective on or between these | |
| 2.5 | dates: | |
| 2.6 | January 1 - January 31 | October 1 - September 30 |
| 2.7 | April 1 - April 30 | January 1 - December 31 |
| 2.8 | July 1 - July 31 | April 1 - March 31 |
| 2.9 | October 1 - October 31 | July 1 - June 30 |

2.10 (c) If the applicant has insufficient wage credits to establish a benefit account under
2.11 paragraph (a) or (b), but during the base period under paragraph (a) or (b) an applicant
2.12 received workers' compensation for temporary disability under chapter 176 or a similar
2.13 federal law or similar law of another state, or if an applicant whose own serious illness
2.14 caused a loss of work for which the applicant received compensation for loss of wages
2.15 from some other source, the applicant may request an extended base period as follows:

2.16 (1) if an applicant was compensated for a loss of work of seven to 13 weeks, the
2.17 base period is the first four of the last six completed calendar quarters before the effective
2.18 date of the application for unemployment benefits;

2.19 (2) if an applicant was compensated for a loss of work of 14 to 26 weeks, the base
2.20 period is the first four of the last seven completed calendar quarters before the effective
2.21 date of the application for unemployment benefits;

2.22 (3) if an applicant was compensated for a loss of work of 27 to 39 weeks, the base
2.23 period is the first four of the last eight completed calendar quarters before the effective
2.24 date of the application for unemployment benefits; and

2.25 (4) if an applicant was compensated for a loss of work of 40 to 52 weeks, the base
2.26 period is the first four of the last nine completed calendar quarters before the effective date
2.27 of the application for unemployment benefits.

2.28 (d) If the applicant has insufficient wage credits to establish a benefit account using
2.29 the secondary base period under paragraph (b), an alternate base period of the last four
2.30 completed calendar quarters before the effective date of the applicant's application for
2.31 unemployment benefits will be used. Establishment of a benefit account is in accordance
2.32 with section 268.07, subdivision 2.

2.33 (e) No base period under paragraph (a), (b), or (c), or (d) may include wage credits
2.34 upon which a prior benefit account was established.

2.35 (f) Notwithstanding (f) Regardless of paragraph (a), the secondary base period
2.36 calculated under in paragraph (b) using the first four of the last five complete calendar
2.37 quarters before the effective date of the applicant's application for unemployment benefits

3.1 must be used ~~for an applicant~~ if the applicant has more wage credits under that base period
3.2 than under the primary base period in paragraph (a).

3.3 EFFECTIVE DATE. This section is effective for applications for unemployment
3.4 benefits filed effective on or after August 2, 2009.

3.5 Sec. 2. Minnesota Statutes 2008, section 268.035, is amended by adding a subdivision
3.6 to read:

3.7 Subd. 19a. Immediate family member. "Immediate family member" means
3.8 the applicant's spouse, parent, stepparent, son or daughter, stepson or stepdaughter, or
3.9 grandson or granddaughter.

3.10 Sec. 3. Minnesota Statutes 2008, section 268.035, subdivision 21a, is amended to read:

3.11 Subd. 21a. Reemployment assistance training. (a) An applicant is in
3.12 "reemployment assistance training" when:

3.13 (1) a reasonable ~~and~~ opportunity for suitable employment for the applicant does not
3.14 exist in the labor market area and ~~it is necessary that the applicant receive additional~~
3.15 training ~~in order to obtain~~ will assist the applicant in obtaining suitable employment;

3.16 (2) the curriculum, facilities, staff, and other essentials are adequate to achieve the
3.17 training objective;

3.18 (3) the training is vocational ~~in nature~~ or short term academic training ~~vocationally~~
3.19 directed to an occupation or skill ~~for which there are reasonable~~ that will substantially
3.20 enhance the employment opportunities available to the applicant in the applicant's labor
3.21 market area;

3.22 (4) the training course is considered full time by the training provider; and

3.23 (5) the applicant is making satisfactory progress in the training.

3.24 (b) Full-time training provided through the dislocated worker program, the Trade
3.25 Act of 1974, as amended, or the North American Free Trade Agreement is considered
3.26 "reemployment assistance training," if that training course is in accordance with the
3.27 requirements of that program.

3.28 (c) Apprenticeship training provided in order to meet the requirements of an
3.29 apprenticeship program under chapter 178 is considered "reemployment assistance
3.30 training."

3.31 (d) An applicant is considered in reemployment assistance training only if the
3.32 training course has actually started or is scheduled to start within 30 calendar days.

4.1 EFFECTIVE DATE. This section is effective for determinations and appeal
4.2 decisions issued on or after the day following final enactment.

4.3 Sec. 4. Minnesota Statutes 2008, section 268.035, subdivision 23a, is amended to read:

4.4 Subd. 23a. **Suitable employment.** (a) Suitable employment means employment in
4.5 the applicant's labor market area that is reasonably related to the applicant's qualifications.
4.6 In determining whether any employment is suitable for an applicant, the degree of risk
4.7 involved to the health and safety, physical fitness, prior training, experience, length
4.8 of unemployment, prospects for securing employment in the applicant's customary
4.9 occupation, and the distance of the employment from the applicant's residence is
4.10 considered.

4.11 (b) In determining what is suitable employment, primary consideration is given to the
4.12 temporary or permanent nature of the applicant's separation from employment and whether
4.13 the applicant has favorable prospects of finding employment in the applicant's usual or
4.14 customary occupation at the applicant's past wage level within a reasonable period of time.

4.15 If prospects are unfavorable, employment at lower skill or wage levels is suitable
4.16 if the applicant is reasonably suited for the employment considering the applicant's
4.17 education, training, work experience, and current physical and mental ability.

4.18 The total compensation must be considered, including the wage rate, hours of
4.19 employment, method of payment, overtime practices, bonuses, incentive payments, and
4.20 fringe benefits.

4.21 (c) When potential employment is at a rate of pay lower than the applicant's former
4.22 rate, consideration must be given to the length of the applicant's unemployment and the
4.23 proportion of difference in the rates. Employment that may not be suitable because of
4.24 lower wages during the early weeks of the applicant's unemployment may become suitable
4.25 as the duration of unemployment lengthens.

4.26 (d) For an applicant seasonally unemployed, suitable employment includes
4.27 temporary work in a lower skilled occupation that pays average gross weekly wages equal
4.28 to or more than 150 percent of the applicant's weekly unemployment benefit amount.

4.29 (e) If a majority of the applicant's ~~wage credits were earned from~~ weeks of
4.30 employment in the base period includes part-time employment, part-time employment
4.31 in a position with comparable skills and comparable hours that pays ~~average gross~~
4.32 weekly comparable wages ~~equal to or more than 150 percent of the applicant's weekly~~
4.33 unemployment benefit amount is considered suitable employment.

5.1 Full-time employment is not considered suitable employment for an applicant if a
5.2 majority of the applicant's weeks of employment in the base period includes part-time
5.3 employment.

5.4 (f) To determine suitability of employment in terms of shifts, the arrangement of
5.5 hours in addition to the total number of hours is to be considered. Employment on a
5.6 second, third, rotating, or split shift is suitable employment if it is customary in the
5.7 occupation in the labor market area.

5.8 (g) Employment is not considered suitable if:

5.9 (1) the position offered is vacant because of a labor dispute;

5.10 (2) the wages, hours, or other conditions of employment are substantially less
5.11 favorable than those prevailing for similar employment in the labor market area; or

5.12 (3) as a condition of becoming employed, the applicant would be required to join a
5.13 company union or to resign from or refrain from joining any bona fide labor organization.

5.14 **EFFECTIVE DATE.** This section is effective August 2, 2009.

5.15 Sec. 5. Minnesota Statutes 2008, section 268.07, subdivision 1, is amended to read:

5.16 **Subdivision 1. Application for unemployment benefits; determination of benefit**
5.17 **account.** (a) An application for unemployment benefits may be filed in person, by mail,
5.18 or by electronic transmission as the commissioner may require. The applicant must be
5.19 unemployed at the time the application is filed and must provide all requested information
5.20 in the manner required. If the applicant is not unemployed at the time of the application
5.21 or fails to provide all requested information, the communication is not considered an
5.22 application for unemployment benefits.

5.23 (b) The commissioner shall examine each application for unemployment benefits to
5.24 determine the base period and the benefit year, and based upon all the covered employment
5.25 in the base period the commissioner shall determine the weekly unemployment benefit
5.26 amount available, if any, and the maximum amount of unemployment benefits available, if
5.27 any. The determination is known as the determination of benefit account. A determination
5.28 of benefit account must be sent to the applicant and all base period employers, by mail or
5.29 electronic transmission.

5.30 (c) If a base period employer did not provide wage detail information for the
5.31 applicant as ~~provided for in~~ required under section 268.044, or provided erroneous
5.32 information, or wage detail is not yet due and the applicant is using an alternate base
5.33 period under section 268.035, subdivision 4, paragraph (d), the commissioner may accept
5.34 an applicant certification ~~as to~~ of wage credits, based upon the applicant's records, and
5.35 issue a determination of benefit account.

6.1 (d) An employer must provide wage detail information on an applicant within five
6.2 calendar days of request by the commissioner, in a manner and format requested, when:

6.3 (1) the applicant is using an alternate base period under section 268.035, subdivision
6.4 4, paragraph (d); and

6.5 (2) wage detail under section 268.044 is not yet required to have been filed by
6.6 the employer.

6.7 ~~(d)~~ (e) The commissioner may, at any time within 24 months from the establishment
6.8 of a benefit account, reconsider any determination of benefit account and make an
6.9 amended determination if the commissioner finds that the determination was incorrect for
6.10 any reason. An amended determination must be promptly sent to the applicant and all
6.11 base period employers, by mail or electronic transmission.

6.12 ~~(e)~~ (f) If an amended determination of benefit account reduces the weekly
6.13 unemployment benefit amount or maximum amount of unemployment benefits available,
6.14 any unemployment benefits that have been paid greater than the applicant was entitled
6.15 is considered an overpayment of unemployment benefits. A determination or amended
6.16 determination issued under this section that results in an overpayment of unemployment
6.17 benefits must set out the amount of the overpayment and the requirement under section
6.18 268.18, subdivision 1, that the overpaid unemployment benefits must be repaid.

6.19 **EFFECTIVE DATE.** This section is effective for applications for unemployment
6.20 benefits filed effective on or after August 2, 2009.

6.21 Sec. 6. Minnesota Statutes 2008, section 268.07, subdivision 2, is amended to read:

6.22 Subd. 2. **Benefit account requirements and weekly unemployment benefit**
6.23 **amount and maximum amount of unemployment benefits.** (a) To establish a benefit
6.24 account using the primary base period under section 268.035, subdivision 4, paragraph
6.25 (a), an applicant must have:

- 6.26 (1) wage credits in the high quarter ~~wage credits~~ of \$1,000 or more; and
6.27 (2) wage credits, in other than the high quarter, of \$250 or more.

6.28 To establish a benefit account using the secondary base period under section 268.035,
6.29 subdivision 4, paragraph (b), an applicant must have wage credits in the high quarter
6.30 of \$1,000 or more.

6.31 (b) If an applicant has established a benefit account, the weekly unemployment
6.32 benefit amount available during the benefit year is the higher of:

- 6.33 (1) 50 percent of the applicant's average weekly wage during the base period, to a
6.34 maximum of 66-2/3 percent of the state's average weekly wage; or

7.1 (2) 50 percent of the applicant's average weekly wage during the high quarter, to a
7.2 maximum of 43 percent of the state's average weekly wage.

7.3 The applicant's average weekly wage under clause (1) is computed by dividing
7.4 the total wage credits by 52. The applicant's average weekly wage under clause (2) is
7.5 computed by dividing the high quarter wage credits by 13.

7.6 (c) The state's maximum weekly unemployment benefit amount and an applicant's
7.7 weekly unemployment benefit amount and maximum amount of unemployment benefits
7.8 available is rounded down to the next lower whole dollar. The state's maximum weekly
7.9 benefit amount, computed in accordance with section 268.035, subdivision 23, applies
7.10 to a benefit account established effective on or after the last Sunday in October. Once
7.11 established, an applicant's weekly unemployment benefit amount is not affected by the last
7.12 Sunday in October change in the state's maximum weekly unemployment benefit amount.

7.13 (d) The maximum amount of unemployment benefits available on any benefit
7.14 account is the lower of:

7.15 (1) 33-1/3 percent of the applicant's total wage credits; or

7.16 (2) 26 times the applicant's weekly unemployment benefit amount.

7.17 **EFFECTIVE DATE.** This section is effective for applications for unemployment
7.18 benefits filed effective on or after August 2, 2009.

7.19 Sec. 7. Minnesota Statutes 2008, section 268.085, subdivision 15, is amended to read:

7.20 Subd. 15. **Available for suitable employment defined.** (a) "Available for suitable
7.21 employment" means an applicant is ready and willing to accept suitable employment in
7.22 the labor market area. The attachment to the work force must be genuine. An applicant
7.23 may restrict availability to suitable employment, but there must be no other restrictions,
7.24 either self-imposed or created by circumstances, temporary or permanent, that prevent
7.25 accepting suitable employment.

7.26 (b) Unless the applicant is in reemployment assistance training, to be considered
7.27 "available for suitable employment," a student who has regularly scheduled classes must
7.28 be willing to ~~quit school~~ discontinue classes to accept suitable employment when:

7.29 (1) class attendance restricts the applicant from accepting suitable employment; and

7.30 (2) the applicant is unable to change the scheduled class or make other arrangements
7.31 that excuse the applicant from attending class.

7.32 (c) An applicant who is absent from the labor market area for personal reasons, other
7.33 than to search for work, is not "available for suitable employment."

7.34 (d) An applicant who has restrictions on the hours of the day or days of the week
7.35 that the applicant can or will work, that are not normal for the applicant's usual occupation

8.1 or other suitable employment, is not "available for suitable employment." An applicant
8.2 must be available for daytime employment, if suitable employment is performed during
8.3 the daytime, even though the applicant previously worked the night shift.

8.4 (e) An applicant must have transportation throughout the labor market area to be
8.5 considered "available for suitable employment."

8.6 EFFECTIVE DATE. This section is effective for determinations and appeal
8.7 decisions issued on or after the day following final enactment.

8.8 Sec. 8. Minnesota Statutes 2008, section 268.095, subdivision 1, is amended to read:

8.9 Subdivision 1. **Quit.** An applicant who quit employment is ineligible for all
8.10 unemployment benefits according to subdivision 10 except when:

8.11 (1) the applicant quit the employment because of a good reason caused by the
8.12 employer as defined in subdivision 3;

8.13 (2) the applicant quit the employment to accept other covered employment that
8.14 provided substantially better terms and conditions of employment, but the applicant did
8.15 not work long enough at the second employment to have sufficient subsequent earnings to
8.16 satisfy the period of ineligibility that would otherwise be imposed under subdivision 10
8.17 for quitting the first employment;

8.18 (3) the applicant quit the employment within 30 calendar days of beginning the
8.19 employment because the employment was unsuitable for the applicant;

8.20 (4) the employment was unsuitable for the applicant and the applicant quit to enter
8.21 reemployment assistance training;

8.22 (5) the employment was part time and the applicant also had full-time employment
8.23 in the base period, from which full-time employment the applicant separated because of
8.24 reasons for which the applicant was held not to be ineligible, and the wage credits from
8.25 the full-time employment are sufficient to meet the minimum requirements to establish a
8.26 benefit account under section 268.07;

8.27 (6) the applicant quit because the employer notified the applicant that the applicant
8.28 was going to be laid off because of lack of work within 30 calendar days. An applicant
8.29 who quit employment within 30 calendar days of a notified date of layoff because of lack
8.30 of work is ineligible for unemployment benefits through the end of the week that includes
8.31 the scheduled date of layoff;

8.32 (7) the applicant quit the employment (i) because the applicant's serious illness or
8.33 injury made it medically necessary that the applicant quit,~~provided that,~~ or (ii) in order to
8.34 provide necessary care because of the illness, injury, or disability of an immediate family
8.35 member of the applicant. This exception only applies if the applicant ~~inform~~ informs the

S.F. No. 1197, 2nd Engrossment - 86th Legislative Session (2009-2010) [s1197-2]

9.1 employer of the ~~serious illness or injury~~ medical problem and request accommodation and
9.2 no reasonable accommodation is made available.

9.3 If the applicant's serious illness is chemical dependency, this exception does not
9.4 apply if the applicant was previously diagnosed as chemically dependent or had treatment
9.5 for chemical dependency, and since that diagnosis or treatment has failed to make
9.6 consistent efforts to control the chemical dependency.

9.7 This exception raises an issue of the applicant's being ~~able to work~~ available for
9.8 suitable employment under section 268.085, subdivision 1, that the commissioner ~~shall~~
9.9 must determine;

9.10 (8) the applicant's loss of child care for the applicant's minor child caused the
9.11 applicant to quit the employment, provided the applicant made reasonable effort to obtain
9.12 other child care and requested time off or other accommodation from the employer and no
9.13 reasonable accommodation is available.

9.14 This exception raises an issue of the applicant's ~~availability~~ being available for
9.15 suitable employment under section 268.085, subdivision 1, that the commissioner ~~shall~~
9.16 must determine; ~~or~~

9.17 (9) domestic abuse of the applicant or an immediate family member of the applicant's
9.18 ~~minor child~~ applicant, necessitated the applicant's quitting the employment. Domestic
9.19 abuse must be shown by one or more of the following:

9.20 (i) a district court order for protection or other documentation of equitable relief
9.21 issued by a court;

9.22 (ii) a police record documenting the domestic abuse;

9.23 (iii) documentation that the perpetrator of the domestic abuse has been convicted
9.24 of the offense of domestic abuse;

9.25 (iv) medical documentation of domestic abuse; or

9.26 (v) written statement that the applicant or ~~the applicant's minor child~~ an immediate
9.27 family member of the applicant is a victim of domestic abuse, provided by a social
9.28 worker, member of the clergy, shelter worker, attorney at law, or other professional who
9.29 has assisted the applicant in dealing with the domestic abuse.

9.30 Domestic abuse for purposes of this clause is defined under section 518B.01; or

9.31 (10) the applicant quit in order to relocate to accompany a spouse whose job location
9.32 changed making it impractical for the applicant to commute.

9.33 **EFFECTIVE DATE.** This section is effective for determinations issued on or
9.34 after August 2, 2009.

9.35 Sec. 9. Minnesota Statutes 2008, section 268.095, subdivision 6, is amended to read:

10.1 Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means
10.2 any intentional, negligent, or indifferent conduct, on the job or off the job ~~(†)~~ that displays
10.3 clearly;

10.4 (1) a serious violation of the standards of behavior the employer has the right to
10.5 reasonably expect of the employee; or

10.6 (2) ~~that displays clearly~~ a substantial lack of concern for the employment.

10.7 (b) Regardless of paragraph (a), the following is not employment misconduct:

10.8 (1) conduct that was a consequence of the applicant's mental illness or impairment;

10.9 (2) inefficiency; or inadvertence;

10.10 (3) simple unsatisfactory conduct; a single incident that does not have a significant
10.11 adverse impact on the employer;

10.12 (4) conduct an average reasonable employee would have engaged in under the
10.13 circumstances;

10.14 (5) poor performance because of inability or incapacity;

10.15 (6) good faith errors in judgment if judgment was required; or

10.16 (7) absence because of illness or injury of the applicant, with proper notice to the
10.17 employer, are not employment misconduct;

10.18 (8) absence, with proper notice to the employer, in order to provide necessary care
10.19 because of the illness, injury, or disability of an immediate family member of the applicant;

10.20 ~~(b)~~ (9) conduct that was a direct result of the applicant's chemical dependency is
10.21 not employment misconduct, unless the applicant was previously diagnosed chemically
10.22 dependent or had treatment for chemical dependency, and since that diagnosis or treatment
10.23 has failed to make consistent efforts to control the chemical dependency; or

10.24 ~~(c)~~ (10) conduct that was a result of the applicant, or the applicant's minor child an
10.25 immediate family member of the applicant, being a victim of domestic abuse as defined
10.26 under section 518B.01, is not employment misconduct. Domestic abuse must be shown as
10.27 provided for in section 268.095, subdivision 1, clause (9).

10.28 ~~(d)~~ ~~A driving offense~~ (c) Regardless of paragraph (b), clause (9), conduct in violation
10.29 of sections 169A.20, 169A.31, or 169A.50 to 169A.53 that interferes with or adversely
10.30 affects the employment is employment misconduct.

10.31 (d) If the conduct for which the applicant was discharged involved only a single
10.32 incident, that is an important fact that must be considered in deciding whether the conduct
10.33 rises to the level of employment misconduct under paragraph (a).

10.34 (e) The definition of employment misconduct provided by this subdivision is
10.35 exclusive and no other definition applies.

11.1 EFFECTIVE DATE. This section is effective for determinations issued on or
11.2 after August 2, 2009.

11.3 Sec. 10. FEDERAL FUNDS EXPENDITURE AUTHORIZED.

11.4 \$9,290,259 of federal money allocated under the American Recovery and
11.5 Reinvestment Act for the purpose of unemployment insurance administration is
11.6 appropriated to the commissioner of employment and economic development to pay
11.7 unemployment insurance administration costs.

11.8 EFFECTIVE DATE. This section is effective the day following final enactment.

11.9 Sec. 11. FEDERAL CONFORMITY.

11.10 Sections 1, 2, 4 to 6, and 8 to 10 are enacted in order to conform to the requirements
11.11 of the American Recovery and Reinvestment Act, which provides Minnesota's
11.12 unemployment insurance trust fund \$130,063,620 in incentive payments if certain changes
11.13 are made to the Minnesota Unemployment Insurance Law. These sections should be
11.14 interpreted consistent with the requirements necessary to qualify for those incentive
11.15 payments.

April 13, 2009

Cheryl Atkinson
Administrator
Office of Workforce Security
200 Constitution Avenue N.W.
Room S-4231
Washington, D.C. 20210

RE: Addendum to Minnesota's Application for Incentive Payment – Part I and Part II dated April 9, 2008.

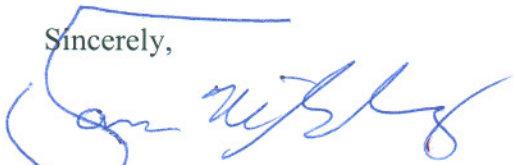
Dear Ms. Atkinson:

Inadvertently we did not include a certification the United States Department of Labor has asked be included in the application. As I certified in the application, the changes made to Minnesota law are permanent in nature and not subject to discontinuation. At no time was there any discussion with any member of the legislature about later repeal.

I certify that our application for incentive payments is submitted in good faith and the changes made to the law were done with the intention of expanding unemployment benefit entitlement to those unemployed workers who meet the new eligibility provisions upon which the application is based.

If you have any questions about this addendum or the documents submitted earlier, please contact Lee B. Nelson at 651-259-7117 or at lee.nelson@state.mn.us.

Sincerely,



Dan McElroy
Commissioner

CC: Jerry Hildebrand