October 3, 1951   (OPINION)

UNEMPLOYMENT COMPENSATION

RE: Both Husband and Wife May Claim Benefits, But Not for Same Depen

You have asked for an opinion relative to the construction of the word "claimant" under Section 52-0604 of the NDRC of 1943 as amended.

The specific situation in which you are interested is somewhat as follows: A husband, who is the father of more than three minors, files a claim for dependency which claim is awarded him under said section. Thereafter, his wife, who is also employed, becomes a claimant and in her claim she claims dependency for their children, but does not claim the same dependents as did the husband. Now your question is, is she entitled to dependency allowance?

We call your attention to Section 3 of Chapter 293 of the 1951 Session Laws which reads in part as follows:

> Definitions. For the purposes of this title, the term 'insured worker' means an individual who with respect to a base period, meets the wage and employment requirements of this chapter. For the purposes of this title a 'dependent' means a claimant's unmarried child, including a stepchild and adopted child, whether or not legally adopted, who is under 18 years of age and is living with the claimant or receiving regular support from the claimant."

We further call your attention to Section 14-0705 of the NDRC of 1943 which reads as follows:

> The wife after marriage has with respect to property, contracts, and torts the same capacity and rights and is subject to the same liabilities as before marriage. In all actions by or against her, she shall use and be sued in her own name."

We call this to your attention for the reason that the State of North Dakota has given the wife a different status than many states.

It is, therefore, our opinion that a married woman who is employed and contributes to the support of the family is entitled to claim benefits in behalf of dependents in the same manner as is her husband, but they both cannot claim the same dependents.

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