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## The Use of the Word "Moron" Does Not Rise to the Level of Willful Misconduct and, Therefore, the Claimant is Entitled to Unemployment Benefits



By Francis X. Wickersham, Esq & G. Jay Habas, Esq of Marshall Dennehey Warner Coleman & Goggin, P.C.

*Neil D. Brown v. Unemployment Compensation Board of Review*, 1618 C.D. 2011; filed August 9, 2012; by Judge Leavitt

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The claimant worked for the employer as a battery machine operator in a warehouse with 605 employees. As part of his job, the claimant was required to make sure that batteries needing repair were kept out of circulation and set aside in a designated space. The claimant labeled each out-of-service battery with a sign reading, "Do Not Use." One day, the claimant discovered someone had torn the sign from an out-of-service battery and attempted to charge and use it before it had been repaired. The claimant then placed two hand-written signs on the battery that read, "To the Moron who can't read - do not use this, do not use this battery" and "Not charging you moron." A complaint was made about the signs, and the claimant was terminated.

The claimant then filed for unemployment compensation benefits but was denied benefits by the Unemployment Compensation Service Center and later by an Unemployment Compensation Referee after evidence was presented. The Referee's denial was affirmed by the Unemployment Compensation Board of Review (Board).

However, the Commonwealth Court reversed the Board's decision and granted the claimant's appeal. In doing so, the court held that the claimant's signs were not threatening and not in violation of the employer's *Employment Guide*. The court pointed out that the claimant worked in a 770,000 square foot warehouse with 605 employees, that it was not a "... ladies' club where the servers wear white gloves and speak in hushed tones." There was no evidence that the claimant directed the word "moron" to any specific individual or coworker. The Board concluded that "moron" was not threatening or so outside the bounds of words that may be spoken in a large and busy warehouse and, therefore, the claimant did not commit willful misconduct.

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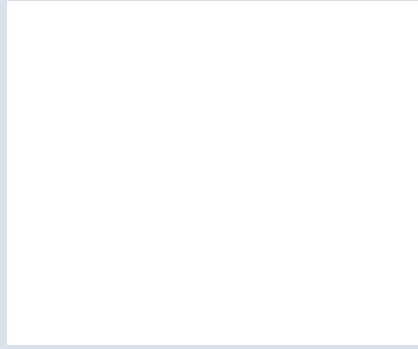
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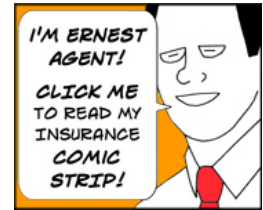
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