

# Appellate Division Rules That Use Of Profanity By Employee Is Grounds For Disqualification From Unemployment Benefits

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On February 15, 2019, in the matter of Anne Raymond v. Board of Review, Department of Labor, and Urology Group of Princeton, PA, A-5129-16T3, the Appellate Division affirmed a ruling from the Department of Labor's Board of Review that an employee of the Urology Group of Princeton, PA, Anne Raymond, had been disqualified from collecting unemployment benefits due to her use of profanity in the workplace.

The claimant for unemployment benefits was terminated for insubordination in November 2016, following an incident in which she was given a written warning by her employer for poor time management and for "gossiping and making comments about working for the devil." The claimant responded by stating to her supervisor that her employers were all "motherf\*\*\*ers" and repeated the statement even after being told that use of profanity directed at the employer would be grounds for termination. The claimant who sent a text message apologizing for her comments, later stated before the Tribunal that she did not remember cursing.

Initially after an initial determination was made that Raymond was disqualified from collecting unemployment benefits due to her termination for simple misconduct, Raymond appealed and the Appeal Tribunal reversed finding that such conduct did not beyond the "ordinary reactions of a reasonable person." However, on further appeal, the Board of Review again reversed noting that the employee had continued in such conduct even after being advised that the language was inappropriate and grounds for termination.

The Appellate Division, in reviewing the Board of Review's decision, upheld the Board's determination finding that although the Court might have made a different assessment in the current environment where cursing is prevalent, it would affirm as the Board's decision was not arbitrary, capricious, or

unreasonable.

Perhaps if the Board of Review had come to the opposite decision, the Appellate Division would have still agreed based on its deference to the Board's findings. Nevertheless, this case should serve as a warning to employees that while the use of profanity in the workplace might be prevalent in today's environment, employees must be careful particularly when the use of language is not permitted by the employer's workplace policies, and particularly when an employee is warned by the employer that such conduct is grounds for discipline or termination.