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# 60-Second Memo

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### When Teasing Goes Too Far

By Julie T. Bittner, Esq.

"What an idiot." "How stupid can you be?" "You're crazy." Okay, show of hands, how many of you have ever made one of those statements in the workplace? Maybe you've grumbled it to yourself after a particularly frustrating encounter. Perhaps you've said it in response to a co-worker's request (you want me to do what?!). Possibly, you've said it to yourself while reading the e-mail of a colleague who just candidly spoke his or her mind by accidentally replying all in an e-mail clearly intended for only a close confidant. Even worse, maybe you just lost the biggest client you've ever had, all because a co-worker failed to pay attention to a small but critical detail.

No insult in the workplace - or anywhere else for that matter - is probably more universal than to call someone out on their intelligence. Terms like "idiot," "dumb," "stupid," or even "crazy" and "nuts," can be commonplace and seem to cross all protected class categories - gender, race, national origin, religion, etc., right? However, have you ever considered that an employee calling another employee such names could possibly be the basis of a disability claim? The U.S. District Court for the District of Minnesota decided just that earlier this year in the case of *Schwarzkopf v. Brunswick Corp.*, 2011 WL 2215013, Case No. 10-cv-02774 (D. Minn., June 7, 2011).

Melvin Schwarzkopf was employed by the Brunswick Corporation, doing business as Life Fitness. He was originally hired as a fabricator and was later promoted to a "Mechanic I" position, which was essentially a janitorial position. Schwarzkopf also had struggled with depression and general anxiety disorder for most of his life - even voluntarily committing himself to a mental hospital for

treatment years before he was employed by Brunswick. At times his anxiety caused him sleeping problems which, in turn, made it difficult for him to focus and concentrate. At the time that he was initially hired by Brunswick, his symptoms were in remission.

A few years into his employment, Schwarzkopf informed two, more senior, mechanics, Duane Bauer and Mark Hager, of his anxiety and attention deficit disorders. According to Schwarzkopf, it was shortly thereafter that Bauer began calling him names like "stupid," "idiot," "mental case," "dumb," and "incompetent." Schwarzkopf claimed that this happened on a nearly daily basis. Bauer also allegedly told Schwarzkopf that "we should put a shock collar" on Schwarzkopf because he was "so forgetful." Schwarzkopf also claimed that Bauer, along with a fellow co-worker, told Schwarzkopf that they were worried he "might go postal." This co-worker also allegedly made other derogatory comments, including frequently calling him a "mental case."

Schwarzkopf alleged that he complained to Hager, who by this time had been promoted to supervisor. Hager reportedly responded by laughing at the shock collar comment and not taking any action. He, too, allegedly called Schwarzkopf an "idiot," "dumb," and "stupid."

Schwarzkopf's depression and anxiety disorder returned, causing him to lose sleep, lack focus, and struggle concentrating. His performance suffered, and Hager and the Human Resource Manager met with him to discuss the same. During this meeting, Schwarzkopf alleged that, if his performance had been poor, it was due to the constant shouting and ridicule. He also asked for a transfer. The Human Resources Manager suggested that Schwarzkopf see a psychologist to help him work through his anxiety problems. The Human Resources Manager also asked Hager whether he and any other maintenance employees had been harassing Schwarzkopf, and Hager denied it.

Schwarzkopf alleged that the harassment continued. Schwarzkopf complained to Hager that Bauer called him names like "nuts," "crazy," "mental case," "paranoid," and "postal." In response, Hager told him that the reason people called him names like that was because he acted so crazy. Eventually, Hager was promoted and Bauer replaced him as Schwarzkopf's direct supervisor. During his supervisory role, Bauer allegedly continued to insult Schwarzkopf.

Thereafter, Schwarzkopf filed a charge of discrimination with the Equal Employment Opportunity Commission, asserting that Bauer and Hager had harassed him on account of his mental disabilities and retaliated against him due to his complaints.

The case made its way to the federal courts, where the company moved for summary judgment. The district court denied summary judgment as to Schwarzkopf's harassment claims, as it concluded that Schwarzkopf offered sufficient evidence to create a jury issue on whether he was subjected to a hostile work environment based on his alleged mental disabilities. The Court reasoned that although some of the comments possibly tended toward "simple teasing," others such as "go postal," "paranoid," and

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"crazy" were more significant. Further, the Court focused on the fact that the name-calling allegedly occurred on a near-constant basis for more than a year, and thus the ridicule and insult could reasonably be found to have permeated the workplace.

What lessons can be drawn from the *Schwarzkopf* case? While courts and employment agencies have generally not gone so far as to find all name-calling in the workplace illegal, there are limits. Employees, especially those in supervisory roles, should be trained to be professional and exhibit an appropriate amount of sensitivity. Further, name-calling, especially repeated name-calling, in the workplace should never be tolerated. Even if the court in *Schwarzkopf* found that the name-calling could not support a claim for harassment under the Americans with Disabilities Act, the name-calling clearly had a negative effect on workplace morale. Finally, keep in mind that courts - and jurors - will not likely be sympathetic to companies that allow supervisors to pick on and make light of an employee who would be particularly susceptible to teasing and ridicule.

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