

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARGARET C. HENRY and DEPARTMENT OF HEALTH &  
HUMAN SERVICES, INDIAN HEALTH SERVICES, Portland, OR

*Docket No. 98-624; Submitted on the Record;  
Issued September 15, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On June 12, 1996 appellant, a personnel assistant, filed a claim asserting that she was intimidated and threatened that day by a liaison employee who attacked her personal integrity and professionalism. The record shows that a labor relations specialist, who was the acting personnel officer, had a meeting with appellant on June 12, 1996 because it appeared to him that appellant had violated the Privacy Act by going into the official personnel files of other employees and because she had bypassed three levels of supervision by taking this information directly to the area director. Appellant asserted that the labor relations specialist raised his voice in a belligerent, bellicose manner and that she felt it was his intent to threaten, intimidate and harass her. The labor relations specialist denied screaming or using a loud voice during this meeting but admitted that he did use a strong, directive tone of voice. Appellant submitted medical evidence supporting that her adjustment disorder with depressed mood versus major depression was directly related to stresses resulting from personnel conflicts generated by the interactions of appellant and her supervisors.

In a decision dated September 9, 1997, the Office of Workers' Compensation Programs affirmed the denial of appellant's claim on the grounds that she failed to submit sufficient evidence to establish that the labor relations specialist erred or acted abusively during his meeting with appellant on June 12, 1996. The Office also found that appellant failed to substantiate harassment by her supervisor following this meeting and failed to establish error or abuse in the actions of a new supervisor on March 29, 1996 when he met with appellant to discuss overtime and her job performance.

The Board finds that the evidence of record is insufficient to establish that appellant sustained an emotional condition while in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.<sup>1</sup> An employee's emotional reaction to an administrative or personnel matter is generally not covered. Thus, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,<sup>2</sup> neither do disciplinary matters consisting of counseling sessions, discussions or letters of warning for conduct;<sup>3</sup> investigations;<sup>4</sup> determinations concerning promotions and the work environment;<sup>5</sup> discussions about an SF-171;<sup>6</sup> reassignment and subsequent denial of requests for transfer;<sup>7</sup> discussion about the employee's relationship with other supervisors;<sup>8</sup> or the monitoring of work by a supervisor.<sup>9</sup>

Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.<sup>10</sup> Perceptions alone, however, are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.<sup>11</sup>

Concerning the meeting of June 12, 1996, the evidence establishes that the acting personnel officer admonished appellant for reviewing other employees' personnel files and for bypassing several levels of supervision. There is a dispute concerning the tone of the voice he used. Appellant asserted that the labor relations specialist raised his voice in a belligerent and bellicose manner and that she cautioned him to lower his voice. The labor relations specialist denied using a loud voice. Statements from witnesses, however, indicate that the voice of the labor relations specialist could be overheard by those who were attending a telecommunications meeting in the area director's conference room next door. His voice distracted the people next door and caused one of them to go to the labor relations specialist and advise that his conversation could be overheard. After this, the labor relations specialist "quieted down." A staffing clerk sitting within 12 feet of the closed door and behind a petition stated that she could hear the labor relations specialist shouting in a loud, abrasive manner for more than 15 minutes.

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<sup>1</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>2</sup> *Joseph F. McHale*, 45 ECAB 669 (1994).

<sup>3</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>4</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>5</sup> *Merriett J. Kauffman*, 45 ECAB 696 (1994).

<sup>6</sup> *Lorna R. Strong*, 45 ECAB 470 (1994).

<sup>7</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>8</sup> *Raul Campbell*, 45 ECAB 869 (1994).

<sup>9</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>10</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>11</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

She stated that “the talking/shouting was fairly loud for it to be heard all the way in the personnel office.” The staffing clerk added that she heard no raised female voices and that appellant emerged from the office visibly shaken. One witness, who attended appellant’s meeting, stated that the voice of the labor relations specialist “does carry,” but her judgment was that he was not rude or improper in his approach to the problem. The statement of appellant’s immediate supervisor, who was on travel status on June 12, 1997 and could not give evidence on whether the labor relations specialist dealt with appellant in an abusive manner during the meeting, stated that the labor relations specialist has a very “big” voice that is generally louder than normal. She also stated that voices generally carried very well through the walls.

Having carefully considered the statements of appellant, the labor relations specialist and others, the Board finds that the weight of the evidence fails to establish error, abuse or unreasonable conduct by the labor relations specialist. The Board has held that an employee’s complaints concerning the manner in which her supervisor performed his duties as a supervisor or the manner in which the supervisor exercised his supervisory discretion fall, as a rule, outside the scope of coverage provided by the Federal Employees’ Compensation Act.<sup>12</sup> Further, reactions to oral reprimands are generally not compensable.<sup>13</sup> Supervisors must have some discretion in exercising their supervisory authority and orally reprimanding an employee in a loud tone of voice is not *per se* abusive. Evidence of record indicated that the labor relations specialist is known for his “big” voice and once the matter was brought to his attention, he appropriately lowered his voice to accommodate those outside the closed-door meeting. Although evidence supports that his voice was, for 10 or 15 minutes, loud enough to be heard by others, the record fails to establish error or abuse or unreasonable conduct by the labor relations specialist under the circumstances. Appellant’s perception that it was the intent of the labor relations specialist to threaten, intimidate and harass her is unsubstantiated.

As the Office properly found, the record fails to substantiate harassment by appellant’s immediate supervisor following the June 12, 1997 meeting and fails to establish error or abuse or unreasonably conduct by a new supervisor during a March 29, 1996 meeting concerning such administrative or personnel matters as overtime and job performance. The Board finds, therefore, that the Office properly denied appellant’s claim.

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<sup>12</sup> *Abe E. Scott*, 45 ECAB 164 (1993).

<sup>13</sup> *See supra* note 2.

The September 9, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
September 15, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member