

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LYNDA P. NOVAK and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Albuquerque, NM

*Docket No. 99-1208; Submitted on the Record;  
Issued February 5, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

On March 27, 1997 appellant, an office automation clerk, filed a claim asserting that stress and tension at work caused or aggravated her ulcerative colitis condition. She stated that she and her supervisor had confrontations and that he had made it difficult to work with others in the office.

Appellant alleged that she needed assistance on a computer that was not received; was reprimanded for late arrival; received a memorandum of counseling; felt her position was being threatened; that no one covered her while she was on annual leave; that her supervisor raised his voice in anger over a telephone book matter; and called her incompetent and inefficient and became irritated with her for not recalling a memorandum. She further alleged that the supervisor scolded her for not securing the office at the close of the day; for adding a performance standard and efficiency element to her performance requirements; and requiring her to submit to leave-without-pay request.

After further development of the evidence, the Office of Workers' Compensation Programs denied appellant's claim. In a decision dated December 18, 1997, the Office found that many of the factors to which appellant attributed her condition were not established as factual because she provided no corroborating evidence to support her allegations. The Office accepted other factors as factual but found that they were not compensable because they involved personnel or administrative action and there was no showing of attendant error or abuse.

Appellant requested reconsideration. In support thereof, she submitted an affidavit from a coworker, who stated that the supervisor was irritated and had spoken to appellant in a tense voice. He stated that he heard the supervisor, reprimanding appellant in his office. On another occasion he heard the supervisor raise his voice at appellant behind closed doors, calling her incompetent and inefficient. He observed that appellant was extremely shaken when she left the

meeting. The coworker explained that the supervisor accused appellant of being the last person out of the building and reprimanded her for leaving the office unsecured but that he in fact was the last person out of the building and was responsible for not securing the building. He noted that the supervisor had told him that he had “zero confidence” in appellant’s ability to perform her work. The coworker characterized the supervisor as extremely impatient with appellant and the supervisor’s lack of patience developed into verbal altercations. He perceived their relationship as difficult.

In a decision dated December 2, 1998, the Office reviewed the merits of appellant’s claim and found that the information submitted did not warrant modification of its prior decision.

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

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. The Board has held, however, 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>2</sup> Perceptions alone 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>3</sup>

The Board has carefully reviewed appellant’s statements and allegations and finds that she has failed to substantiate a compensable factor of employment. In each instance she has implicated the treatment she received from her supervisor.<sup>4</sup> As a general rule her emotional reaction to such matters is not compensable. For example, the Board has held that an oral reprimand generally does not constitute a compensable factor of employment,<sup>5</sup> neither do disciplinary matters consisting of counseling sessions, discussion or letters of warning for conduct;<sup>6</sup> investigations;<sup>7</sup> determinations concerning promotions and the work environment;<sup>8</sup> discussions about an SF-171;<sup>9</sup> reassignment and subsequent denial of requests for transfer;<sup>10</sup>

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

<sup>2</sup> *Margreate Lublin*, 44 ECAB 945 (1993).

<sup>3</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>4</sup> In one instance she noted an exchange with the timekeeper over the telephone.

<sup>5</sup> *Joseph F. McHale*, 45 ECAB 669 (1994).

<sup>6</sup> *Barbara J. Nicholson*, 45 ECAB 803 (1994); *Barbara E. Hamm*, 45 ECAB 843 (1994).

<sup>7</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>8</sup> *Merriett J. Kauffman*, 45 ECAB 696 (1994).

<sup>9</sup> *Lorna R. Strong*, 45 ECAB 470 (1994).

<sup>10</sup> *James W. Griffin*, 45 ECAB 774 (1994).

discussion about the employee's relationship with other supervisors;<sup>11</sup> or the monitoring of work by a supervisor.<sup>12</sup> To establish a compensable factor of employment, appellant must show error or abuse by her supervisor. In this case, appellant has asserted that her supervisor became irritated with her, reprimanded her, scolded her and raised his voice. The coworker's affidavit tends to support that the supervisor reprimanded appellant, raised his voice, called her incompetent and inefficient, and was harsh and tense and impatient with appellant. This evidence, however, provides an insufficient basis to require a finding by the Board of error or abuse in the exercise of supervisory discretion or the discharge of supervisory responsibilities. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under the Federal Employees' Compensation Act.<sup>13</sup> The Board has specifically held that being spoken to in a loud and harsh voice does not constitute verbal abuse or harassment.<sup>14</sup>

Because evidence fails to establish error or abuse by the supervisor, appellant has failed to establish a compensable factor of employment.

The December 2, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
February 5, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>11</sup> *Raul Campbell*, 45 ECAB 869 (1994).

<sup>12</sup> *Daryl R. Davis*, 45 ECAB 907 (1994).

<sup>13</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>14</sup> *Judith A. Tobias*, Docket No. 98-1724 (issued April 14, 2000).