



supervisor approached her and loudly told her to go back to dietetics to pass out nourishment. She asserted that she became upset due to her supervisor's tone of voice in front of the staff and suffered chest pains, high blood pressure and mental stress. On the reverse side of the claim form, appellant's supervisor asserted that she did not talk loud or yell at her, but only asked if they were finished with the training and if not, when they would be finished. The supervisor asserted further that there was no one available to take nourishment to the wards.

In a letter dated April 17, 2003, the Office requested additional information from the employing establishment within 30 days, including comments from the supervisor implicated on March 11, 2003 on the accuracy of all statements provided by appellant and its position on the claimed incident. Also in a letter dated April 17, 2003, the Office advised appellant that the information submitted was insufficient to support her claim because there was no medical evidence containing a diagnosis of any condition resulting from the claimed injury or evidence supporting that she was injured in the performance of duty. The Office requested that the requisite evidence be submitted within 30 days.

On May 1, 2003 appellant submitted documentation including nursing and social worker reports and work disability slips. She also submitted a narrative statement and witness statements from fellow employees in support of her claim. In appellant's statement dated April 27, 2003, she discussed the alleged incident and stated:

"...We had a mandatory class to go to after lunch. Maxeille Manning said I could go, so we went to lunch, then to class. Before the class was finished, Ms. Manning came to me and asked in a very loud voice, 'What about the nourishment?' I looked at her and Ms. Gaskins and the others that were around. I told Ms. Gaskins that I could not believe that she had done that...." After I left the class ... I asked Mr. Jones and Ms. Singleton where was the nourishment and they said that someone had already delivered them and that Ms. Manning knew this before she came to the auditorium. "I then went in to help with the silverware. Mr. Richardson and Ms. Manning were in the dish room when I went in. Ms. Manning was feeding the machine and Mr. Richardson was catching. I said to Mr. Richardson, 'I can't believe that Ms. Manning could be so ugly to people.' At that time I was very upset and having shortness of breath. I continued with the silverware until it was time to leave. "By the time I got outside, I was shaking and crying and very upset. I felt that I needed to go to the doctor, so Ms. Singleton followed me to my doctor's office. When I arrived at the doctor's office, the secretary called the nurse practitioner, who took my blood pressure and asked me what was wrong ... she said my blood pressure was extremely high and she told the doctor. They said that I couldn't go home. From there they sent me to Shands ICU [Intensive Care Unit] after giving me medicine under my tongue. I was in the ICU for two days until I was sent to North Florida by ambulance for a heart cauterization."

In a witness statement dated April 24, 2003, Glenda Chatmon stated:

"I was present when Ms. Manning came to the auditorium to get [appellant] and what she said and how she said it was very unkind. [Appellant] is a very kind

person and helps everyone she can. I Glenda Chatmon have witnessed the way that [Ms.] Manning treats employees and has been treating [appellant]. I've been working in Nutrition and Food Service for 14 years and Ms. Manning has blamed [appellant] for problems that should not be discussed in the workplace, while she's trying to do her job and criticizes her job performance."

In a witness statement dated March 20, 2003, Sharon Keene stated: "I was present when [Ms.] Manning came to the auditorium to get [appellant] and what she said and how she said it was very unkind! [O]n the way to my car I realized just how much this upset [appellant] when she tried to talk about it. She was crying and grabbing her chest."

On May 16, 2003 the Office received documentation from the employing establishment including witness statements which controverted appellant's claim and a statement from Ms. Manning, appellant's supervisor. In the supervisor's statement, she alleged that appellant was one of the employees she sent to training on March 11, 2003 and at approximately 2:10 p.m., she went into the auditorium to see if the employees were about finished. Ms. Manning further stated:

"All the employees were at the same table. I asked '[h]ow much more do you [all] have to go before you'll be finished' [and] all the employees answered and said 'This is the last part and we'll be through.' I was standing behind [appellant] [and] told her that I need her to take the nourishment to the ward because we was short of help [and] I did [not] have anyone to take the nourishment. She said 'Yes... I will be right there.' I left [and] went back to [the] kitchen, Mr. Richardson and myself was working in dish room [and] [appellant] came in there and did the silver and nothing was said."

Ms. Manning indicated further that she first learned that appellant was sick the next morning when a nurse called stating that she was in the hospital.

In a witness statement dated April 10, 2003, Norma Grimes asserted that she attended the training on March 11, 2003 and at no time heard or saw Ms. Manning yell at appellant or show her any disrespect. In an undated witness statement, Eric Sharpe, a supervisor of the employing establishment asserted that he also went to the training in the auditorium and did not observe Ms. Manning doing anything to appellant and that all was quiet during training.

By decision dated June 28, 2003, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that she sustained an emotional condition in the performance of duty. The Office found that the witness statements submitted in support of the claim merely stated that Ms. Manning was "very unkind" and were, therefore, insufficient to support error or abuse. The Office further found that the statements submitted by the employing establishment including Ms. Manning's statement refuted appellant's allegation that the supervisor spoke loudly to her or in an improper tone.

By letter postmarked September 2, 2003, appellant requested a review of the written record based on previously submitted evidence. By decision dated October 27, 2003, the Office's Branch of Hearings and Review advised her that her request for a review of the written

record was denied as untimely and she was, therefore, not entitled to a hearing as a matter of right. The Office stated that it had further considered appellant's request and denied that request as the issue of causal relationship could be equally well addressed through a reconsideration application.

### **LEGAL PRECEDENT -- ISSUE 1**

As the Board observed in the case of *Lillian Cutler*,<sup>1</sup> workers' compensation law does not cover each and every illness that is somehow related to one's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work. On the other hand, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.

The Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably. The Board has also generally held that allegations alone by a claimant are insufficient without evidence corroborating the allegations.<sup>2</sup> Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

Appellant attributes her claimed condition to actions taken by Ms. Manning, her supervisor on March 11, 2003 when she directed appellant to leave a training program to give nourishment to wards. As a general rule, a claimant's reaction to such administrative actions falls outside the scope of coverage. Appellant asserts error or abuse by her supervisor in the loud manner in which she spoke to her when requesting that she leave training to provide nourishment on March 11, 2003, but such error or abuse is not substantiated by probative and reliable evidence. Although appellant may have believed the supervisor acted improperly, it is well established that not every statement uttered in the workplace will give rise to coverage under the

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<sup>1</sup> 28 ECAB 125, 129-31 (1976).

<sup>2</sup> *Joe E. Hendricks*, 43 ECAB 850, 857-58 (1992).

<sup>3</sup> *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991).

Federal Employees' Compensation Act.<sup>4</sup> Statements from appellant's witnesses vaguely indicate that Ms. Manning spoke to appellant in a "very unkind" manner at training and other statements submitted from the employing establishment controvert her claim that Ms. Manning spoke to her in a loud or disrespectful manner during the alleged incident. Ms. Manning also explained that she asked the entire group how long the training would run and then asked appellant to go take the nourishment to the ward and that they worked together after the incident and nothing more was said. Nothing in the record indicates that Ms. Manning acted unreasonably when directing appellant, her employee, to perform a work task, namely providing nourishment to wards.

As the record in this case fails to establish that the employing establishment erred or acted abusively or unreasonably in the administrative actions implicated by appellant, the Board will affirm the Office's June 28, 2003 decision rejecting her claim for compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.<sup>5</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>6</sup> The Board has held that the Office, in its broad discretionary authority to administer the Act, has power to hold hearings in circumstances where no legal provision is made for such hearings and the Office must exercise its discretion in such circumstances.<sup>7</sup>

### **ANALYSIS -- ISSUE 2**

As appellant's September 2, 2003 request for a review of the written record was dated more than 30 days after the Office's June 28, 2003 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant's request for a hearing and determined that the issue of causal relationship could be equally well resolved through a request for reconsideration. This is considered a proper exercise of the Office's discretionary authority.<sup>8</sup>

Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant's request for a hearing.

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<sup>4</sup> *Mary A. Sisneros*, 46 ECAB 155 (1994); *Cf. Kimber A. Stokke*, 48 ECAB 510 (1997) (where the evidence established that a coworker made a credible threat of physical harm to appellant).

<sup>5</sup> *See* 5 U.S.C. § 8124(b).

<sup>6</sup> *See Charles J. Prudencio*, 41 ECAB 499, 501 (1990). *See also* 20 C.F.R. § 10.131.

<sup>7</sup> *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>8</sup> *See Mary E. Hite*, 42 ECAB 641, 647 (1991).

**CONCLUSION**

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty. The Board also finds that the Office properly denied appellant's request for an oral hearing on her claim before an Office hearing representative.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 27 and June 28, 2003 are affirmed.

Issued: June 7, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member