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IN THE SUPREME COURT OF THE STATE OF IDAHO

SIRANOUSH M. HIATT, an individual,

Plaintiff-Appellant,

vs.

IDAHO DEPARTMENT OF LABOR

Respondent, and

HEALTH CARE IDAHO CREDIT UNION

Respondent.

**SUPREME COURT
NO. 46672-2019**

APPELLANT'S REPLY BRIEF IN RESPONSE TO IDAHO DEPARTMENT OF LABOR

**Appeal From Industrial Commission
Case No. IDOL #42102551-2018**

Thomas E. Limbaugh, Chairman of the Industrial Commission, Presiding

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I. ARGUMENT

A. Hiatt was not discharged for misconduct under the “standards of behavior” analysis because the employer’s expectations were not objectively reasonable

Respondent Idaho Department of Labor (“IDOL”) argues that the Industrial Commission’s (“Commission”) finding that Hiatt was discharged for employee misconduct was supported by substantial and competent evidence. Specifically, they argue that the Commission’s findings are supported because the employer Health Care Idaho Credit Union’s (“HCIC”) expectations were reasonable in that either (1) the expectations were communicated to Hiatt, or (2) the expectations flowed naturally from the employment relationship. For the reasons set forth below, IDOL’s arguments fail; Hiatt complied with communicated expectations, and Hiatt’s behavior did not fail to meet an expectation that flowed naturally from the employment relationship.

1. Hiatt’s conduct did not fall below a standard of behavior that was communicated to her

The Idaho Supreme Court has stated, an “employer’s expectations are ordinarily reasonable *only* where they have been communicated to the employee.” *Folks v. Moscow School District No. 281*, 129 Idaho 833, 837, 933 P.2d 642, 646 (1997). (emphasis added). Further, an employee can only be held accountable for failing those expectations that he or she understood, explicitly or implicitly, and was capable of satisfying. *Puckett v. Idaho Dep’t of Corrections*, 107 Idaho 1022, 695 P.2d 407 (1985).

IDOL argues that Hiatt received a “formal written reprimand” for “unprofessional conduct” and “insubordinate conduct,” and that this reprimand represents HCIC’s communication of expectations for Hiatt’s behavior. *IDOL’s Response Brief*, p. 14. On the other hand, Hiatt has

argued that the written reprimand identifies only a particular and specific kind of conduct as unprofessional and insubordinate, i.e. raising her voice or yelling.

The plain language of the written reprimand clearly supports Hiatt's reasonable understanding that the unprofessional and insubordinate conduct to avoid, was raising her voice; "you engaged in insubordinate behavior *by raising your voice.*" Agency Record: Exhibits, ("R.") p. 26 (emphasis added). Additionally, Hiatt was verbally reprimanded five months prior to her termination when Hiatt was told that *screaming* in the office would not be tolerated. R., p. 12. In both the written and oral reprimands, HCIC communicated its expectation that Hiatt *not raise her voice or scream.*

Hiatt can only be held accountable for failing those expectations that were communicated to her. See *Puckett*, Idaho 1022, P.2d 407. While HCIC's written reprimand admonishes Hiatt for unprofessional and insubordinate conduct, those words are, without more, vague, ambiguous, and do not identify any particular expectation. As noted, the written reprimand identifies "raising the voice" as the unacceptable behavior, this comports with the content of the oral reprimand. Hiatt was thus instructed that raising her voice or yelling was unacceptable behavior; it was this expectation which HCIC communicated to Hiatt and which Hiatt understood as the unacceptable, unprofessional and insubordinate behavior.

Notably absent from the Commission's Findings of Fact, is a finding that Hiatt raised her voice or yelled at the February 22, 2019 meeting which led to her discharge. After discussing conflicting evidence on the record regarding the parties' competing contentions concerning whether Hiatt did or did not raise her voice, the Commission does not find that Hiatt yelled; instead the Commission concludes only that, "Claimant was upset and combative." *Decision and Order* p. 7.

HCIC communicated a particular expectation of behavior to Hiatt, namely that yelling or raised voices is unacceptable behavior. After reviewing the record, the Commission did not make a finding that Hiatt yelled or raised her voice. The Commission's findings, therefore, do not support the conclusion that Hiatt's behavior failed a communicated expectation.

2. *Hiatt's conduct did not fall below a standard of behavior that flows naturally from the employment relationship*

The Idaho Supreme Court has stated, an "employer's expectations are ordinarily reasonable only where they have been communicated to the employee, *or if they flow naturally from the employment relationship,*" *Davis v. Howard O. Miller Co.*, 107 Idaho 1092, 1094, 695 P.2d 1231, 1233 (1984) (emphasis added). IDOL argues that HCIC's expectations were objectively reasonable because they flow naturally from the particular employment relationship. *IDOL Response Brief*, p. 14. IDOL does not support this contention with any fact establishing what the expectation is, nor why it flows naturally in this employment situation. Additionally, IDOL does not address Hiatt's assertion that the Feb. 22 Meeting was a unique and uncommon occurrence.

Some expectations flow normally from an employment relationship; but, "if *certain practices or expectations are not common* among employees in general or within a particular enterprise and have not been communicated by the employer to the employee, they cannot serve as a proper basis for a charge of employee misconduct." *Davis v. Howard O. Miller Co.*, 107 Idaho at 1094, 695 P.2d at 1233. (emphasis added).

As Hiatt put forth in her opening brief, Hiatt had never had a closed-door meeting with two members of management. The meeting was to discuss a massive pay cut wherein Hiatt was the only employee subjected to pay-cuts. Other than the admonition to not yell, Hiatt was not aware of any particular expectation, and the situation which Hiatt was placed in on Feb. 22 was unusual

and presented an atypical environment from which usual expectations would not naturally flow. The Feb. 22 Meeting was an uncommon situation, as a result, no known expectations flowed from the employment relationship which can serve as a proper basis for a charge of employee misconduct.

B. Hiatt was engaged in a protected activity when she was discharged, and public policy is served if her unemployment benefits are protected

IDOL contends that Hiatt's argument that she was terminated because she was reporting discrimination fails because the Commission did not find that Hiatt was discharged because of her disability or in retaliation for reporting discrimination. *IDOL Response Brief*, pp. 16-17. IDOL misses the force of Hiatt's argument, which is simply that Hiatt *was* reporting a discrimination at the time she was discharged, and that Hiatt should not lose unemployment eligibility because of how she reported.

The issue of whether Hiatt was discharged for her disability, or in retaliation for reporting discrimination, is not the issue before the Commission, or this Court. Hiatt was reporting a discrimination at the Feb. 22 Meeting, a fact that has not been challenged and is supported in the record. *Decision and Order*, p. 8 (The Commission recognized that Hiatt's frustration stemmed from her belief that she had her salary cut because of her injury).

Hiatt has argued that the public policy related to reporting discrimination is best served by ensuring that reporting employees are not deprived of their unemployment insurance. IDOL has not refuted this argument.

II. CONCLUSION

For the reasons and arguments stated within, including by reference, those arguments already briefed before the Court, Hiatt requests that the Decision and Order of the Industrial Commission be overruled, and that Hiatt be deemed eligible for unemployment insurance.

DATED this 20th day of September, 2019

McCONNELL WAGNER SYKES &
STACEY, PLLC

/s/ Michael A. Short

Michael A. Short

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of September 2019, a true and correct copy of the foregoing document was served by the method indicated below upon the following party(ies):

Idaho Industrial Commission Judicial Division, IDOL Appeals 700 South Clearwater Lane Boise, Idaho 83712	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> iCourt
Idaho Department of Labor 317 West Main Street Boise, Idaho 83735-0720	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> iCourt
Bradley V. Sneed Kormanik & Sneed, LLP 206 W. Jefferson St. Boise, ID 83702	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> iCourt

/s/ Michael A. Short
Michael A. Short