

Uldaho Law

## Digital Commons @ Uldaho Law

---

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

---

9-20-2019

### Hiatt v. Health Care Idaho Credit Union Appellant's Reply Brief 2 Dckt. 46672

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

#### Recommended Citation

"Hiatt v. Health Care Idaho Credit Union Appellant's Reply Brief 2 Dckt. 46672" (2019). *Idaho Supreme Court Records & Briefs, All*. 7709.

[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/7709](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7709)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**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 HEALTH CARE IDAHO CREDIT  
UNION**

---

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

---

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

---

Jeff R. Sykes, ISB #5058  
[sykes@mwsslawyers.com](mailto:sykes@mwsslawyers.com)  
Michael A. Short, ISB #10554  
[nicholson@mwsslawyers.com](mailto:nicholson@mwsslawyers.com)  
McConnell Wagner Sykes & Stacey PLLC  
827 E. Park Boulevard, Suite 201  
Boise, Idaho 83712  
Telephone: 208.489.0100  
Facsimile: 208.489.0110  
*Attorneys For Appellant Siranoush M. Hiatt*

Bradley V. Sneed, ISB #625  
[bvs@khsidaholaw.com](mailto:bvs@khsidaholaw.com)  
Kormanik & Sneed LLP  
206 W. Jefferson Street  
Boise, Idaho 83702  
Telephone: 208.288.1888  
Facsimile: 866.821.9543  
*Counsel For Respondent  
Health Care Idaho Credit Union*

## Table of Contents

<b>I.</b>	<b>ARGUMENT</b>	.....	<b>4</b>
	A.	Hiatt’s conduct did not fall below a standard of behavior that was communicated to her because the standard communicated to Hiatt was not to scream, and the Commission did not make a finding that Hiatt screamed or raised her voice .....	4
	B.	Hiatt’s conduct did not fall below a standard of behavior that flows naturally from the employment relationship .....	5
		1. The Feb. 22 Meeting was novel and uncommon .....	5
		2. The uncommon nature of the Feb. 22 Meeting is relevant .....	6
<b>II.</b>	<b>CONCLUSION</b>	.....	<b>7</b>

**Cases**

*Bullard v. Sun Valley Aviation*, 128 Idaho 430, 914 P.2d 564 (1996)..... 6

*Davis v. Howard O. Miller Co.*, 107 Idaho 1092, 695 P.2d 1231 (1984) ..... 6

*Folks v. Moscow Sch. Dist. #281*, 129 Idaho 833, 933 P.2d 642 (1997)..... 4

*Hart v. Dreary High Sch.*, 126 Idaho 550, 887 P.2d 1057 (1994)..... 4

## I. ARGUMENT

### A. Hiatt's conduct did not fall below a standard of behavior that was communicated to her because the standard communicated to Hiatt was not to scream, and the Commission did not make a finding that Hiatt screamed or raised her voice

Respondent Health Care Idaho Credit Union (“HCIC”) argues that HCIC communicated its expectations to Hiatt and that Hiatt’s behavior did not meet those expectations. Specifically, and in line with what Hiatt has argued in her Opening Brief, Hiatt states that Hiatt was warned against “screaming.” *HCIC Response Brief*, p. 15 (“Ms. Hiatt was advised by HCIC that “screaming” at Ms. Eisenbarth would not be tolerated”), and p. 16 (“Ms. Hiatt was warned against “screaming” at Ms. Eisenbarth”). Despite HCIC’s frequent citations to the record regarding Hiatt’s behavior at the Feb 22, 2018 meeting (“Feb. 22 Meeting”), the Commission made **no** finding of fact that Hiatt yelled, screamed, or raised her voice.

In appeals from the Industrial Commission, the Court is limited to reviewing questions of law. (*Folks v. Moscow Sch. Dist. #281*, 129 Idaho 833, 933 P.2d 642 (1997)) (citing Idaho Const. art. V, § 9; *Welch v. Cowles Publ’g Co.*, 127 Idaho 361, 363, 900 P.2d 1372, 1374 (1995)); *Hart v. Dreary High Sch.*, 126 Idaho 550, 552, 887 P.2d 1057, 1059 (1994)). “The Idaho Supreme Court will disturb the Commission’s findings of fact only where they are not supported by substantial and competent, though conflicting evidence.” *Id.*

The Commission reviewed the evidence regarding Hiatt’s behavior at the Feb. 22 Meeting, and while noting conflicting testimony as to Hiatt yelling, concluded only that Hiatt was upset and combative. *Decision and Order*, p. 7. The Commission weighed the evidence and chose *not* to make a finding that Hiatt raised her voice or yelled. HCIC has not argued, nor offered reason to disturb the Commission’s conclusion as to Hiatt’s behavior on Feb. 22.

HCIC communicated particular expectations 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.

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

HCIC incorrectly describes the Feb. 22 Meeting as a common occurrence in the employment relationship between HCIC and Hiatt. HCIC also incorrectly argues that the uncommon nature of a situation is not a proper consideration for determining what expectations naturally flow.

*1. The Feb. 22 Meeting was novel and uncommon*

HCIC contends that the Feb. 22 Meeting was not novel or new because Hiatt indicated that she had, on other occasions, discussed her pay cuts and other concerns with Eisenbarth. *HCIC Response Brief*, pp. 18-19. It is true that Hiatt had these conversations, and that Hiatt and Eisenbarth had previously met in Eisenbarth's office. These facts however, do not speak to the conditions of the Feb. 22 Meeting.

The Feb. 22 Meeting was conducted in the HCIC meeting room, not Eisenbarth's office. The Feb. 22 Meeting was conducted behind closed doors, whereas previously the conversations were open to the office. The Feb. 22 Meeting was not a discussion just between Eisenbarth and Hiatt, a third member of HCIC management was present. Finally, Hiatt was sent home and asked to return the next day to discuss a drastic, greater than 50% pay cut. This situation was clearly unique and novel.

2. The uncommon nature of the Feb. 22 Meeting is relevant

Both parties cite *Davis v. Howard O. Miller Co.* for the statement that 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). But, *Davis* continues, “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.” *Id.* (emphasis added)

HCIC further contends that “comporting oneself in a professional manner” is an expectation that flows from all employment relationships and is to be expected in all employment situations. *HCIC Response Brief*, p. 18. The expectations which flow naturally from an employment relationship, however, are contingent on factors, *inter alia*, such as the nature of the employment position, length of experience, and the situation itself. See *Bullard v. Sun Valley Aviation*, 128 Idaho 430, 434, 914 P.2d 564, 568 (1996) (The employer's expectation that its employees would not cross the airport runways without permission flowed naturally from the nature of the employee's employment and his years of experience). In order to determine what standards flow naturally from the employment relationship, it is proper to consider specific situations rather than apply a blanket standard.

The Feb. 22 Meeting was not a common occurrence. Hiatt had never had a closed-door meeting with two members of management; a meeting to discuss a massive pay cut wherein Hiatt was the only employee who received a reduction in wages. The only clear instruction given to Hiatt for the tense and novel meeting was that she was not to raise her voice; a directive she obeyed. Any expectation rooted in the normal employment situation that might flow naturally from the

normal work-relationship were inapplicable to the Feb. 22 Meeting. Because the Feb. 22 Meeting was an uncommon situation, no known expectations flowed from the employment relationship which can serve as a proper basis for a charge of employee misconduct.

### **C. 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 20<sup>th</sup> 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 20<sup>th</sup> 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