

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNA A. WORRALL and DEPARTMENT OF THE ARMY,
Fort Leavenworth, Kans.

*Docket No. 95-2940; Submitted on the Record;
Issued April 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On May 25, 1994 appellant filed a claim asserting that abuse and harassment from her managers caused stress, depression, headaches, sleeplessness, anxiety and tight muscles in her neck and shoulders.

An employee relations specialist from the employing establishment stated that the allegations and documents provided by appellant to support her compensation claim were also part of an ongoing grievance. On May 26, 1994 appellant's informal grievance was denied with the following findings: her allegations had been denied by all persons; there was no evidence or statements from other employees supporting her allegations; appellant's perceptions of unsatisfactory working conditions were hers alone and not shared by other employees; she was not entitled to compensation for the instances in which she was required to carry a beeper during off-duty hours; management's actions in abolishing her supervisory position were appropriate and taken without malice or unfairness; there was no basis for providing her with administrative leave; there was no evidence that she was the victim of unlawful discrimination, verbal abuse, sexual harassment or intimidation; she disagreed with the supervisory chain with matters of personnel management and operations, but instances in which her supervisory chain instructed her to follow instructions with which she did not agree were in the arena of making management decisions and were not inappropriate and did not constitute discrimination, abuse or harassment; and there was no evidence that her former subordinates were subjected to working conditions of the type she alleged.

Appellant exercised her right to file a formal grievance. On July 28, 1994 her formal grievance was denied on the grounds that there was no evidence of improper actions or motives by management, no evidence of abuse or harassment of employees and no evidence of overtime or medical expense compensation due her.

A September 15, 1994 letter from the inspector general advised appellant that his office would initiate a thorough inquiry into appellant's charges of discrimination, abuse, waste, fraud,

unethical acts, unprofessionalism and improprieties. On August 5, 1994 the inspector general found that the various charges made by appellant against her supervisor were unsubstantiated, including that he misused government equipment for personal use or gain, that he had unnecessary physical contact with female employees and/or sought sexual favors from some, that he made inappropriate reference to the sexual conduct of several government employees, that he inappropriately commented on an alleged sexual relationship between two federal employees, that he sexually harassed female employees with obscene or sexually explicit language or inappropriate jokes or discussions, that he continued sexually oriented behavior after having been made aware that such behavior was objectionable and that he verbally abused employees.

On December 15, 1994 appellant filed a complaint of with the Equal Employment Opportunity Commission (EEOC) alleging sexual discrimination in that she was subjected to sexual harassment, verbal abuse, harassment and intimidation, was not being allowed to supervise subordinates, was not being provided information concerning family medical leave when she needed it, and was having to work overtime while on call. Appellant advised that she intended that all issues and dates and circumstances and events be encompassed by her claim, and pursuant thereto she submitted her packet of evidence for the EEOC's consideration.

In a decision dated February 9, 1995, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that the evidence failed to establish that the claimed condition or disability occurred in the performance of duty. On February 23, 1995 appellant requested a review of the written record by an Office hearing representative.

On May 3, 1995 appellant entered into an agreement whereby her signature constituted a full and complete settlement of her captioned complaint and the potential EEO complaint identified.

In a decision dated June 15, 1995, an Office hearing representative affirmed the denial of appellant's claim, finding, among other things, that the evidence failed to support that the employing establishment erred in its administration of personnel actions or that appellant was subjected to acts of harassment.

On July 16, 1995 appellant requested that the Office reconsider its decision. She argued that management created and promoted a hostile and abusive working environment, that it erred in its administration of personnel actions as evidence in the EEO settlement agreement, that it did not compensate for overtime, and that it harassed and discriminated against her causing emotional distress and harmful psychological well being. In a decision dated August 10, 1995, the Office denied modification of the prior decision.

The Board finds that the record fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to one's employment. There are situations in which an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. Generally, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act, though error or abuse by the employing establishment in an administrative or personnel matter may afford

coverage.¹ Mere perceptions or feelings of error or abuse, however, are insufficient to establish a compensable factor of employment. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.² To support a claim based on harassment or discrimination, there must be some evidence that the harassment did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act.³

In this case, appellant filed a claim asserting that abuse and harassment from her managers caused stress, depression, headaches, sleeplessness, anxiety and tight muscles in her neck and shoulders. Appellant pursued these allegations in several forums, and although she submitted evidence to support her allegations, she failed to obtain a single finding of wrongdoing. Her informal grievance was denied for lack of evidence supporting her claims. Appellant's formal grievance was also denied for lack of evidence. Following an inquiry, the inspector general found that the various charges made by appellant against her supervisor were unsubstantiated. Had appellant succeeded in substantiating any of her claims before these various bodies, she may have established at least some factual basis for her claim for workers' compensation benefits. Without a favorable finding, and without probative evidence substantiating her allegations of abuse and harassment in this case, appellant's perceptions of wrongdoing are insufficient to establish an entitlement to benefits.

The August 10, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 23, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹ *Abe E. Scott*, 45 ECAB 164 (1993).

² *Donald E. Ewals*, 45 ECAB 111 (1993).

³ *Sharon R. Bowman*, 45 ECAB 187 (1993).