U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NYDIA E. MAISONET and U.S. POSTAL SERVICE,
MORGAN POSTAL DELIVERY CENTER, New York, NY

Docket No. 02-627; Submitted on the Record;
Issued July 18, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's slip and fall on an icy sidewalk on February 1, 2000 occurred in the performance of duty.

On February 11, 2000 appellant, then a 42-year-old general clerk, filed a traumatic injury claim asserting that she sprained the right side of her back and buttocks on February 1, 2000 when she slipped and fell on an icy sidewalk adjacent to the employing establishment. The injury occurred 10 minutes after her shift ended and as she was heading to a parking lot.

The employing establishment controverted appellant's claim in part because the injury occurred off its premises and appellant was not engaged in official "off premises" duty.

In a decision dated August 26, 2000, the Office of Workers' Compensation Programs denied appellant's claim for failure to establish fact of injury.

Appellant requested reconsideration. She argued that her fall occurred on property that was owned, controlled or maintained by the employing establishment. She had previously witnessed employing establishment personnel shoveling snow and ice from the sidewalk at the location of her fall. Appellant offered a diagram showing that the employing establishment occupied the entire city block.

The Office conducted a telephone conference with the employing establishment on August 27 and 30, 2001. The employing establishment advised that the sidewalk in question was city property; the employing establishment shoveled snow on the sidewalk but did not otherwise own, control or maintain it. The employing establishment provided photographs of the sidewalk and advised that the injury site was 700 feet from the entrance to the employing establishment.

In a decision dated September 28, 2001, the Office reviewed the merits of appellant's claim, vacated its prior decision and denied appellant's claim on the grounds that she was not in the performance of duty at the time of her injury. The Office found no evidence that the point at

which the injury occurred lay on the only route, or at least on the normal route, that employees must traverse to reach the employing establishment. There was also no evidence of a close association of the access route with the premises. The Office concluded that appellant was exposed to the hazards common to all travelers at the point where she fell and was therefore not in the performance of duty.

Under the Federal Employees' Compensation Act, an injury sustained by an employee having fixed hours and a fixed place of work while going to or coming from work is generally not compensable because it does not occur in the performance of duty. This is in accord with the weight of authority under workers' compensation statutes that such injuries do not occur in the course of employment. However, exceptions to the rule have been declared by courts and workers' compensation agencies. One such exception, almost universally recognized, is the premises rule: An employee going to or coming from work is covered under workers' compensation while on the premises of the employer. The term "premises," as it is generally used in workers' compensation law, is not synonymous or necessarily coextensive with "property." It may be broader or narrower and is dependent more on the relationship of the property to the employment than on the status or extent of legal title. In some cases "premises" may include all the "property" owned by the employer. In other cases, even though the employer does not have ownership and control of the place where the injury occurred, the place is nevertheless considered part of the "premises."[1]

The Board has recognized the proximity rule, which states that under special circumstances the industrial premises are constructively extended to those hazardous conditions that are proximate to the premises and may, therefore, be considered as hazards of the employing establishment. The main consideration in applying this rule is whether the conditions giving rise to the injury are causally connected to the employment.[2]

Applying these principles to the facts of the present case, the Board finds that appellant's slip and fall on an icy sidewalk on February 1, 2000 did not occur in the performance of duty.

Appellant had fixed hours and a fixed place of work. Her injury occurred as she was coming from work. The injury did not occur on the property of the employing establishment but rather on a public sidewalk adjacent to the employing establishment. Even if the public sidewalk on which appellant fell was the customary means of access to or egress from the employing establishment for its employees, this does not alter the public nature of the sidewalk or render it part of the employing establishment's premises.[3] The hazard causing the injury, ice or snow on the sidewalk, is a hazard common to all travelers on the sidewalk and is not causally related to the employment. While the employing establishment's responsibility to clear the sidewalk may subject it to tort liability under the Federal Tort Claims Act, this responsibility does not make the

[1] *Denise A. Curry*, 51 ECAB ___ (Docket No. 97-2579, issued November 3, 1999) and cases cited therein.

[2] *Id*.

[3] *Id*.

sidewalk part of the employing establishment's premises or bring the sidewalk within the proximity rule.[4]

The September 28, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[4] *Denise A. Curry*, *supra* note 2. *See Samuel Curiale*, 48 ECAB 468 (1997) (holding that the claimed injury occurred off the premises of the employing establishment, as the injury occurred on a road that was not owned, controlled, or maintained by the employing establishment); *Diane Bensmiller*, 48 ECAB 675 (1997) (holding that the premises doctrine is applied to those cases where it is affirmatively demonstrated that the employer "owned, maintained, or controlled" the parking facility in which the injury occurred); *see also Randi H. Goldin*, 47 ECAB 708 (1996) (finding that the employing establishment did not own the sidewalk/driveway where the claimant fell and was not responsible for its maintenance); *Vincent Siderine*, 35 ECAB 304 (1983) (denying compensation where that the rain gutter that caused the claimant's mishap was constructed by the town and maintained by the town).