U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE A. CURRY and U.S. POSTAL SERVICE,
POST OFFICE, Milford, CT

Docket No. 97-2579; Submitted on the Record;
Issued November 3, 1999

DECISION and ORDER

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

The issue is whether appellant's slip and fall on a snow-covered sidewalk on January 10, 1994 occurred in the performance of duty.

On January 15, 1994 appellant, a letter carrier, filed a claim for an injury to her low back sustained on January 15, 1994 when she "stepped onto uncleaned sidewalk and fell." The employing establishment controverted appellant's claim, stating, "The injury happened before employee clocked into work and the injury occurred on a public city-owned sidewalk." By decision dated March 31, 1994, the Office of Workers' Compensation Programs found that the fact of an injury was not established.

At a hearing held on November 16, 1994 appellant testified that employees were allowed to park in the employing establishment's parking lot if they could find a space, that employees were also allowed to park on the public street on the side of the employing establishment, and that when employees parked on the street they entered the employing establishment by walking along the sidewalk to the parking lot and across the parking lot into the back of the building. Appellant testified that on January 10, 1994 she parked on the public street on the side of the employing establishment minutes before her 7:00 a.m. starting time and that she stepped onto the sidewalk, which was covered with snow, slipped and fell, injuring her back. Appellant's attorney contended that the sidewalk on which appellant fell was an extension of the employing establishment's premises, since "The only entity that had an obligation to keep the sidewalk clear of ice and snow was the [employing establishment] pursuant to the statutes and the adoption of the local ordinance by the town of Milford." Appellant submitted a photograph and a diagram of the area where she fell, and a copy of sections of the Connecticut General Statutes (CGS) and of the Milford Town Code indicating that the owner or person in possession of the property abutting a public sidewalk was liable for any injury caused by the presence of ice or snow on the

sidewalk. Appellant also submitted a September 21, 1994 letter from the Connecticut Interlocal Risk Management Agency to her attorney, which stated:

> "As you are aware, we are the claim administrators for the City of Milford. As pursuant to CGS 7-163a and [s]ection 20-9 of the Milford Town Code, it is the responsibility of all abutting land owners to ensure the sidewalks abutting their property are free from any ice and snow accumulation. My investigation with the City of Milford has shown that the City performed no positive act with regard to the removal of ice and snow accumulation on this particular section of sidewalk. As it is evident that the abutting land owner is the [employing establishment], I must respectfully request that you channel your efforts for compensation to the same. Accordingly, the City of Milford will make no voluntary payments at this time."

By decision dated January 11, 1995, an Office hearing representative found that appellant was not injured on postal property, that the sidewalk on which she fell was not reserved exclusively or even primarily for employing establishment employees, that there was no showing of significant use and benefit to the employing establishment and that the employing establishment's responsibility for snow removal did not confer ownership or control of the sidewalk to the employing establishment or confer the status of employing establishment premises upon the public sidewalk.

Appellant requested reconsideration, and submitted a copy of a contract between the employing establishment and a private company to plow the employing establishment's parking lot. Appellant, through her attorney, contended that employing establishment employees in fact removed snow from the sidewalk. By decision dated April 1, 1996, the Office refused to modify its prior decision. Appellant again requested reconsideration, and submitted a copy of a section of the town code stating, "All snow and ice shall be removed from the sidewalks of the city by the owner, tenant or occupant of the premises adjoining and fronting every such sidewalk within twenty-four (24) hours after the storm, during which such snow or ice was precipitated, shall have ceased." By decision dated July 12, 1996, the Office refused to reopen the case for further review of the merits of appellant's claim. Appellant again requested reconsideration, contending that the employing establishment might avoid liability in a claim under the Federal Torts Claims Act (FTCA) by arguing that the sidewalk was part of its premises. By decision dated June 26, 1997, the Office refused to modify its prior decisions.

Under the Federal Employees' Compensation Act an injury sustained by a plant employee, having fixed hours and 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, many exceptions to the rule have been declared by courts and workmen's compensation agencies. One such exception, almost universally recognized, is the premises rule: an employee going to or coming from work is covered under workmen's compensation while on the premises of the employer. The "premises" of the employer, as that term is used in workmen's compensation law, are not necessarily coterminous with the property owned by the employer; they may be broader or narrower and are

dependent more on the relationship of the property to the employment than on the status or extent of legal title. The term "premises" as it is generally used in workmen's compensation law, is not synonymous with "property." The former does not depend on ownership, nor is it necessarily coextensive with the latter. 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 also recognized the proximity rule, which states that under special circumstances the industrial premises are constructively extended to those hazardous conditions which 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 situation in the present case, the Board finds that appellant's slip and fall on a snow-covered sidewalk on January 10, 1994 did not occur in the performance of duty.

Appellant's slip and fall did not occur on the employing establishment's premises, but rather on the public sidewalk adjacent to the employing establishment. At the time of her injury, appellant had fixed hours and place of work, and had not yet reported to work at the time of her injury. Her injury was an ordinary, nonemployment hazard of the journey to work itself which is shared by all travelers.[3] Even if the public sidewalk on which appellant fell was the customary means of access to 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.[4] The proximity rule also does not apply as 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.[5] While the employing establishment's responsibility to clear the sidewalk may subject it to tort liability under the FTCA, this responsibility does not make the sidewalk part of the employing establishment's premises or bring the sidewalk within the proximity rule.[6]

[1] *Thomas P. White*, 37 ECAB 728 (1986); *Dollie J. Braxton*, 37 ECAB 186 (1986).

[2] *Estelle M. Kasprzak*, 27 ECAB 339 (1976); *Lillie J. Wiley*, 6 ECAB 500 (1954).

[3] *Jacqueline Nunnally-Dunford*, 36 ECAB 217 (1984).

[4] *Sallie B. Wynecoff*, 39 ECAB 186 (1987).

[5] *Melvin Silver*, 45 ECAB 677 (1994).

[6] *Id.*

The decision of the Office of Workers' Compensation Programs dated June 26, 1997, is affirmed.

Dated, Washington, D.C.
November 3, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member