U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMIE BROOKS and U.S. POSTAL SERVICE,
POST OFFICE, Dover, DE

Docket No. 02-1549; Submitted on the Record;
Issued December 17, 2002

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's slip and fall on an ice-covered sidewalk on February 6, 2001 occurred in the performance of duty.

On February 8, 2001 appellant, then 58-year-old letter carrier, filed a notice of traumatic injury alleging that on February 6, 2001 he was reporting to work when he fell on black ice on the sidewalk adjacent to his duty station. Appellant stopped work on February 6, 2001 and received treatment for multiple fractures of the left arm.

In a statement dated February 6, 2001, appellant's supervisor wrote that appellant had parked his car on a public street and was walking down a public cement sidewalk on his way to work when he fell on ice and hurt his left arm. The employing establishment controverted appellant's claim alleging that appellant fell at 6:40 a.m., 20 minutes before his shift was to begin at 7:00 p.m. It was further contended that the injury did not occur on postal property.

In a decision dated March 16, 2001, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that his injury did not occur in the performance of duty.

On May 4, 2001 appellant requested reconsideration.

In a June 1, 2001 letter, appellant's counsel advised that additional evidence was to be submitted in 10 days.

A copy of a notarized affidavit, signed by appellant, indicated that all employees were required to use the side entrance of the building where he entered on the day he was injured, and that the sidewalk adjacent to his duty station was traditionally maintained by the janitor of the employing establishment. He further noted that the sidewalk had "always been maintained, repaired and kept clear of snow and ice by post office employees."

Appellant also submitted a section 19-5 copy of the Dover Code, page 1448, along with pictures of the sidewalk and duty station in question.

In a June 14, 2001 decision, the Office denied appellant's request for reconsideration of the merits of his claim.

Appellant again requested reconsideration and his counsel submitted letters dated June 7 and 18, 2001 regarding premises case law under workers' compensation.[1]

In an April 15, 2002 decision, the Office denied modification of its prior decision.

The Board finds that appellant failed to establish that he was injured in the performance of duty.

Under the Federal Employees' Compensation Act[2] an injury sustained by an 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 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."[3]

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.[4]

Applying these principles to the present case, the Board finds that appellant's slip and fall on an ice-covered sidewalk on February 6, 2001 did not occur in the performance of duty. Appellant's slip and fall did not occur on the employing establishment's premises as the

[1] It appears that appellant's affidavit had also not been considered by the Office in the prior decision.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Denise A. Curry*, 51 ECAB 158 (1999); *Thomas P. White*, 37 ECAB 728 (1986).

[4] *Denise A. Curry, supra* note 3; *Estelle M. Kasprzak*, 27 ECAB 339 (1976).

sidewalk was a public sidewalk adjacent to appellant's duty station. At the time of his injury, appellant had fixed hours and place of work, and had not yet reported to work at the time of injury. His injury was an ordinary, nonemployment hazard of the journey to work itself, which is shared by all travelers.[5] 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.[6] The ice on the sidewalk is a hazard common to all travelers on the sidewalk and is not a hazard related to the employment.[7]

The decision of the Office of Workers' Compensation Programs dated April 15, 2002 is hereby affirmed.

Dated, Washington, DC
December 17, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] *Denise A. Curry, supra* note 3.

[6] *Id*.

[7] *Id.*; *Melvin Silver*, 45 ECAB 677 (1994).