

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSTANCE LOWBER, : CIVIL ACTION
 :
 Plaintiff, :
 :
 UNITED STATES OF AMERICA, :
 : NO. 97-7527
 Defendant. :

MEMORANDUM

R.F. KELLY, J.

OCTOBER 23, 1998

This matter was tried on October 20, 1998, from the testimony and exhibits presented, at that time I make the following:

FINDINGS OF FACT

1. On Saturday, December 9, 1995, snow and ice fell in the Philadelphia area and around the U.S. Postal Service's Wadsworth Finance Station in the Mount Airy section of Philadelphia. By Monday, December 11, 1995, as a result of extremely cold conditions over the weekend, a thick coating of ice covered the streets and sidewalks in front of the Wadsworth Finance Station.

2. On Monday, December 11, 1995, although the conditions were extreme, the sidewalk area in front of the post office had been cleared by the time that Ms. Lowber approached the post office. The sidewalk areas that received no sunlight during the day were especially difficult to shovel and had not been cleared at the time that Ms. Lowber approached the post office. Given the difficulties presented by the weather and the conditions at the time, the efforts of the Postal Service to clear the area in

front of the post office were reasonable.

3. At approximately 3:00 p.m. on December 11, 1995, Ms. Lowber approached the Wadsworth Finance Station to mail some letters. Instead of walking on the sidewalk area that had been cleared of snow and ice, she instead walked on an avoidable ice covered area, slipped and fell down. Ms. Lowber was aware that the conditions were extreme and knew that portions of the area where she was walking were icy at the time that she fell.

4. After getting back on her feet, Ms. Lowber was able to walk without assistance and entered the post office on her own to report her fall. After leaving the post office, Ms. Lowber spoke with Postal Service Supervisor Patricia Williams outside of the post office regarding her fall. Ms. Lowber pointed out where she had fallen and Ms. Williams asked her if she was injured. Ms. Lowber stated that she was not injured.

5. Ms. Williams testified that just prior to this, as she (Ms. Williams) was going into the post office, she noticed the Plaintiff walking across the ice and snow covered part of the sidewalk toward the post office and thought it odd that she was not using the part of the sidewalk that had been cleared.

6. Ms. Williams testified in a clear and convincing manner and I found her testimony to be credible,

7. Ms. Lowber did not request any medical assistance and did not go to the hospital to seek treatment until the next day.

CONCLUSIONS OF LAW

1. The mere fact that an accident occurred does not give rise to an inference that the injured person was the victim of negligence. Estate of Swift v. Northeastern Hospital of Philadelphia, 456 Pa. Super. 330, 335, 690 A.2d 719, 722 (1997).

2. The existence and extent of the duty which a possessor of property owes to its invitees is set forth in the Restatement (Second) of Torts at § 343 which provides:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.

3. In this case, the weather conditions at the Wadsworth Finance Station were extreme and the Postal Service took all reasonable steps to clear the area in front of the post office that was frequented by postal customers. The entire sidewalk area in front of the entrance to the post office, the steps leading to the post office, and the area in front of the mailboxes where Ms. Lowber fell had been cleared of snow and ice. The contractor hired to clear the sidewalk area by the Post Office was not able to clear all of the remaining areas around the perimeter of the post office due to the severely cold and icy conditions that preceded and

followed December 11, 1995 and due to the lack of sunlight on those areas. The ice was too thick, too hard, and attempts to use rock salt were unsuccessful.

4. In this case, Plaintiff knew that the conditions were extreme, treacherous and icy, yet she chose to walk on the icy portion of sidewalk rather than the area that had been cleared. This was the sole reason why she fell. Even if a dangerous condition existed at the Wadsworth Finance Station on the day of Ms. Lowber's fall, the U.S. Postal Service is not liable if it was reasonable for it to believe that the dangerous condition would be obvious to and discovered by an invitee. Roland v. Kravco, 355 Pa. Super. 493, 497, 513 A.2d 1029, 1032 (1986); (citing Palenscar v. Michael J. Bobb, Inc., 439 Pa. 101, 266 A.2d 478 (1970)).

5. I find that Defendant United States of America was not negligent.

For the above reasons, I enter the following Order.

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Plaintiff,	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	NO. 97-7527
	:	
Defendant.	:	

O R D E R

AND NOW, this 23rd day of October, 1998, Judgment is hereby entered in favor of the Defendant, United States of America and against the Plaintiff, Constance Lowber.

BY THE COURT:

Robert F. Kelly, J.