

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA M. LEWIS and DEPARTMENT OF AGRICULTURE,  
NATIONAL FINANCE CENTER, New Orleans, La.

*Docket No. 96-2616; Submitted on the Record;  
Issued August 18, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a back injury while lifting stacks of statements on June 6, 1995.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof in this case.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>1</sup>

In the present case, appellant, a mail clerk, filed a notice of traumatic injury alleging that she sustained a back and leg injury on June 6, 1995, while lifting stacks of "E & L" statements. The Office of Workers' Compensation Programs denied appellant's claim by decision dated April 4, 1996 on the grounds that fact of injury was not established. The Office denied modification of its prior decision, after merit review, by decision dated August 15, 1996.

Appellant has not submitted any medical evidence to the record that she sought medical treatment for a back injury sustained on June 6, 1995. Rather the medical evidence from appellant's treating physician, Dr. James C. Butler, a Board-certified orthopedic surgeon, indicates that appellant was seen on June 19, 1995, with a two-week history of left hip pain, with onset of symptoms following prolonged standing. Appellant has not submitted any medical evidence which notes a history of a lifting injury on June 6, 1995. The evidence of record is, therefore, insufficient to establish that appellant did sustain a back injury on June 6, 1995,

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<sup>1</sup> O. Paul Gregg, 46 ECAB 624 (1995).

resulting from an employment incident occurring at the time, place and in the manner alleged, *i.e.*, from lifting stacks of statements.

Dr. Butler did perform diagnostic studies, including a magnetic resonance imaging scan and electromyographical studies. In a report dated April 19, 1996, Dr. Butler explained that appellant did have a disc herniation at the L4-5 level, which he felt was the cause of her complaints referable to her left leg. Dr. Butler also opined that “by her history alone do I relate the onset of her complaints to her job activities. She has not been specific but only stated that she feels prolonged standing and walking required of her job have contributed to or caused her low back problem. It is my opinion that prolonged standing and walking can aggravate a disc injury. Appellant has not claimed that her back condition was caused by standing or walking at work.

Also, appellant has not described to either the Office or Dr. Butler the exact nature of her standing and walking. Furthermore, while Dr. Butler indicates that walking and standing could have aggravated appellant’s “disc injury,” he has not provided a rationalized medical opinion, which explains the nature of appellant’s preexisting condition and explains specifically how the requirements of appellant’s work duties would have aggravated such condition. As such, appellant has not submitted the necessary factual and medical evidence to establish her claim.

The decisions of the Office of Workers’ Compensation Programs dated August 15 and April 4, 1996 are hereby affirmed.

Dated, Washington, D.C.  
August 18, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member