

disability on or after June 24, 2002 causally related to a May 14, 2002 employment injury. The facts and the history of this case are herein incorporated by reference.²

By letter dated September 29, 2003, appellant requested reconsideration and submitted additional evidence. She stated that her reason for filing a recurrence of disability claim was to extend her limited-duty assignment which was due to expire on June 24, 2002.

In two reports dated June 24, 2003, Dr. Vikram H. Gandhi, a Board-certified orthopedic surgeon, advised that appellant experienced pain and atrophy in the right leg, right groin pain and neck stiffness. He diagnosed a right inguinal and right quadriceps “injury” and lumbar radiculopathy.

In a June 30, 2003 disability certificate, Dr. Gandhi indicated that appellant’s injury to her right groin and right quadriceps, and possibly her back, occurred on May 14, 2002. He stated, “there was no reoccurrence of injury.”

In a form report dated July 7, 2003, Dr. Gandhi diagnosed an inguinal strain, right quadriceps tear and lumbar radiculopathy causally related to the May 14, 2002 employment injury. He indicated that appellant was totally disabled from October 25 to December 6, 2002 and was able to perform limited duty as of December 6, 2002.

By decision dated October 30, 2003, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.³

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees’ Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation on her own motion or on application. The Secretary, in accordance with the facts on review, may end, decrease, or increase the compensation previously awarded; or award compensation previously refused or discontinued.⁴

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.⁵ To

² On May 14, 2002 appellant, then a 30-year-old city carrier, sustained a right inguinal strain and partial tear of the right quadriceps. On November 13, 2002 she filed a claim for a recurrence of disability beginning June 24, 2002 while performing light duty which caused permanent disability beginning September 17, 2002.

³ Appellant submitted additional evidence subsequent to the Office decision of October 30, 2003. However, the Board’s jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.⁷

ANALYSIS

The Board notes that the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that her claimed recurrence of disability on or after June 24, 2002 was causally related to her May 14, 2002 accepted employment injury, a right inguinal strain and partial tear of the right quadriceps.

In support of her reconsideration request, appellant submitted additional medical evidence.

In reports dated June 24, 2003, Dr. Gandhi diagnosed a right inguinal and right quadriceps "injury" and lumbar radiculopathy. A June 30, 2003 disability certificate indicated that appellant's injury to her right groin and right quadriceps, and possibly her back, occurred on May 14, 2002. He stated, "There was no reoccurrence of injury." On July 7, 2003 Dr. Gandhi diagnosed an inguinal strain, right quadriceps tear and lumbar radiculopathy causally related to the May 14, 2002 employment injury. He indicated that appellant was totally disabled October 25 to December 6, 2002 and was able to perform limited duty as of December 6, 2002.

The Board finds that the reports from Dr. Gandhi do not constitute relevant and pertinent evidence not previously considered by the Office. The reports do not address the relevant issue for which appellant's claim was denied, *i.e.*, whether she was unable to perform her limited-duty position on or after June 24, 2002 due to a change in the nature and extent of her accepted employment injury or a change in the nature and extent of her limited-duty job requirements.⁸ Therefore, these reports are not sufficient to require further merit review of the claim.

Appellant has also alleged that her limited-duty job stopped on June 24, 2002. However, as noted in the Board's June 18, 2003 decision, appellant's supervisor indicated in the November 13, 2002 recurrence claim form that appellant was not removed from limited duty. Appellant's allegation, therefore, was previously considered by the Office and does not constitute relevant legal argument not previously considered. Furthermore, appellant has not submitted any factual evidence in support of her allegation that she was required to perform regular duty on or after June 24, 2002.

⁶ 20 C.F.R. § 10.607(a).

⁷ 20 C.F.R. § 10.608(b).

⁸ Although Dr. Gandhi indicated in his July 7, 2003 report that appellant was totally disabled through December 6, 2002, he did not indicate that this total disability was due to a change in the nature and extent of her accepted employment injury or a change in the nature and extent of her limited-duty job requirements.

CONCLUSION

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 30, 2003 is affirmed.

Issued: December 15, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member