

BRB No. 04-0393 BLA  
Case No. 04-BLA-5041

JAMES R. MADARA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,	)	DATE ISSUED: 09/29/2004
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
	)	
Respondent	)	ORDER

Claimant appeals the administrative law judge's Order Granting Director's Motion for a Physical Examination and Order of Remand dated January 16, 2004. The Board acknowledged receipt of claimant's appeal on February 5, 2004. The Director, Office of Workers' Compensation Programs has filed a motion to dismiss claimant's appeal as interlocutory.

Claimant's appeal of the administrative law judge's order is interlocutory in nature. Under certain limited circumstances, the Board will consider an interlocutory appeal. The appeal must meet the following three-pronged test. First, the order must conclusively determine the disputed question. Second, the order must resolve an important issue that is completely separate from the merits of the case. Third, the order must be effectively unreviewable on appeal from a final judgment. *See Gulfstream*

*Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988); *see also Canada Coal Co. v. Stiltner*, 866 F.2d 153 (6th Cir. 1989).

Because the administrative law judge's order dated January 16, 2004 does not meet the three-pronged test, the Board dismisses claimant's appeal. Therefore, the Director's motion is moot.

Any party aggrieved by the administrative law judge's decision on the merits of this case must file a new appeal with the Board within thirty (30) days of the date the administrative law judge's decision on the merits is filed. 20 C.F.R. §802.205(a).

Service of this Order has been made on all parties, the Solicitor of Labor, and the District Director.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge