

BRB No. 04-0816 BLA
Case No. 03-BLA-6156

HAROLD L. MOORE)	
)	
Claimant-Respondent)	DATE ISSUED: 09/28/2004
)	
v.)	
)	
SHAMROCK COAL COMPANY, INC.)	
)	
and)	
)	
SUN COAL COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

By letter dated July 30, 2004, the Board acknowledged receipt of employer's appeal of the administrative law judge's Order Remanding Claim issued June 8, 2004, and the administrative law judge's Decision and Order Denying Petition for Reconsideration issued July 7, 2004.

A review of the file indicates that the Order Remanding Claim of the administrative law judge issued June 8, 2004 is not final. Administrative Law Judge Daniel J. Roketenetz ordered the record be remanded to the District Director to provide a complete pulmonary evaluation to claimant.

Generally, a decision or order of an administrative law judge must be final before the Board will consider an appeal from that decision. The Board, however, will accept an interlocutory appeal if it is necessary to properly direct the course of the adjudicatory process. *See Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). Additionally, the Board will accept an appeal of an order which is interlocutory in nature if it meets the following three-pronged test. First, the order must conclusively determine the disputed question. Secondly, the order must resolve an important issue, which is completely separate from the merits of the action. Finally, the order must be effectively

unreviewable on appeal from a final judgment. *See Canada Coal Co. v. Stiltner*, 886 F.2d 153 (6th Cir. 1989); *see also Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 108 S.Ct. 1133 (1988).

The administrative law judge's Order Remanding Claim of June 8, 2004, does not meet the three-pronged test for allowing interlocutory appeals, nor does this case require the Board to direct the course of the adjudicatory process. The administrative law judge's actions are fully reviewable after a final decision is issued. *See Tignor v. Newport News Shipbuilding and Dry Dock Co.*, 29 BRBS 135 (1995). The Board therefore dismisses this appeal as interlocutory. Any party who is aggrieved by the administrative law judge's final decision may file an appeal with the Board within thirty (30) days from the date the decision is filed. 33 U.S.C. §921(a), (b); 20 C.F.R. §802.205.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge