



BRB No. 15-0463

RAMON HERNDON)

Claimant-Respondent)

v.)

DATE ISSUED: Nov. 19, 2015

VIGOR INDUSTRIAL/CASCADE)
GENERAL, INCORPORATED)

Employer)

LIBERTY NORTHWEST INSURANCE)
CORPORATION)

Carrier-Petitioner)

AMERICAN HOME INSURANCE)
COMPANY/AIG)

Carrier-Respondent)

SIGNAL MUTUAL INDEMNITY)
ASSOCIATION, LIMITED)

Carrier-Respondent)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest) ORDER

Liberty Northwest Insurance Corporation appeals the Order Denying Liberty Northwest's Motion to Compel (2013-LHC-00408 and 00409, 2015-LHC-00624) of Administrative Law Judge Steven B. Berlin rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33

U.S.C. §901 *et seq.* (the Act). The Board is in receipt of Liberty Northwest's Petition for Review and brief. No response briefs have been received.

Liberty Northwest filed with the administrative law judge a motion to compel American Home Insurance (AIG) to make available for a deposition a person to testify about the reasons AIG stipulated to its liability to claimant in 2007. Liberty Northwest also sought to compel AIG to produce documents supporting AIG's denial of certain requests for admission, or, alternatively, to direct AIG to serve sufficient answers. AIG opposed the motion to compel. The administrative law judge denied the motion to compel a deposition on the ground that the information sought was "highly unlikely" to result in any evidence relevant to the "mistake in fact" modification issue. The administrative law judge also found that AIG's answers to the requests for admission were adequate. Thus, the administrative law judge denied the motion to compel further answers on the part of AIG.

The administrative law judge's Order Denying Liberty Northwest's Motion to Compel is interlocutory, as it neither awards nor denies benefits to claimant. *See* 33 U.S.C. §919(c), (d); *see, e.g., Gupton v. Newport News Shipbuilding & Dry Dock Co.*, 33 BRBS 94 (1999). The Supreme Court has articulated a three-pronged test to determine whether an order that does not finally resolve litigation is nonetheless appealable under 28 U.S.C. §1291. First, the order must conclusively determine the disputed question. Second, the order must resolve an important issue which is completely separate from the merits of the action. Third, the order must be effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988) (collateral order doctrine); *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949); *see Niaz v. The Capital Hilton Hotel*, 19 BRBS 266 (1987). While the Board is not bound by the formal or technical rules of procedure governing litigation in federal courts, *see* 33 U.S.C. §923(a), it has relied on such rules for guidance where the Act and its regulations are silent. *See generally Sprague v. Director, OWCP*, 688 F.2d 862 n.16, 15 BRBS 11 n.16(CRT) (1st Cir. 1982). Thus, where the order appealed does not satisfy the three-pronged test, the Board ordinarily will not grant interlocutory review, unless, in its discretion, the Board finds it necessary to direct the course of the adjudicatory process or because the issue is of significance to the industry. *See Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *L.D. [Dale] v. Northrop Grumman Ship Systems, Inc.*, 42 BRBS 1, *recon. denied*, 42 BRBS 46 (2008); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989).

Liberty Northwest urges the Board to decide its interlocutory appeal, contending the administrative law judge's ruling "precludes a hearing directed to all the issues raised by AIG's motion for modification and Liberty Northwest's opposition." Brief at 4. We decline to do so and we dismiss Liberty Northwest's appeal. The Board generally dismisses appeals of interlocutory discovery orders as they fail to meet the third prong of the collateral order doctrine. *See, e.g., Newton v. P&O Ports Louisiana, Inc.*, 38 BRBS

23 (2004); *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). Indeed, the Supreme Court has held that discovery orders denying claims of attorney-client privilege are not appealable under 28 U.S.C. §1291 pursuant to the collateral order doctrine. *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009). Discovery orders are reviewable under the abuse of discretion standard after a final decision issues. *Elnashar v. Speedway SuperAmerica, LLC*, 446 F.3d 796 (8th Cir. 2006); *Butler*, 28 BRBS 114; *see generally J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92 (2009), *aff'd sub nom. Keller Found./Case Found. v. Tracy*, 696 F.3d 835, 46 BRBS 69(CRT) (9th Cir. 2012), *cert. denied*, 133 S.Ct. 2825 (2013). Moreover, as the administrative law judge is afforded broad discretion in authorizing discovery, it is not necessary for the Board to direct the course of the adjudicatory process in this case. *Butler*, 28 BRBS 114; *cf. Niazzy*, 19 BRBS 266 (Board decides interlocutory appeal where administrative law judge's order denied party its right to due process). Liberty Northwest's broad claim that its defense of AIG's modification claim will be hindered is insufficient to establish a basis for interlocutory review. *Newton*, 38 BRBS 23.

Accordingly, Liberty Northwest's appeal is dismissed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge