

BRB No. 07-0810

N.R.)
)
 Claimant-Petitioner)
)
 v.)
)
 HALLIBURTON SERVICES) DATE ISSUED: 09/11/2008
)
 and)
)
 INSURANCE COMPANY OF THE STATE)
 OF PENNSYLVANIA)
)
 Employer/Carrier-) ORDER on
 Respondents) RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board’s Decision and Order in this case, *N.R. v. Halliburton Services*, BRBS , BRB No. 07-0810, (June 27, 2008)(McGranery, J. dissenting). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). Claimant responds, urging denial of employer’s motion for reconsideration. Employer requests the Board to bifurcate this claim in such a fashion that the medical and compensation issues are remanded to the administrative law judge and the legal issue, regarding the zone of special danger doctrine under the Defense Base Act, 42 U.S.C. §1651 *et seq.*, is appealable to the Federal courts.

We need not recount the full procedural history of this case as the sole issue presented by employer’s motion for reconsideration involves whether the Board has the authority to enter an Order “granting an interlocutory appeal” from its decision in this case. In its motion for reconsideration, employer argues that the fact that this case involves a threshold legal issue upon which there is a substantial ground for difference of opinion mandates that the Board take the requested action so that employer may take an expedited appeal of its interlocutory decision to the appropriate federal court.

We deny employer’s Motion. The Board does not possess the authority to grant an appeal of a non-final decision to a higher court. 33 U.S.C. §921(b); 20 C.F.R. §§802.219, 802.301. Bifurcating the claim, even if we were inclined to do so, would not affect this issue, as administrative action on the claim would still be incomplete. Only the appellate court with jurisdiction over the claim can determine whether an

interlocutory appeal is appropriate. 33 U.S.C. §921(c). *See, e.g., Newpark Shipbuilding & Repair v. Roundtree*, 723 F.2d 399 (5th Cir.) (*en banc*), *cert. denied* 469 U.S. 818 (1984); *see also* 28 U.S.C. §1292(b).

Accordingly, employer's motion for reconsideration is denied, and the case is remanded to the administrative law judge for consideration consistent with the Board's decision. 20 C.F.R. §802.409.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge