



BRB No. 26-0063

SETH SUTTON)
)
 Claimant-Respondent)
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 v.)
)
 SSA ATLANTIC)
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 and)
)
 HOMEPORT INSURANCE COMPANY)
)
 Employer/Carrier-)
 Petitioners)

NOT-PUBLISHED

DATE ISSUED: 02/17/2026

ORDER

Employer and its Carrier (Employer) have filed a Petition for Interlocutory Review and Emergency Motion for Stay of Administrative Law Judge (ALJ) Pamela A. Kultgen’s February 10, 2026 Order Denying Motion to Continue Hearing (2025-LHC-00172). In support of its petition and motion, Employer has filed a Certificate of Emergency. Employer asserts the matter is ripe for review and asks the Benefits Review Board to vacate the ALJ’s Order and remand the case with instructions to grant its motion.

The ALJ originally set this matter for hearing on September 16, 2025. Order at 2. Due to Employer’s counsel’s conflict, she rescheduled it for September 25, 2025, and on joint motion, she again rescheduled it for December 16, 2025, to allow the parties to complete mediation. *Id.* On joint motion, she again rescheduled the hearing for February 24, 2026, to allow the parties additional discovery time. *Id.* According to Employer and the ALJ, Claimant identified a vocational rehabilitation expert as a potential witness in the late afternoon of January 14, 2026 – the day discovery closed. *Id.* at 1-2; Petition at 5. Employer filed a motion asking the ALJ to continue the hearing because the timing of Claimant’s action “prejudice[d] Employer’s ability to produce rebuttal evidence.” Order at 2. Claimant objected to Employer’s motion, asserting the hearing had been scheduled and then rescheduled three times and that Employer had sufficient opportunity to develop its own vocational evidence during the discovery period but chose not to. *Id.* at 2. The

ALJ denied Employer's motion but provided it an opportunity to further develop and submit evidence:

Although the undersigned did not set a specific deadline for the disclosure of expert witnesses separate from disclosure of other witnesses, taken together these regulations [29 C.F.R. §§18.50(c)(1)(i)(A), 18.51(d), 18.53(a)(1)] appear inconsistent with the identification and production of an expert witness report on the day that discovery ends. Despite this, I do not want to further delay Claimant's hearing. I will allow Employer to supplement the record with a responsive expert report and/or with a deposition (the latter only if the vocational specialist does not testify at the hearing).

Id. at 3.

Employer asserts proceeding with the hearing on February 24, 2026, would violate its "Due Process" rights and create a "procedural paradox." Petition at 5-6. It asserts it cannot conduct a meaningful cross-examination if it is not permitted to discover information before confronting the witness. *Id.* at 6. It asks the Board to grant its petition, issue an emergency stay of the hearing, vacate the ALJ's Order, and remand the case with instructions to the ALJ to grant a continuance "to allow pre-hearing depositions of the expert witness." *Id.*

Employer appeals a non-final, or interlocutory, order which neither awards nor denies benefits. See 33 U.S.C. §919(c). The Board generally does not undertake review of a non-final order. See, e.g., *Newton v. P & O Ports La., Inc.*, 38 BRBS 23, 24 (2004); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114, 117 (1994). The Board will undertake interlocutory review only if the non-final order conclusively determines a disputed question, resolves an important issue completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276 (1988) ("collateral order doctrine"); *Zaradnik v. The Dutra Group, Inc.*, 52 BRBS 23, 24 (2018). If the order at issue fails to satisfy any one of these requirements, the Board nonetheless may, in its discretion, accept the appeal if it is necessary to direct the course of the adjudicatory process or if a party has been denied due process of law. 33 U.S.C. §923(a) (Board is not bound by formal rules of procedure); *Pensado v. L-3 Commc'ns Corp.*, 48 BRBS 37, 37 (2014); *Baroumes v. Eagle Marine Servs.*, 23 BRBS 80, 82 (1989).

Employer asserts this interlocutory appeal satisfies the collateral order doctrine because the ALJ's Order 1) "conclusively denied" its request for time to conduct a pre-hearing deposition, 2) addressed an issue separate from the merits involving a "Due Process" and "fundamental fairness" right to depose a witness before cross-examining him at the hearing, and 3) is unreviewable after final judgment because a post-hearing

deposition will not “un-ring the bell” as “[t]he harm is the hearing itself proceeding under these constitutionally defective conditions.” Petition at 4-5. We reject Employer’s arguments.

First, Employer has not demonstrated how the ALJ issued a ruling separate from the merits that violated the Due Process Clause. Due process is not the catch all guarantee of procedural fairness Employer envisions. Rather it requires only that a party be given notice of the proceedings and an opportunity to be heard at a reasonable time and in a reasonable manner. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). The right to procedural due process in an administrative proceeding encompasses a party’s “meaningful opportunity to present [its] case.” *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976). In adjudicating matters under the Act, ALJs enjoy broad discretion in evidentiary and procedural matters and may be overturned only if the challenging party shows their findings are arbitrary, capricious, or an abuse of discretion. *Collins v. Elec. Boat Corp.*, 45 BRBS 79, 81-82 (2011); *Everson v. Stevedoring Servs. of Am.*, 33 BRBS 149, 152 (1999). They are not bound by common law or statutory rules of evidence or technical or formal rules of procedure. 33 U.S.C. §§919(d), 923(a); 20 C.F.R. §§702.338, 702.339; *see also Casey v. Georgetown Univ. Med. Ctr.*, 31 BRBS 147, 152 (1997).

In this case, the ALJ acknowledged the situation was not ideal but granted Employer the accommodation to provide rebuttal evidence and cross-examine the witness while keeping the hearing on schedule after multiple continuances. Despite Employer’s pleading, the ALJ did not abuse her discretion by doing so. Her decision to deny additional extra time to conduct a pre-hearing deposition of Claimant’s witness but allow time for post-hearing rebuttal is reasonable.

Furthermore, the ALJ’s Order did not conclusively determine a disputed question (it in fact provides Employer an opportunity to further develop and submit rebuttal evidence), and it is not unreviewable after a final decision has been issued. *Newton*, 38 BRBS at 25; *Butler*, 28 BRBS 114. And the Board need not direct the course of the adjudicatory process, as the ALJ is afforded wide discretion in that regard and is attempting to reasonably advance the proceedings in this case. 33 U.S.C. §§919(c)-(d), 923(a), 927; 5 U.S.C. §556(c); *Newton*, 38 BRBS at 25; 20 C.F.R. §§702.338-702.339.

Accordingly, we deny Employer’s motion for an emergency stay of the hearing, dismiss Employer’s appeal, and remand the case to the ALJ for her to proceed with the scheduled hearing. Any party aggrieved by the ALJ’s final decision awarding or denying

benefits may file an appeal with the Board within 30 days of the date the district director files the decision. 33 U.S.C. §921(a), (b); 20 C.F.R. §802.205.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge