

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 23-0196

BRENDA BEASLEY
(Widow of HENRY BEASLEY)

Claimant-Petitioner

v.

SSA TERMINALS, LLC

and

HOMEPORT INSURANCE COMPANY

Employer/Carrier-
Respondents

and

MATSON TERMINALS, INCORPORATED

and

SIGNAL MUTUAL INDEMNITY
ASSOCIATION, LTD.

Employer/Carrier

and

JONES STEVEDORING COMPANY

Self-Insured
Employer

DATE ISSUED: 6/06/2023

)
and)
)
RESIDUAL ENTERPRISES)
CORPORATION (successor-in-interest to SL)
SERVICE, INCORPORATED))
)
Employer)
)
and)
)
SEA-LAND SERVICE, INCORPORATED)
)
and)
)
ZURICH AMERICAN INSURANCE)
COMPANY)
)
Employer/Carrier)
)
and)
)
SL SERVICE, INCOPORATED (f/k/a)
SEA-LAND SERVICE, INCORPORATED))
)
and)
)
THE TRAVELERS INDEMNITY)
COMPANY)
)
Employer/Carrier) ORDER

On March 14, 2023, Claimant filed an appeal of Administrative Law Judge (ALJ) Christopher Larsen's Order Granting Motion to Compel (2022-LHC-00672). 33 U.S.C. §921(a); 20 C.F.R. §§802.201, 802.205(a). Claimant's appeal was assigned the Benefits Review Board's docket number 23-0196. 20 C.F.R. §802.210.

SSA Terminals, Incorporated (Employer) has filed a motion to dismiss Claimant's appeal as interlocutory. 20 C.F.R. §802.401(b). In her Opening Brief, Claimant responds

to Employer's motion,¹ asserting it should be denied because the ALJ's interlocutory order is subject to the Board's jurisdiction because it violates her due process rights by compelling the production of multi-privileged documents from two entirely non-relevant cases,² which are incapable of triggering the Section 33(g) bar, 33 U.S.C. §933(g).

Henry Beasley (Decedent) was diagnosed with lung cancer which he related to his alleged exposure to asbestos in the course of his work as a longshoreman with multiple employers. On July 20, 2017, he engaged Brayton Purcell, LLP (BP), who filed a personal injury action on his behalf in California against various third parties – asbestos manufacturers, distributors, and related entities – for injuries he sustained as a result of asbestos exposure (CGC-17-276600). Prior to his death on September 18, 2018, Decedent reached settlements with several of the third-party defendants in his personal injury claim. After Decedent's death, Claimant, also represented by BP, executed documents purportedly waiving any interest in Decedent's third-party claims and disclaiming her interest in Decedent's estate in favor of participating in her death benefits claim arising under the Act. 33 U.S.C. §909.

Upon Decedent's death, his stepson (and Claimant's son), Bobby Phillips, was substituted as successor-in-interest in the on-going third-party proceedings. In that capacity, Mr. Phillips executed some third-party settlements. A dispute arose between Decedent's estate and Decedent's son, Marc Beasley, as to the allocation of the proceeds from the post-death third-party settlements. This dispute was resolved by a court order dated September 15, 2020, resulting in a fifty/fifty split between Decedent's estate and Marc Beasley. Mr. Phillips, as Decedent's successor-in-interest, and Claimant (the plaintiffs) engaged new counsel who filed a professional negligence lawsuit in California against BP (CGC-21-594197), alleging it breached its fiduciary duty to disclose material

¹ Claimant's brief opposes Employer's assertion that the ALJ's order is interlocutory and non-reviewable and challenges the merits of the ALJ's order in furtherance of her appeal. She references the Motion to Dismiss on page 9 of her brief. For purposes of this disposition, we limit our consideration of Claimant's pleading to her "response" to Employer's motion to dismiss.

² Claimant states the documents in question involve settlement- and mediation-related communications entitled to absolute privileges under California law, as well as highly confidential attorney-client communications which are privileged against third parties, such as Employer in this case.

information to the plaintiffs.³ The parties resolved this dispute via mediation and a confidential settlement agreement.

Meanwhile, on July 18, 2019, Claimant filed a claim for death benefits under the Act. Employer controverted the claim, primarily asserting 33 U.S.C. §933(g) prohibited Claimant's recovery under the Act because, in her dual capacity as Decedent's surviving spouse and heir, she entered third-party settlements for an amount less than Employer's liability for compensation under the Act without obtaining Employer/Carrier's permission. Claimant countered Employer's position, alleging Section 33(g) is inapplicable because she disclaimed all interest in the third-party settlements. The case was forwarded to the Office of Administrative Law Judges (OALJ) for a formal hearing.

Before the OALJ, Employer submitted written discovery requests to Claimant seeking, among other things, production of wills and trusts documents for Decedent and Claimant, power of attorney documents, and all correspondence between Claimant's counsel and counsel/representatives for the third-party defendants, including settlement demands in the resolved third-party cases. Claimant objected to most of Employer's request on privacy grounds and alleged the requested documents contain confidential settlement communications.⁴ On January 23, 2023, Employer filed a motion to compel Claimant's production of four categories of documents pertaining to the two civil suits, CGC-17-276600 and CGC-21-594197.⁵ Claimant filed objections to Employer's motion.

³ The plaintiffs in the negligence suit made multiple allegations, including that BP "failed to disclose that if [Claimant] elected to not pursue her wrongful death claims, then the Estate of Henry Beasley would be divested of settlement proceeds it was lawfully entitled to receive and that this divestment would be triggered by [BP] representing other claimants [notably Marc Beasley] on the same wrongful death claims." Cause of Action filed in the Superior Court of California, County of San Francisco (July 29, 2021).

⁴ Claimant states she "previously produced all of Decedent's personal injury settlement releases to [Employer]" on July 29, 2022. Cl's Br. at 2.

⁵ In case CGC-17-276600, Employer sought "all Trusts and/or Wills affecting the disposition of the proceeds from this litigation" (Emp Request #7) as well as all correspondence between counsel for the opposing parties including but not limited to settlement demands, (Emp Request #12). ALJ Order dated March 6, 2023, at 2-3. For case CGC-21-594197, Employer similarly sought all correspondence between counsel for the opposing parties (Emp Request # 22) and additionally "all documents confirming an agreed disposition and all documents describing the terms of the agreed disposition" (Emp Request # 23). *Id.* at 3.

In his order dated March 6, 2023, the ALJ granted Employer the discovery related to its possible Section 33(g) defense. In reaching this conclusion, he found it “unlikely” that counsel for the third-party defendants would not have bargained for releases of all claims from all of Decedent’s heirs, even if, as Claimant alleged, no wrongful death action had yet been filed. ALJ Order at 5. Additionally, he found Claimant’s contention that she “disclaimed” her interests in the third-party settlements and Decedent’s estate relates directly to the question of whether the Section 33(g) bar is applicable and, therefore, represents “at best an open question” requiring the parties produce evidence relevant to that issue. *Id.* Moreover, the ALJ found it significant that BP represented Decedent and all of his heirs in the third-party lawsuit and resulting settlements and continues to represent Claimant such that she “is charged with knowledge of the other heirs’ claims, just as they are charged with knowledge of hers.” *Id.* Consequently, finding the requested information from the two civil suits relevant to the applicability of the Section 33(g) bar, the ALJ granted Employer’s motion and ordered Claimant to produce the requested documents within ten days of her receipt of the order. *Id.* at 6. The ALJ’s order prompted Claimant’s present appeal, BRB No. 23-0196.

Claimant’s appeal is of 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 Louisiana, Inc.*, 38 BRBS 23 (2004); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). The Board will undertake interlocutory review only if the non-final order conclusively determines a disputed question, resolves an important issue which is 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 (1988) (“collateral order doctrine”); *Zaradnik v. The Dutra Group, Inc.*, 52 BRBS 23 (2018). If the order at issue fails to satisfy any one of these requirements, the Board nonetheless may, in its discretion, decide the appeal if necessary to direct the course of the adjudicatory process or if a party has been denied due process of law.⁶ 33 U.S.C. §923(a) (the Board is not bound by formal rules of procedure); *Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989).

⁶ Due process requires a party be given notice of the proceedings and opportunity to be heard at a reasonable time and in a reasonable manner. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Additionally, 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); *see also Goldberg v. Kelly*, 397 U.S. 254 (1970). Claimant has not shown the ALJ abused his discretion and/or violated her right to due process by compelling her to produce the evidence Employer requests.

The ALJ is afforded wide discretion in issuing rulings on discovery matters and in determining the admissibility of evidence. 33 U.S.C. §§923(a), 927(a); *see, e.g., Collins v. Electric Boat Corp.*, 45 BRBS 79 (2011); *Maraney v. Consolidation Coal Co.*, 37 BRBS 97 (2003); *Martiniano v. Golten Marine Co.*, 23 BRBS 363 (1990); *Durham v. Embassy Dairy*, 19 BRBS 105 (1986). Discovery orders, including those alleged to have resulted in the wrongful exclusion or admission of evidence, are reviewable following a decision on the merits; thus, Claimant's appeal does not satisfy the elements of the collateral order doctrine. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108-109 (2009);⁷ *Newton*, 38 BRBS at 25; *Butler*, 28 BRBS 114. Moreover, as Claimant has not shown she will suffer any specific harm as a result of the ALJ's order compelling her to produce the information requested by Employer, and the ALJ has not yet rendered a decision on the merits adverse to her, the Board need not direct the course of the proceedings below.⁸ *Newton*, 38 BRBS at 25.

⁷ In *Carpenter*, the Supreme Court of the United States held that even discovery orders compelling the disclosure of privileged material do not justify an interlocutory appeal of that order, as "[a]ppellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence." *See Carpenter*, 558 U.S. at 109. We therefore reject Claimant's assertion that the privileged nature of the information Employer seeks in this case requires us to address the merits of the ALJ's order and reverse his decision to grant Employer's motion to compel.

⁸ 29 C.F.R. §18.85(b)(1) of the OALJ Rules provides that an ALJ may, upon an interested party's motion or on his own, "order any material that is in the record to be sealed from public access." Therefore, Claimant has a procedure by which to keep materials confidential should she deem it necessary.

Accordingly, we grant Employer's motion to dismiss Claimant's appeal of the ALJ's interlocutory order.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge