

U.S. Department of Labor

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



BRB No. 19-0455

CLYDE E. HENRY)
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 Claimant)
)
 v.)
)
 CERES GULF, INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DATE ISSUED: 03/27/2020
)
)
 TERMINAL LINK TEXAS)
)
 and)
)
)
 PORTS INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents) ORDER

Ceres Gulf, Inc., appeals the Ruling on Motions to Interplead and Remand (2019-LHC-0089) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act).

Claimant injured his left shoulder on August 11, 2017, while working for Ceres Gulf. He filed a claim for benefits for his shoulder injury against Ceres Gulf, alleging injuries to his "left shoulder and arm and lower back" and "aggravation of pre-existing condition of lower back & lower extremities, & spine." Terminal Link Ex. 9. Ceres Gulf filed a motion to join Terminal Link to the case, asserting claimant's shoulder injury was a natural progression or natural/unavoidable result of claimant's prior back injury and therefore Terminal Link is the responsible employer. Terminal Link opposed.

The administrative law judge denied the motion. He stated Ceres Gulf did not sustain its burden of showing a factual or legal basis for holding Terminal Link liable for claimant's 2017 injury. Ruling on Motion to Interplead at 3-4.

Ceres Gulf appeals the administrative law judge's denial of its motion to join Terminal Link. Terminal Link filed a response, arguing first that the appeal should be dismissed as interlocutory and, in the alternative, if the Board accepts the appeal, it should affirm the administrative law judge's ruling denying Ceres Gulf's motion to join it to the claim. Ceres Gulf filed a reply brief. Claimant has not responded.

This appeal is interlocutory; the administrative law judge denied a motion to interplead, but did not award or deny benefits. *See* 33 U.S.C. §919(e); 20 C.F.R. §702.348. Generally, in order for a non-final order to be appealable, it must: conclusively determine the disputed question; resolve an important issue completely separate from the merits of the action; and be effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988) ("collateral order doctrine"); *see, e.g., Zaradnik v. The Dutra Group*, 52 BRBS 23 (2018); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987). If the order appealed does not satisfy these three elements, the Board, in its discretion, may grant review if it finds it necessary to direct the course of the adjudicatory process.¹ *See, e.g., Watson v. Wardell Orthopaedics, P.C.*, 51 BRBS 17 (2017); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1988).

We dismiss Ceres Gulf's appeal. The appeal does not satisfy the collateral order doctrine as the issue raised is not unreviewable after a final order issues. *See Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). Moreover, the Board need not direct the course of the adjudicatory process in this case. *See, e.g., Watson*, 51 BRBS 17 (addressing scope of administrative law judge's authority under Section 19(a)); *L.D. [Dale] v. Northrop Grumman Ship Systems, Inc.*, 42 BRBS 1, *recon. denied*, 42 BRBS 46 (2008) (addressing potential conflict between two sections of the Act). The administrative law judge's denial of Ceres Gulf's motion to interplead Terminal Link is fully reviewable after he issues a final decision that "adversely affects or aggrieves" any party. 33 U.S.C. §921(b); *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*, 570 U.S. 904 (2013); *Weber v. S.C. Loveland Co.*, 35 BRBS 190 (2002), *aff'g and modifying on recon.* 35 BRBS 75 (2001); *Rochester v. George Washington Univ.*, 30 BRBS

¹ The Board is not bound by formal rules of procedure. *See* 33 U.S.C. §923(a); *Hardgrove v. Coast Guard Exch. System*, 37 BRS 21 (2003).

233 (1997); *see also Rhine v. Stevedoring Services of America*, 596 F.3d 1161, 44 BRBS 9(CRT) (9th Cir. 2010); 20 C.F.R. §802.201(a).

Accordingly, we dismiss Ceres Gulf's appeal.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge