



BRB No. 20-0151

MENTOR GASHI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FLUOR FEDERAL GLOBAL PROJECTS)	
)	DATE ISSUED: 03/27/2020
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	ORDER

Claimant appeals the Order Granting Employer’s Motion for Partial Summary Decision (2019-LDA-01462) of Administrative Law Judge Jerry R. DeMaio rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). Employer has filed a motion to dismiss claimant’s appeal as review of the administrative law judge’s interlocutory order is not warranted in this case. Claimant responds that employer’s motion should be denied and the Board should review his appeal.

This appeal is interlocutory because the administrative law judge granted employer’s motion for partial summary decision finding claimant’s claim for disability benefits untimely filed pursuant to Section 13 of the Act, 33 U.S.C. §913. However, because claimant’s claim for medical benefits remains pending, the administrative law judge did not issue a “final” decision awarding or denying benefits. 33 U.S.C. §919(e); 20 C.F.R. §702.348; *see Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (claims for medical benefits are not subject to any statutes of limitations). Generally, the Board does not decide cases on an interlocutory basis in order to avoid piecemeal review. *Hudnall v. Jacksonville Shipyards*, 17 BRBS 174 (1985). 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. *See, e.g., Watson v. Wardell Orthopaedics, P.C.*, 51 BRBS 17 (2017); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1988).

We grant employer’s motion and dismiss claimant’s appeal. This appeal does not satisfy the criteria of the collateral order doctrine as the issue decided is not “collateral” nor is it unreviewable after a final order issues. *See Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 744 (1976) (decisions granting partial summary judgment but leaving the “award[] of other relief ... to be resolved have never been considered ... ‘final’ within the meaning of 28 U.S.C. § 1291”); *see, e.g., Zaradnik*, 52 BRBS 23; *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). Moreover, although the Board is not bound by formal rules of procedure, 33 U.S.C. §923(a), 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 finding that claimant’s compensation claim was untimely filed 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 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 claimant's appeal.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge