



BRB No. 14-0448
Case No. 2014-LHC-00677
OWCP No. 18-0091149

MICHAEL COMFORT)	
)	
Claimant-Respondent)	
)	
v.)	
)	
FOSS MARITIME COMPANY)	DATE ISSUED: <u>Apr. 9, 2015</u>
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION)	
)	
Employer/Carrier-)	ORDER on MOTION for
Petitioners)	RECONSIDERATION

Employer has filed a timely motion for reconsideration of the Board’s Order in this case, *Comfort v. Foss Maritime Co.*, BRB No. 14-0448 (Dec. 3, 2014), in which the Board dismissed employer’s appeal on the ground that it was an interlocutory order. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant has not responded to this motion. For the reasons stated below, we grant employer’s motion for reconsideration and reinstate employer’s appeal on the Board’s docket. We remand this case for the administrative law judge to address employer’s contention that it is entitled to summary decision.

Employer contends that the Board should entertain its interlocutory appeal as the Board has the authority to direct the course of the adjudicatory process.¹ Indeed, the

¹ We reject employer’s contention that the Board should review its appeal under the “collateral order doctrine.” *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). The administrative law judge’s denial of employer’s motion for summary decision is not a “collateral order” because the substance of the denial is that the case will go forward on the merits. *See Green v. Ingalls Shipbuilding, Inc.*, 29 BRBS 81 (1995).

Board is not bound by formal rules of procedure and can decide interlocutory appeals on this basis. 33 U.S.C. §923(a); *Hardgrove v. Coast Guard Exchange System*, 37 BRBS 21 (2003). We agree with employer that, on the facts of this case, the Board should accept its appeal of the administrative law judge's interlocutory order in order to direct the course of the adjudicatory process. See, e.g., *Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987). Accordingly, we grant employer's motion for reconsideration, vacate the Board's December 3, 2014 Order, and reinstate employer's appeal on the Board's docket. 20 C.F.R. §802.409.

Employer contends that under 29 C.F.R. §18.20,² claimant's failure to timely respond to employer's request for admissions means the facts are "deemed admitted" as a

² Section 18.20 states in part:

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within thirty (30) days after service of the request or such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves on the requesting party:

(1) A written statement denying specifically the relevant matters of which an admission is requested;

(2) A written statement setting forth in detail the reasons why he or she can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(e) Any matter admitted under this section is conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission.

matter of law.³ Given the nature of employer's requests for admissions, employer thus contends that claimant's claim must be denied and that the administrative law judge erred in failing to grant summary decision to employer.

The administrative law judge's order, in full, states, "Employer/Carrier's Motion for Summary Decision is denied as its Reply reinforces, questions of fact exit (sic) which preclude the entry of summary decision." Order Denying Motion for Summary Decision, 2014-LHC-00677 (Aug. 21, 2014). Employer filed a motion for reconsideration with the administrative law judge, again averring that all matters were deemed admitted and that it is entitled to a decision in its favor. The administrative law judge summarily denied employer's motion for reconsideration. Order Denying Motion for Reconsideration of Order Denying Summary Decision, 2014-LHC-00677 (Sept. 4, 2014). The administrative law judge did not address employer's contention that there are no material facts in dispute because the facts are deemed admitted due to claimant's untimely response to employer's requests for admissions. *See generally* *L.V. [Valladolid] v. Pacific Operations Offshore, LLP*, 42 BRBS 67, 68 n.3 (2008), *rev'd*, 604 F.3d 1126, 44 BRBS 35(CRT) (9th Cir. 2010), *aff'd*, 132 S.Ct. 680, 45 BRBS 87(CRT) (2012); *Weber v. S.C. Loveland Co.*, 35 BRBS 75, 81 n.7 (2001), *aff'd on recon.*, 35 BRBS 190 (2002); *Coats v. Newport News Shipbuilding & Dry Dock Co.*, 21 BRBS 77, 80 n.3 (1988). Thus, we remand this case for the administrative law judge to address this contention specifically, and to re-address employer's motion for summary decision, if appropriate, in view of his determination on the admissions issue.

29 C.F.R. §18.20.

³ Claimant filed a claim for benefits on September 27, 2013. After his claim was transferred to the Office of Administrative Law Judges, employer propounded written discovery requests on claimant (through his attorney) on February 27 and 28, 2014 (two sets of requests for admission, two sets of interrogatories, and three sets for production of documents). Claimant was deposed on March 14, 2014. Claimant did not respond to the discovery requests until May 9, 2014. Claimant, *inter alia*, denied each request for admission. On July 22, 2014, employer filed a motion for summary decision with the administrative law judge.

Accordingly, we grant employer's motion for reconsideration and reinstate its appeal on the Board's docket. 20 C.F.R. §802.409. We remand this case to the administrative law judge for further proceedings in accordance with this order. 20 C.F.R. §802.405(a).

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge