



BRB No. 15-0238
Case No. 2014-LHC-01205
OWCP No. 13-107182

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|----------------------------------|---|-----------------------------------|
| BEVERLY HALE |) | |
| (Widow of ANTHONY HALE) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| BAE SYSTEMS - SAN FRANCISCO SHIP |) | DATE ISSUED: <u>Apr. 30, 2015</u> |
| REPAIR |) | |
| |) | |
| and |) | |
| |) | |
| SIGNAL MUTUAL INDEMNITY |) | |
| ASSOCIATION, LIMITED |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | ORDER |

The Board acknowledges employer’s timely notice of appeal, dated April 13, 2015, of the Order Denying Motion to Compel and the Order Denying Reconsideration and Denying Stay of Administrative Law Judge Christopher Larsen. 33 U.S.C. §921(b); 20 C.F.R. §§802.205, 802.207. Employer’s appeal is assigned the Board’s docket number 15-0238. All correspondence relating to this appeal must bear this number. 20 C.F.R. §802.210.

Claimant has filed a motion to dismiss employer’s appeal because the administrative law judge’s orders are interlocutory. The Board generally does not undertake interlocutory review of orders granting or denying discovery motions because the orders may be reviewed on appeal from a final decision and order. *See, e.g., Newton v. P & O Ports Louisiana, Inc.*, 38 BRBS 23 (2004); *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995); *Butler v. Ingalls Shipbuilding, Inc.*,

28 BRBS 114 (1994). The Board will undertake interlocutory review 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”); *Newton*, 38 RBS 23. The Board also will undertake interlocutory review if it is necessary to address the course of the adjudicatory process or if a party alleges it has been denied due process of law. *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).

Employer moved the administrative law judge to issue an order to compel claimant to produce documents in connection with third-party settlements. Based on the information provided, we grant claimant’s motion to dismiss this appeal. The discovery orders appealed may be reviewed upon the issuance of a final decision on the merits. *Newton*, 38 BRBS 23. The administrative law judge denied employer’s motion because the parties did not document a sufficient effort to confer in good faith, as previously ordered, and because employer’s allegation of the relevancy of the settlements based on common representation was unsubstantiated. Moreover, the administrative law judge did not foreclose further discovery, as he stated: “Movant is entitled to discover whether such settlements may be relevant for reasons other, or in addition to, representation by claimant’s counsel.”¹ Order at 2. As employer may conduct additional discovery, it is apparent that the matter has not been finally decided and there has been no denial of due process. Thus, the Board need not direct the course of the proceedings. *Newton*, 38 BRBS 23; *Niazy*, 19 BRBS 266. Employer’s challenge to the administrative law judge’s limitations on discovery is reviewable following a decision on the merits. *See generally J.T. [Tracy] v. Global Int’l Offshore, Ltd.*, 43 BRBS 92 (2009), *aff’d sub nom. Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835, 46 BRBS 69(CRT) (9th Cir. 2012), *cert. denied*, 133 S.Ct. 2825 (2013).

¹ Only the post-death settlements have potential relevancy in this case, as claimant was not a person entitled to compensation prior to her husband’s death. 33 U.S.C. §933(f), (g); *Ingalls Shipbuilding, Inc. v. Director, OWCP [Yates]*, 519 U.S. 248, 31 BRBS 5(CRT) (1997); *Taylor v. Director, OWCP*, 201 F.3d 1234, 33 BRBS 197(CRT) (9th Cir. 2000).

Accordingly, employer's appeal of the administrative law judge's interlocutory orders is dismissed.²

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

² In light of our decision to dismiss the appeal, we deny employer's motion to hold in abeyance the proceedings before the administrative law judge scheduled for May 7, 2015. The motion to consolidate has already been denied. *Greene v. BAE Systems - San Francisco Ship Repair*, BRB No. 15-0194 (Apr. 24, 2015).