

PETER FORTUNATO	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
L-3 COMMUNICATIONS	)	
	)	
and	)	
	)	
ACE USA	)	DATE ISSUED: 08/05/2011
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

Claimant appeals the Order Denying Claimant's Motion in Opposition to Employer/Carrier's Request for Subpoena (OWCP No. 02-202226) of Administrative Law Judge Paul C. Johnson. Claimant has filed his petition for review and brief in support of his appeal, to which employer has responded. Employer also has filed a motion to dismiss claimant's appeal.

According to the parties' pleadings, claimant sustained an injury during the course of his employment in Iraq for which employer is paying disability and medical benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Ac, 42 U.S.C. §1651 *et seq.* Employer sought to depose claimant in order to ascertain whether claimant's injury falls within the provisions of the War Hazards Compensation Act, 42 U.S.C. §1701 *et seq.*, such that employer would be entitled to reimbursement under that Act for its payments to claimant. *See generally Irby v. Blackwater Security Consulting, LLC*, 41 BRBS 21 (2007). Claimant refused to agree to a deposition and employer sought a subpoena from the Office of Administrative Law Judges in order to compel claimant's attendance at a deposition. The administrative law

judge granted employer's request for a subpoena compelling claimant's appearance and testimony at a deposition.

Claimant's opposition to employer's motion for a subpoena was not received by the administrative law judge until after he issued the subpoena. The administrative law judge therefore treated claimant's filing as a motion to quash the subpoena. Claimant contended that the administrative law judge was without authority to issue the subpoena while the case remained pending before the Office of Workers' Compensation Programs (OWCP), and that forcing claimant to attend a deposition would cause him to incur legal expenses that are not payable by employer pursuant to Section 28 of the Act, 33 U.S.C. §928.

The administrative law judge denied the motion to quash finding that, pursuant to *Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986) (*en banc*), an administrative law judge has the authority to issue subpoenas while a case is pending before the OWCP. The administrative law judge further found that employer's request for claimant's deposition was for a proper purpose and not unrelated to claimant's claim under the Act, notwithstanding that employer is currently paying appropriate compensation benefits to claimant. Finally, the administrative law judge rejected claimant's objection on the basis of cost, finding that claimant did not establish that he would incur an undue expense that would justify limiting employer's access to relevant and discoverable information.

Claimant appeals the administrative law judge's Order and employer moves to dismiss it on the ground that the appeal is of an interlocutory discovery order. We grant employer's motion to dismiss claimant's appeal. Claimant's appeal is of a non-final discovery order and the Board ordinarily declines to review such orders until a final order has issued. *See Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995). Under the facts presented here, interlocutory review is not appropriate as claimant has not been harmed by an action that is unreviewable at such time as a final order is issued. *Id.*; *see also Newton v. P&O Ports Louisiana, Inc.*, 38 BRBS 23 (2004); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). In addition, claimant has not established that his right to due process of law has been infringed, *see Niazzy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987), or that the administrative law judge's action in issuing the subpoena is improper as a matter of law. *See Maine*, 18 BRBS 129; *Valdez v. Bethlehem Steel Corp.*, 16 BRBS 143 (1984); *Percoats v. Marine Terminals Corp.*, 15

BRBS 151 (1982); *Lopes v. George Hyman Constr. Co.*, 13 BRBS 314 (1981); 33 U.S.C. §§924, 927; 29 C.F.R. §§18.14, 18.22, 18.24.

Accordingly, claimant's appeal is dismissed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge