BRB No. 10-0173
Case No. 2009-LDA-00317
OWCP No. 02-0137327

FAREES AL-SINDI	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
L-3 COMMUNICATIONS/TITAN CORPORATION	)	
	)	
and	)	
	)	
AIG WORLDSOURCE	)	DATE ISSUED: 12/11/2009
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

Employer has filed a timely notice of appeal of the Order Denying Motion to Compel Claimant to Attend a Psychological Evaluation (2009-LDA-00317) of Administrative Law Judge William Dorsey dated November 5, 2009. 33 U.S.C. §921; 20 C.F.R. §802.205. This appeal is assigned BRB No. 10-0173. All correspondence pertaining to this appeal must bear this number.

In his Order, the administrative law judge denied employer's motion to compel claimant to undergo a psychological examination scheduled for November 5, 2009. The administrative law judge reasoned that employer was aware of claimant's claim of a psychological condition as of April 2008, but did not schedule an examination until November 5, 2009. This date was after the October 30, 2009, date by which the parties

were to have exchanged documentary evidence.[1] The administrative law judge also found it unlikely that a report of the examination could be completed by November 10, 2009, which was the final deadline for discovery to be completed.

Employer's appeal of this Order is interlocutory. Employer contends, however, that the Board should decide its appeal now because the administrative law judge misapplied his own pre-hearing order and the denial of the motion to compel deprives employer of its due process right to present a defense to the claim.

The Board generally does not accept interlocutory appeals so as to avoid piecemeal review. *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 in that "small class [of cases] which finally determine claims of rights separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Industrial Loan Co.*, 337 U.S. 541, 546 (1949)(the collateral order doctrine);[2] *see also United States v. 101.88 Acres of Land, Etc.*, 616 F.2d 762, 765 (5th Cir. 1980). If the order appealed from does not satisfy the criteria of the collateral order doctrine, the Board will undertake interlocutory review nonetheless if, in its discretion, it is necessary to properly direct the course of the adjudicatory process. *See Hardgrove v. Coast Guard Exchange System*, 37 BRBS 21 (2003); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1988).

We dismiss employer's appeal as it does not meet all the criteria of the collateral order doctrine, nor does the Board need to direct the course of the adjudicatory process. The Board generally declines to review interlocutory discovery orders as they are not "effectively unreviewable" after a final order issues. *Newton*, 38 BRBS 23; *Butler*, 28 BRBS 114. If, after a final order is issued, employer establishes that the administrative law judge abused his discretion in denying employer's motion to compel the

[1] The administrative law judge ordered the parties to exchange documentary evidence 30 days before the calendar call on November 30, 2009.

[2] Under the collateral order doctrine, review of an interlocutory order will be undertaken if the following three criteria are satisfied: (1) the order must conclusively determine the disputed question; (2) the order must resolve an important issue that is completely separate from the merits of the action; and (3) the order must be effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994).

examination, the case can be remanded to allow employer to obtain this evidence and for reconsideration of the issues affected by the evidence.[3] *Id.; see generally Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994).

Moreover, even if, as employer alleges, the administrative law judge misapplied his own pre-hearing order and abused his discretion in denying the motion to compel the examination, we reject its contention that its due process rights are at stake such that the Board should decide its appeal now. The right to procedural due process in an administrative proceeding encompasses the receipt of notice of the case against a party and that party's "meaningful opportunity to present [its] case." *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976); *see also Goldberg v. Kelly*, 397 U.S. 254 (1970). We cannot say that employer was denied the *opportunity* to present its case given that it had ample notice of the claim and of the deadlines imposed by the July 16, 2009, pre-trial order. *Newton*, 38 BRBS at 25; *cf. Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987) (accepting interlocutory appeal where intevernor was not given opportunity to respond to a motion to compel production of documents and responses to interrogatories). Thus, we dismiss employer's appeal of the administrative law judge's interlocutory order. *Hartley v. Jacksonville Shipyards, Inc.*, 28 BRBS 100 (1994).

Accordingly, employer's appeal is dismissed. Any party adversely affected by the final decision issued in this case may appeal that decision to the Board within 30 days from the date on which the administrative law judge's Decision and Order is filed by the district director. 33 U.S.C. §§919(e), 921(a); 20 C.F.R. §§702.349, 702.350, 802.201.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

[3] In addition, Section 22 of the Act, 33 U.S.C. §922, provides that a compensation order may be modified based on a change in condition or a mistake in a determination of fact. *See Jensen v. Weeks Marine, Inc.*, 346 F.3d 273, 37 BRBS 99(CRT) (2d Cir. 2003).