U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 18-0560

AYUBU MAGOMU	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
AEGIS DEFENSE SERVICES	)	
	)	
and	)	
	)	
ALLIED WORLD NATIONAL ASSURANCE COMPANY	)	DATE ISSUED: 12/20/2018
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	ORDER

Employer appeals the Order Denying Employer's Motion to Quash Subpoena (OWCP No. 02-308761) of Administrative Law Judge Paul R. Almanza rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the DBA).[1] Employer contends the administrative law judge erred in relying on the Board's decisions in *Maine v. Brady-Hamilton Stevedore Co.*, 18 BRBS 129 (1986) (en banc), and *Armani v. Global Linguist Solutions*, 46 BRBS 63 (2012), to deny its motion to quash claimant's subpoena request. It asserts that Section 18.56 of the Rules of Practice and Procedure for Administrative

[1] This case is pending before the Office of Workers' Compensation Programs.

Hearings before the Office of Administrative Law Judges, 29 C.F.R. §18.56, is analogous to Rule 45 of the Federal Rules of Civil Procedure, making applicable federal case law which holds that subpoenas are not proper tools for discovery of information from parties to the claim. Claimant responds, urging the Board to dismiss the appeal as interlocutory or, alternatively, to affirm the administrative law judge's Order. The Director, Office of Workers' Compensation Programs (the Director), responds with a Motion to Dismiss employer's interlocutory appeal.

In this case, on June 13, 2015, claimant filed a claim under the DBA. Dir. Br. at Exh. A. Claimant claims to have requested his personnel folder relating to the alleged injury from employer in October 2016. In March 2018, while this case was before the district director, and having received no response to the request from employer, claimant requested that the Office of Administrative Law Judges issue two subpoenas for employer to produce documents. On March 19, 2018, the administrative law judge issued the subpoenas. Employer filed a motion to quash to which claimant responded. Dir. Br. at Exh. B. The administrative law judge denied employer's motion and ordered it to respond to the subpoenas.

The administrative law judge's order denying employer's motion to quash is interlocutory in that it neither awards nor denies benefits. The Board generally does not undertake interlocutory review of orders granting or denying procedural motions because the orders may be reviewed on appeal from a final decision and order on the merits. *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"); *Zaradnik v. The Dutra Group, Inc.*, 52 BRBS 23 (2018); *Newton*, 38 BRBS 23. The Board also will undertake interlocutory review if it is necessary to direct 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).

We reject employer's contention that the Board should decide this interlocutory appeal on the grounds that an incorrect law has been applied and the administrative law judge's ruling would create precedent that would adversely affect claimants and employers alike. Employer has not alleged it would suffer any specific harm if it complied with the subpoenas. The issue employer raises is a challenge to the administrative law judge's ruling on a discovery dispute. An administrative law judge has broad discretion to direct

and authorize discovery, and his discovery ruling will constitute reversible error only if it is so prejudicial as to result in a denial of due process. *Tignor*, 29 BRBS at 138; *see* 20 C.F.R. §702.338. A discovery order is reviewable following a decision on the merits; thus, it does not satisfy the elements of the collateral order doctrine. *See Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108-109 (2009) (orders to disclose privileged material not subject to interlocutory appeal); *Tignor*, 29 BRBS 135 (discovery order is not a collateral issue; question of abuse of discretion can be addressed in appeal of final decision despite inability of document production or deposition to be "undone"). Moreover, as employer has not asserted it will suffer any specific harm as a result of the subpoenas, the Board need not direct the course of the proceedings below. *Newton*, 38 BRBS 23.

Accordingly, we grant the Director's motion to dismiss employer's appeal of the administrative law judge's interlocutory order.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge