

BRB No. 11-0808

ANTHONY L. WASHINGTON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
SSA/COOPER)	DATE ISSUED: 02/14/2012
)	
and)	
)	
HOMEPORT INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	ORDER on MOTION
Respondents)	for RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board’s order dismissing the appeal in this case as interlocutory. *Washington v. SSA/Cooper*, BRB No. 11-0808 (Oct. 25, 2011). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer responds, urging denial of the motion. We deny claimant’s motion for reconsideration.

Claimant contends the administrative law judge’s pre-hearing orders are collateral and final and that the circumstances warrant the Board’s intervention to direct the course of the adjudicatory process. Specifically, claimant asserts the orders violate his “rights” to medical privacy and to avoid having his relationship with his physicians and/or their opinions interfered with via *ex parte* communications. He argues that if resolution of this issue is postponed until the merits have been decided then he will be irrevocably harmed because his medical privacy rights will have been violated. He concludes that his claimed rights cannot be vindicated if he complies with the pre-hearing orders by releasing his information and that there will not be a reviewable decision if he does not. Additionally, claimant argues that the administrative law judge’s orders deny him important rights guaranteed by the Health Insurance Portability and Accountability Act (HIPAA) and that the “unfettered *ex parte* access” granted by the administrative law judge are overly intrusive and in violation of his rights under HIPAA. Citing *Goicochea v. Wards Cove Packing Co.*, 37 BRBS 4 (2003), claimant states that the administrative law judge erred in not considering less intrusive alternatives for giving employer access to his medical information.

Contrary to claimant's contention, the administrative law judge's pre-hearing orders do not invoke the collateral order doctrine. They do not conclusively resolve a disputed question and they are not unreviewable upon the issuance of a final decision. *See generally J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92 (2009); *Newton v. P & O Ports Louisiana, Inc.*, 38 BRBS 23 (2004). Moreover, the administrative law judge has stated that the medical records will be reviewed for relevance and admissibility before he admits them into evidence. The administrative law judge is not bound by formal rules of procedure and may inquire so as to best ascertain the rights of the parties. 33 U.S.C. §923(a); 20 C.F.R. §§702.338, 702.339. Under 29 C.F.R. §18.14(a), (b), "the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding," and it "is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Further, upon application by a party an administrative law judge may issue an order "which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" by denying or limiting the discovery or the manner in which it is obtained. 29 C.F.R. §18.15; *see also* 33 U.S.C. §927(a) (power to issue subpoenas, administer oaths, and compel testimony and discovery to be able to discharge the duties of office); *Herbert v. Lando*, 441 U.S. 153 (1979); Fed. R. Civ. P. 26(c). Therefore, we deny claimant's motion for reconsideration, and we affirm the Board's dismissal of this appeal.¹

¹Claimant's specific assertions regarding his rights under HIPAA and/or alternative, less intrusive, methods of revealing his medical information to employer may be addressed to the administrative law judge. *Goicochea*, 37 BRBS 4; *see generally Fields v. W.V. State Police*, 264 F.R.D. 260 (S.D. W. Va. 2010); 29 C.F.R. §18.15.

Accordingly, claimant's motion for reconsideration is denied.² 20 C.F.R. §802.409. The Board's Order dismissing this appeal is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

²As a majority of the permanent Board members has denied reconsideration, claimant's motion for reconsideration *en banc* also is denied. 20 C.F.R. §801.301(c).