

BRB No. 04-0663  
Case No. 03-LHC-1454  
OWCP No. 14-0132921

KENNETH GJERDE	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: 06/24/2004
	)	
v.	)	
	)	
TODD SHIPYARDS CORPORATION	)	
	)	
Employer-Respondent	)	ORDER

The Board acknowledges receipt of claimant's Notice of Appeal of the administrative law judge's oral ruling of April 15, 2004, denying claimant's motion to withdraw his claim. Claimant's appeal is assigned the Board's docket number, BRB No. 04-0663. This number must be referenced in all future correspondence to the Board concerning this appeal.

On April 15, 2004, during a telephone conference with the parties, the administrative law judge denied claimant's motion to withdraw his claim. There has been no order issued which memorializes the administrative law judge's oral ruling, and there is no indication that the ruling was transcribed into the formal record of these proceedings.

We must dismiss claimant's appeal. Claimant is appealing an interlocutory ruling by the administrative law judge. The Board ordinarily does not undertake review of non-final orders. *See, e.g., Arjona v. Interport Maintenance*, 24 BRBS 222 (1991). The United States Supreme Court has articulated a three-pronged test to determine whether an order that does not finally resolve a litigation is nonetheless appealable. First, the order must conclusively determine the disputed question. Secondly, the order must resolve an important issue that is completely separate from the merits of the action. Third, the order must be effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988)(collateral order doctrine). If the order at issue fails to satisfy any one of these requirements, it is not appealable. *Id.* at 276. While the Board is not bound by the formal or technical rules of procedure governing litigation in federal courts, *see* 33 U.S.C. §923(a), it has relied on the

Federal Rules of Civil Procedure for guidance where the Act and Regulations are silent. *See generally Sprague v. Director*, OWCP, 688 F.2d 862 n.16, 15 BRBS 11 n.16(CRT) (1<sup>st</sup> Cir. 1982). Thus, where the order appealed from does not satisfy the aforementioned three-prong test, the Board ordinarily will not grant interlocutory review, unless, in its discretion, the Board finds it necessary to properly direct the course of the adjudicatory process. *See Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987). The third prong of the collateral order doctrine is not satisfied in this case, as the administrative law judge's denial of claimant's motion to withdraw may be reviewed after a final decision is issued in this case. Thus, the Board will not entertain claimant's appeal. *See Newton v. P&O Ports Louisiana, Inc.*, 38 BRBS 23 (2004).

Moreover, there is another procedural impediment to the Board's reviewing the administrative law judge's denial of claimant's motion. The administrative law judge's ruling is not contained in an order that was filed and served on the parties nor was it made in a transcribed proceeding. *See generally* 33 U.S.C. §§919, 921(a), (b); 5 U.S.C. §554 *et seq.*; 20 C.F.R. §§702.332, 702.349, 802.201. Thus, the Board does not have any basis for ascertaining whether the administrative law judge's ruling is rational, supported by substantial evidence, and in accordance with law. *See Stevens v. Matson Terminals, Inc.*, 32 BRBS 198 (1998). In this regard, we note that the regulation governing the withdrawal of claims states that the motion for withdrawal must be in writing and provide reasons for the request to withdraw. 20 C.F.R. §702.225(a). Before he may grant a motion to withdraw, the administrative law judge must find that the withdrawal is for a proper purpose and that it is in claimant's best interest. *Id.*; *Downs v. Ingalls Shipbuilding, Inc.*, 30 BRBS 99 (1996). Without a written order or a transcribed ruling, the Board cannot review the administrative law judge's ruling denying claimant's motion to withdraw. *See generally McCracken v. Spearin, Preston & Burrows, Inc.*, 36 BRBS 136 (2002).

Accordingly, claimant's appeal is dismissed. Any party who is aggrieved by the administrative law judge's interlocutory order of final decision may file an appeal with the Board within thirty (30) days from the date a final decision and order is filed. 33 U.S.C. §921(a), (b); 20 C.F.R. §802.205.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge