U.S. Department of Labor

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

BRB No. 18-0229

MICHAEL SANDREY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: June 29, 2018
	)	
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	ORDER

Claimant appeals the Decision on Employer's Motion to Compel (2018-LHC-00057) of Administrative Law Judge Jerry R. DeMaio rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* The administrative law judge granted employer's motion to compel claimant to attend a defense medical evaluation with Dr. Lifrak, whose office is 37.6 miles from claimant's home. On appeal, claimant avers the administrative law judge was bound to accept the district director's determination that claimant was not required to attend this examination because it was more than 25 miles from claimant's home. Employer responds, contending the Board should accept the interlocutory appeal, as it is of significance for other cases, and affirm the administrative law judge's decision. The Director, Office of Workers' Compensation Programs, has filed a motion to dismiss claimant's appeal as interlocutory.

Claimant's appeal is of a non-final, or interlocutory, order. The Board ordinarily does not undertake review of non-final orders. *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). The Board, however, will accept an interlocutory appeal if it meets the three-

prong test of the "collateral order doctrine," *see Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987), or if, in the Board's discretion, it is necessary to direct the course of the adjudicatory process. *Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services,* 23 BRBS 80 (1989).

We agree with the Director that claimant's appeal must be dismissed. The administrative law judge's decision is not unreviewable after a final order issues, and thus the collateral order doctrine is not satisfied. *See Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). In addition, no due process considerations are raised in this appeal and it is not necessary for the Board to direct the course of the adjudicatory process. Claimant has not offered any reason why the Board should decide this appeal, nor has employer established that the issue raised is of wide significance, as the administrative law judge made a fact-specific determination. *Cf. Watson v. Huntington Ingalls Industries, Inc.*, 51 BRBS 17 (2017) (accepting interlocutory appeal due to nature/significance of issue raised); *Pensado*, 48 BRBS 37 (accepting interlocutory appeal where administrative law judge ordered claimant to pay for travel to defense medical examinations); *L.D. [Dale] v. Northrop Grumman Ship Systems, Inc.*, 42 BRBS 1, *recon. denied,* 42 BRBS 46 (2008) (accepting interlocutory appeal to address issue of potential overlapping jurisdiction of Section 7(f) and 19(h)).

Accordingly, we grant the Director's motion to dismiss claimant's appeal. Any party who is aggrieved by the administrative law judge's final decision may file an appeal with the Board within 30 days of the date the decision is filed by the district director 33 U.S.C. §921(a), (b); 20 C.F.R. §802.205.

SO ORDERED.

_____
BETTY JEAN HALL, Chief
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge

_____
RYAN GILLIGAN
Administrative Appeals Judge