

BRB No. 05-0113
Case Nos. 03-LHC-2304
and 03-LHC-2305
OWCP Nos. 14-125052
and 14-130265

BRUCE W. CHRISTENSEN)
)
 Claimant-Petitioner) DATE ISSUED:
11/29/2004)
)
 v.)
)
 STEVEDORING SERVICES OF AMERICA)
)
 and)
)
 HOMEPORT INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents) ORDER

On October 12, 2004, claimant filed a Notice of Appeal of the administrative law judge's Order issued September 16, 2004. By letter dated October 22, 2004, the Board acknowledged claimant's appeal and set the briefing schedule. On November 4, 2004, employer filed a motion to dismiss claimant's appeal or for summary order of remand to the Office of Administrative Law Judges.

Generally, a decision or order of an administrative law judge must be final before the Board will consider an appeal from that decision. The Board, however, will accept an interlocutory appeal if it is necessary to properly direct the course of the adjudicatory process. *See Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). Additionally, the Board will accept an appeal of an order which is interlocutory in nature if it meets the following three-pronged test. First, the order must conclusively determine the disputed question. Secondly, the order must resolve an important issue, which is completely separate from the merits of the action. Finally, the order must be effectively unreviewable on appeal from a final judgment. *See Canada Coal Co. v. Stiltner*, 886 F.2d 153 (6th Cir. 1989); *see also Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 108 S.Ct. 1133 (1988).

The administrative law judge's Order dated September 16, 2004, does not meet the three-pronged test for allowing interlocutory appeals, nor does this case require the Board to direct the course of the adjudicatory process. The administrative law judge's September 16, 2004 Order is not final, and his actions are fully reviewable after a final decision is issued. *See Tignor v. Newport News Shipbuilding and Dry Dock Co.*, 29 BRBS 135 (1995). Moreover, as employer notes, this case is currently pending before the U.S. Court of Appeals for the Ninth Circuit. The Board therefore dismisses this appeal as interlocutory. Any party who is aggrieved by the administrative law judge's final decision may file an appeal with the Board within thirty (30) days from the date the decision is filed. 33 U.S.C. §921(a), (b); 20 C.F.R. §802.205.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge