

BRB No. 09-0765  
Case No. 2008-LDA-00287  
OWCP No. 02-174615

D.F. )  
)  
Claimant-Respondent )  
)  
v. )  
)  
SERVICE EMPLOYEES )  
INTERNATIONAL, INCORPORATED )  
)  
and )  
)  
INSURANCE COMPANY OF THE STATE ) DATE ISSUED: 10/23/2009  
OF PENNSYLVANIA )  
)  
Employer/Carrier- )  
Petitioners )  
)  
DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
)  
Party-in-Interest ) ORDER

On August 20, 2009, the Board acknowledged receipt of employer's notice of appeal of the administrative law judge's Order Denying Protective Order. Employer has filed a motion for an enlargement of time in which to file its Petition for Review and brief. 20 C.F.R. §§802.211, 802.217.

According to employer's motion, the facts underlying its appeal concern a Freedom of Information Act (FOIA) request by a party not involved in claimant's claim for benefits under the Longshore Act, as extended by the Defense Base Act. This party allegedly has filed a FOIA request for the release of a videotaped deposition of a physician taken in connection with claimant's claim. Employer filed with the

administrative law judge a motion for a protective order, *see* 29 C.F.R. §18.15, seeking to prohibit the disclosure of the deposition as it would violate claimant's privacy. The administrative law judge denied the motion on the ground that claimant did not object to the release of the deposition and, thus, employer cannot assert a violation of claimant's privacy.

We must dismiss employer's appeal as the administrative law judge and the Board lack jurisdiction to address the relief employer seeks. Employer seeks to prevent the release of the deposition under the FOIA by way of a motion for a protective order under 29 C.F.R. §18.15.<sup>1</sup> Such action is beyond the scope of the administrative law judge's authority under the regulations at 29 C.F.R. Part 18. The regulations apply to "adjudicatory proceedings before the Office of Administrative Law judges, United States Department of Labor." 29 C.F.R. §18.1. Thus, pursuant to Section 18.15, a party in an adjudicatory proceeding over which the administrative law judge has jurisdiction may apply for a protective order for one of the enumerated reasons. A FOIA request, however, is not an adjudicatory proceeding before the Office of Administrative Law

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<sup>1</sup> Section 18.15 provides:

(a) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one present except persons designated by the administrative law judge; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

Judges, and thus employer cannot seek to prevent the release of documents by resort to the regulations at 29 C.F.R. Part 18. Employer, moreover, specifically states that it is not seeking to prevent the use of the doctor's deposition in claimant's claim under the Act. Similarly, the Board has jurisdiction only in appeals filed in claims under the Acts over which it specifically has been given review authority.<sup>2</sup> Neither the Longshore Act, the Defense Base Act, the Acts' implementing regulations at 20 C.F.R. Parts 701, 702, 703 and 704, the general OALJ regulations at 29 C.F.R. Part 18, nor the Board's regulations at 20 C.F.R. Parts 801 and 802, provide any basis for the administrative law judge or the

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<sup>2</sup> Section 801.102, 20 C.F.R. §801.201, states:

Review Authority.

(a) The Board is authorized, as provided in 33 U.S.C. 921(b), as amended, to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions or orders with respect to claims for compensation or benefits arising under the following Acts, as amended and extended:

(1) The Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*;

(2) The Defense Base Act (DBA), 42 U.S.C. 1651 *et seq.*;

(3) The District of Columbia Workmen's Compensation Act (DCWCA), 36 D.C. Code 501 *et seq.* (1973);

(4) The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*;

(5) The Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 *et seq.*;

(6) Title IV, Section 415 and Part C of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, 91 Stat. 1290 (formerly the Federal Coal Mine Health and Safety Act, hereinafter, FCMHSA, of 1969) as amended by the Black Lung Benefits Reform Act of 1977, Pub. L. 92-239, 92 Stat. 95, the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 11, and the Black Lung Benefits Amendments of 1981, Pub. L. 97-119, 95 Stat. 1643 (30 U.S.C. 901 *et seq.*).

Board to assert jurisdiction over a FOIA request. Therefore, employer's appeal must be dismissed.<sup>3</sup>

Accordingly, employer's appeal is dismissed. Employer's motion for an enlargement of time in which to file its Petition for Review and brief is denied.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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<sup>3</sup> For general FOIA information, employer is referred to the Department of Labor's website at <http://www.dol.gov/dol/foia/main.htm> and the Department of Justice's website at <http://www.usdoj.gov/oip/foi-act.htm>.