



MARGARET MCCUE	) BRB No. 17-0203
	) Case No. 2013-LHC-00637
	) OWCP No. 13-105664
)
RUTH SIVER	) BRB No. 17-0204
	) Case No. 2013-LHC-00385
	) OWCP No. 13-90549
)
DORIS HENDERSON	) BRB No. 17-0205
	) Case No. 2014-LHC-00065
	) OWCP No. 13-094429
)
MARGARET IRELAND	) BRB No. 17-0206
	) Case No. 2014-LHC-01186
	) OWCP No. 13-107341
)
ROSALIE HODGE	) BRB No. 17-0207
	) Case No. 2014-LHC-01360
	) OWCP No. 13-107387
)
JACQUELINE KING	) BRB No. 17-0208
	) Case No. 2016-LHC-01090
	) OWCP No. 13-107101
)
ALICE MACKEY	) BRB No. 17-0209
	) Case No. 2016-LHC-01145
	) OWCP No. 13-107085
)
LORENE DILLARD	) BRB No. 17-0210
	) Case No. 2016-LHC-01150
	) OWCP No. 13-093768
)
RITA RIORDAN	) BRB No. 17-0211
	) Case No. 2016-LHC-01341
	) OWCP No. 13-107049
)
JAMIE LYNN STEIN (for MARTHA MIHALKO)	) BRB No. 17-0212
	) Case No. 2016-LHC-01154
	) OWCP No. 13-107395

Claimants-Petitioners)	
)	
v.)	
)	
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION	)	DATE ISSUED: <u>Sept. 7, 2017</u>
)	
Employer/Carrier)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Respondent	)	ORDER on MOTION for RECONSIDERATION

Claimants in these consolidated appeals have filed timely motions for reconsideration of the Board's Order dismissing the appeals as untimely filed. *McCue, et al. v. California Ins. Guarantee Assoc.*, BRB Nos. 17-0203 – 17-0212 (March 16, 2017). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. The Director, Office of Workers' Compensation Programs (the Director), responds in agreement with claimants that the Board's March 2017 Order should be vacated. Claimants' motions for reconsideration are granted but the relief requested is denied. 20 C.F.R. §802.409.

To summarize, the claimants in these cases are all widows or widows' estates filing claims for death benefits. According to the administrative law judge's Order Dismissing California Guarantee Association (Nov. 15, 2016) (hereinafter Order Dismissing CIGA), *recon. denied* (Dec. 16, 2016), the employees all died subsequent to 1987, and the employers and their insurers are no longer in existence. California Insurance Guarantee Association (CIGA) was substituted for the various employers and carriers in these asbestos claims. CIGA moved to be dismissed from the claims because, effective January 1, 1988, the California legislature amended state law and excluded Longshore claims from CIGA's coverage. The administrative law judge granted CIGA's motion¹ and also withdrew his order consolidating the 12 cases before him,² stating that the common issue has been resolved; he returned the cases to their individual dockets. Order Dismissing CIGA at 2-3, 21, 23. The administrative law judge's Order is dated

¹ The administrative law judge also noted that he had granted the same motion when *McCue* had been brought to him as an individual case. Order Dismissing CIGA at 21; *see also McCue v. Colberg, Inc.*, 2013-LHC-00637 (Oct. 9, 2014), *appeal dismissed*, BRB No. 15-0037 (July 23, 2015) (Buzzard, J., dissenting), *recon. denied* (Oct. 22, 2015).

² Only 10 of the cases have been appealed to the Board.

November 15, 2016, and it was filed by the district director on November 22, 2016. Dir. Br. at exh. 1.

On November 23, 2016, claimants filed a “Motion to Clarify and Vacate Provision of Order Dissolving Consolidation.” Claimants stated that this motion requested modification of the administrative law judge’s severing the cases for adjudication. On December 9, 2016, claimants filed notices of appeal of the administrative law judge’s November Order with the Board. The administrative law judge, having interpreted claimants’ motion as a motion for reconsideration, stated that the legal question of CIGA’s liability was resolved and that nothing remains warranting consolidation of the claims. Therefore, on December 16, 2016, he denied the motion for reconsideration. On December 20, 2016, claimants asked the Board to consolidate their appeals. The Board granted the motion to consolidate. However, because claimants had filed a “motion for reconsideration” with the administrative law judge, the Board dismissed the appeals as premature under 20 C.F.R. §802.206(f). *See McCue, et al. v. California Ins. Guarantee Assoc.*, BRB Nos. 17-0120 – 17-0129 (Jan. 6, 2017).

Following the Board’s January 6 dismissal, on January 25, 2017, claimants filed second notices of appeal, incorporating the administrative law judge’s Order Denying Motion to Reconsider into their appeals and, again, requesting consolidation. The Board granted the motions to consolidate; however, because the notices of appeal were filed more than 30 days after December 16, 2016, the Board dismissed the appeals as having been untimely filed. Order (March 16, 2017). Claimants have filed timely motions for reconsideration of the Board’s dismissal, urging the Board to address their “timely-filed” appeals. The Director responds, urging the Board to grant the motions for reconsideration and to vacate the dismissal of the appeals as being untimely filed; he asserts the appeals are premature, and the Board should order the district director to file the administrative law judge’s Order Denying Motion to Reconsider so the time for filing an appeal may commence running.

We decline to address whether an administrative law judge’s interlocutory order, which does not award or deny compensation (*i.e.*, is not a “compensation” order), must be filed in the office of the district director before the time for filing an appeal commences. We dismiss the appeals on different grounds, as we conclude the administrative law judge’s order dismissing CIGA and severing the cases and his order on reconsideration affirming the dissolution of the consolidation are interlocutory orders which do not satisfy the collateral order doctrine.

The Board generally does not undertake interlocutory review of orders granting or denying procedural motions because the orders may be reviewed on appeal from a final decision and order on the merits. *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); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994); *Arjona v. Interport Maintenance*, 24 BRBS 222 (1991). The Board will undertake interlocutory review if the non-final order conclusively determines a disputed question, resolves an important issue which is completely separate from the merits of the action, and is effectively unreviewable on appeal from a final judgment. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988) (“collateral order doctrine”); *Newton*, 38 BRBS 23. The Board also will undertake interlocutory review if it is necessary to direct the course of the adjudicatory process or if a party alleges it has been denied due process of law. *See, e.g., Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987).

The administrative law judge’s orders in this case dismiss a party from the claims and dissolve a consolidation, returning the cases to their individual dockets. The procedural orders do not satisfy all three prongs of the collateral order doctrine because they are not unreviewable after final judgment. *See Butler*, 28 BRBS 114. Moreover, administrative law judges are afforded broad discretion in directing pre-hearing matters. 29 C.F.R. §§18.12, 18.43; *see also* 5 U.S.C. §554 *et seq.*; *Butler*, 28 BRBS 114; *Durham v. Embassy Dairy*, 19 BRBS 105 (1986). These cases have not been finally decided, there has been no denial of due process, and the Board need not direct the course of the proceedings. For the reasons in *McCue v. Colberg, Inc.*, BRB No. 15-0037 (July 23, 2015) (Buzzard, J., dissenting), *recon. denied* (Oct. 22, 2015), we dismiss claimants’ appeals of the administrative law judge’s interlocutory orders.³ *Newton*, 38 BRBS 23.

³ As noted, the Board has already dismissed claimant McCue’s earlier appeal on the same issue. In *McCue*, the Board noted that the Special Fund may accept liability for claims where the employers/carriers are insolvent. *McCue*, slip op. at 3 n.2; *see also* 33 U.S.C. §918(b); Order Dismissing CIGA at 20-21. Therefore, CIGA need not be a party to determine the compensability of the claim. The Board also stated there had been no determination as to whether McCue’s claim was compensable or whether it was barred by application of Section 33(g), 33 U.S.C. §933(g), and CIGA’s dismissal from the case is reviewable after such determination has been made. *McCue*, slip op. at 3; *see also Fulton v. Colberg, Inc.*, BRB No. 16-0023 (Nov. 16, 2015) (Board dismissed the appeal for the reasons in *McCue*).

Accordingly, we grant reconsideration in that we dismiss claimants' appeals on the ground that they are interlocutory.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge