



BRB No. 21-0193

DALIBOR STOJKOVSKI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FLUOR CONOPS, LIMITED)	
)	DATE ISSUED: 05/18/2021
and)	
)	
STARR INDEMNITY AND LIABILITY)	
COMPANY)	
)	
Employer/Carrier-)	ORDER on
Respondents)	MOTION to DISMISS

Claimant appeals Administrative Law Judge Dana Rosen’s Order Denying Claimant’s Motion to Compel Discovery and her Order Denying Claimant’s Motion for Reconsideration of Discovery Motion and Order Denying Claimant’s Motion for Reassignment (2020-LDA-01273), dated December 1 and December 30, 2020, respectively, rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the DBA).¹ The Benefits Review Board acknowledges the appeal, 33 U.S.C. §921(b); 20 C.F.R. §§802.205, 802.210, which is assigned the Board’s docket number 21-0193. Employer and its Carrier (Employer) have filed a motion to dismiss the appeal as interlocutory. 20 C.F.R. §802.401(b). Claimant responds, opposing Employer’s motion.

Claimant worked at Bagram Airfield in Afghanistan. He filed a claim for benefits for an alleged work-related psychological injury. During the course of discovery, Claimant

¹ On January 19, 2021, Judge Rosen issued an Order Staying Proceedings Pending Claimant’s Benefits Review Board Interlocutory Appeal.

requested copies of documents containing information about attacks that occurred at the base during his employment, Pet. for Rev. at ii, asserting they are relevant to his claim. Employer objected due to their alleged sensitive nature and potential impact on national security. The administrative law judge agreed Claimant is entitled to non-privileged relevant matter, 29 C.F.R. §18.56, but “may not obtain sensitive national security records. . . .” Order at 2. Consequently, she denied Claimant’s motion to compel, motion for reconsideration, and motion for reassignment.²

On appeal, Claimant asks the Benefits Review Board to exercise its discretion to direct the course of the adjudication process by accepting this interlocutory appeal, claiming the administrative law judge denied him due process by refusing to compel discovery of the requested information. The Board generally does not undertake interlocutory review of non-final discovery 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); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). It will do so, however, 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”); *Zaradnik v. The Dutra Grp., Inc.*, 52 BRBS 23 (2018), *appeal dismissed*, 792 F. App’x 518, 54 BRBS 45(CRT) (9th Cir. 2020); *Newton*, 38 BRBS 23. Additionally, if the order at issue fails to satisfy any one of these requirements, the Board may, in its discretion, decide the interlocutory appeal if necessary to direct the course of the adjudication process. 33 U.S.C. §923(a); *Watson v. Huntington Ingalls Indus., Inc.*, 51 BRBS 17, 18 (2017); *Boudreaux v. Owensby & Kritikos, Inc.*, 49 BRBS 83 (2015); *Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Armani v. Global Linguist Solutions*, 46 BRBS 63 (2012).

The administrative law judge’s orders in this case address matters of discovery. As the administrative law judge’s discovery orders are reviewable after a final decision is issued, *Newton*, 38 BRBS 23; *Butler*, 28 BRBS 114, they do not satisfy the collateral order doctrine and, therefore, we decline the interlocutory appeal on those grounds. *See J.T. [Tracy] v. Global Int’l Offshore, Ltd.*, 43 BRBS 92, 96 n.13 (2009), *aff’d sub nom. Keller Foundation/Case Foundation v. Tracy*, 696 F.3d 835, 46 BRBS 69(CRT) (9th Cir. 2012), *cert. denied*, 570 U.S. 904 (2013); *Tignor*, 29 BRBS 135 (discovery order is not a collateral issue; question of abuse of discretion can be addressed in appeal of final decision). Further, Claimant’s assertion that the denial of his discovery request may have far-reaching effects

² The administrative law judge summarily denied the motion for reconsideration. She denied the motion for reassignment as improper judge-shopping. Order on Recon. at 2.

in numerous DBA claims is largely unsupported and contradicted by his citation to several cases in which administrative law judges apparently have permitted discovery on related issues. *Butler*, 28 BRBS 114 (discovery need not be uniform in allegedly similar cases); *cf. Niazy v. The Capitol Hilton Hotel*, 19 BRBS 266 (1987) (violation of due process to issue order on motion without giving adequate response time). Therefore, we also decline to direct the course of the adjudication in this case, without expressing any view, at this time, on the merits of the administrative law judge's Order. *Newton*, 38 BRBS 23. Claimant may renew any objections to the Order, should they remain, in an appeal of a final judgment.³

³ In *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009), the United States Supreme Court stated: "Permitting piecemeal, prejudgment appeals, we have recognized, undermines 'efficient judicial administration' and encroaches upon the prerogatives of district court judges, who play a 'special role' in managing ongoing litigation." It explained:

The crucial question . . . is not whether an interest is important in the abstract; it is whether deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant orders. We routinely require litigants to wait until after final judgment to vindicate valuable rights, including rights central to our adversarial system.

Id. at 108-109.

Accordingly, we grant Employer's motion to dismiss Claimant's appeal of the administrative law judge's interlocutory orders.⁴

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

⁴ Claimant suggests the Board order the case be transferred to an administrative law judge with a security clearance to permit the exchange of classified documents, to the extent the requested documents are classified. As we have dismissed the appeal of the administrative law judge's denial of Claimant's motion to compel discovery as interlocutory, we dismiss the appeal related to the denial of reassignment for the same reason. *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995); *Hartley v. Jacksonville Shipyards, Inc.*, 28 BRBS 100 (1994).