

BRB No. 04-0115 BLA
Case No. 99-BLA-0987

HAROLD E. PEARCE)	
)	
Claimant-Respondent)	DATE ISSUED:Nov. 25, 2003
)	
v.)	
)	
UNITED ENERGIES, INC./)	
HARRISBURG COAL COMPANY)	
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employers/Carrier-)	
Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

Claimant has filed a motion requesting that employer's appeal be stricken and the briefing schedule be held in abeyance pending the outcome of this motion in the captioned case. In support of his motion, claimant notes that the Order of the administrative law judge issued September 19, 2003 is not final. Administrative Law Judge Hillyard ordered the record be held open until December 3, 2003, for submission of final briefs on the merits of the case. Employer has filed a response to claimant's motion to dismiss.

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 of September 19, 2003, 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 actions are fully reviewable after a final decision is issued. *See Tignor v. Newport News Shipbuilding and Dry Dock Co.*, 29 BRBS 135 (1995). The Board therefore grants claimant's motion and 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

REGINA C. McGRANERY
Administrative Appeals Judge