



BRB No. 16-0278  
Case No. 2015-LHC-01154  
OWCP No. 07-305537

DUNCAN MYERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MICHAEL BAKER CORPORATION	)	
	)	DATE ISSUED: <u>May 27, 2016</u>
and	)	
	)	
ILLINOIS NATIONAL INSURANCE	)	
COMPANY	)	
	)	
Employer/Carrier-	)	
Petitioners	)	ORDER

Employer appeals the Decision on Timeliness of Claim of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). For the reasons that follow, we dismiss employer’s appeal.

Claimant sustained a work-related back injury on April 9, 2009. Claimant was restricted to light-duty work for several weeks, but then sought a medical release so he could return to his offshore job. His physician gave him a release with instructions to avoid certain activities. Claimant kept working, although he stated he periodically experienced pain while doing so. In November 2012, back surgery was advised, and claimant filed a claim under the Act. Claimant has not had the surgery.

The parties presented to the administrative law judge only the issue of the timeliness of claimant’s claim pursuant to Section 13 of the Act, 33 U.S.C. §913. Employer informed the administrative law judge that it did not dispute liability for medical care or have any defense based on the lack of a causal relationship between the work injury and claimant’s current back condition. Employer alleged, however, that any claim for disability benefit during and after claimant’s recovery from the surgery was barred because the claim was not timely filed. Decision at 1-2. The administrative law

judge noted that the parties did not request the issuance of a compensation order, but he found the timeliness issue ripe for adjudication as claimant desired a ruling in the event he decides to undergo back surgery. *Id.* at 2 n.4.

The administrative law found that claimant's claim was timely filed because the statute of limitations did not begin to run until surgery was recommended in November 2012. At this point, claimant fully appreciated the disabling nature of his work-related injury; the parties stipulated that claimant had not previously sustained a loss of wage-earning capacity. The administrative law judge then stated, "The parties have 30 days from receipt of this ruling to file a joint motion for remand or a joint motion identifying any remaining issues for adjudication." Decision at 11.

Employer, however, mailed to the Board a notice of appeal of the administrative law judge's decision. The notice of appeal was filed on March 10, 2016. Prior thereto, the administrative law judge, having received a copy of the notice of appeal, issued a Bench Memorandum admonishing employer for filing an interlocutory appeal in contravention of the parties' agreement as to the procedures they would follow in this case. The Board has now received employer's Petition for Review and brief, as well as a motion for expedited consideration in which employer urges the Board to decide its interlocutory appeal. 20 C.F.R. §§802.211, 802.303(b). We decline to do so.

The administrative law judge's Decision on Timeliness of Claim is an interlocutory order in that it neither awards nor denies benefits. *See* 33 U.S.C. §919(e); *Arjona v. Interport Maint.*, 24 BRBS 222 (1991). The Board has the discretion to decide appeals on an interlocutory basis, *see* 33 U.S.C. §923(a), but generally declines to do so in order to avoid piecemeal review. *Hudnall v. Jacksonville Shipyards*, 17 BRBS 174 (1985). The Board may undertake review of an interlocutory order if the order appealed meets the criteria of the "collateral order doctrine," *see, e.g., Niaz v. The Capital Hilton*, 19 BRBS 266 (1987); it is necessary for the Board to direct the course of the adjudicatory process, *see, e.g., Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); or the issue is of significance to the industry, *see, e.g., L.D. [Dale] v. Northrop Grumman Ship Systems, Inc.*, 42 BRBS 1, *recon. denied*, 42 BRBS 46 (2008). This appeal does not satisfy any of these tests; in this respect, we are not persuaded by employer's contention that the issue is of significance to the industry such that we should decide the appeal now. *See Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995). The administrative law judge's interlocutory ruling on the timeliness of claimant's claim is fully reviewable after a final compensation order is issued and employer is "adversely affected or aggrieved" thereby. 33 U.S.C. §921(b); *J.T. [Tracy] v. Global Int'l Offshore, Ltd.*, 43 BRBS 92 (2009), *aff'd sub nom. Keller Found./Case Found. v. Tracy*, 696 F.3d 835, 46 BRBS 69(CRT) (9<sup>th</sup> Cir. 2012), *cert. denied*, 133 S.Ct. 2825 (2013); 20 C.F.R. §802.201.

Accordingly, employer's interlocutory appeal is dismissed. The case is remanded to the administrative law judge for further proceedings in accordance with the administrative law judge's instructions.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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RYAN GILLIGAN  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge