

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 22-0346
Case No. 2014-LHC-01205
OWCP No. 13-107182

BEVERLY HALE)
(Widow of ANTHONY R. HALE, SR.))

Claimant-Petitioner)

v.)

BAE SYSTEMS SAN FRANCISCO SHIP)
REPAIR)

and)

SIGNAL MUTUAL INDEMNITY)
ASSOCIATION, LIMITED)

Employer/Carrier-)
Respondent)

NAUTICAL ENGINEERING)

and)

STATE COMPENSATION INSURANCE)
FUND)

Employer/Carrier-)
Respondent)

SAN FRANCISCO WELDING AND)
FABRICATION)

DATE ISSUED: 9/27/2022

and)	
)	
AMTRUST NORTH AMERICA)	
)	
Employer/Carrier-)	
Respondent)	
)	
BETHLEHEM STEEL COMPANY)	
)	
and)	
)	
TRAVELERS INSURANCE COMPANY)	
)	
Employer-Respondent)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

The Benefits Review Board acknowledges Claimant’s timely notice of appeal, filed on May 23, 2022, of Administrative Law Judge (ALJ) Christopher Larsen’s Order Granting Motion for Modification issued April 1, 2022, and Order Denying Reconsideration issued on April 22, 2022. Claimant’s appeal is assigned the Board’s docket number, BRB No. 22-0346. All correspondence relating to this appeal must bear this number. 20 C.F.R. §802.210.

Claimant’s appeal is of non-final, or interlocutory, orders as they neither award nor deny benefits. See 33 U.S.C. §919(c). The Board generally does not undertake interlocutory review of non-final orders. See, e.g., *Newton v. P & O Ports Louisiana, Inc.*, 38 BRBS 23 (2004); *Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). The Board will undertake interlocutory review only if the non-final orders conclusively determine a disputed question, resolve an important issue which is completely separate from the merits of the action, and are 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 Group, Inc.*, 52 BRBS 23 (2018). If the order at issue fails to satisfy any one of these requirements, the Board nonetheless may, in its discretion, decide the appeal if necessary to direct the course of the adjudicatory process or if a party

has been denied due process of law. 33 U.S.C. §923(a) (Board is not bound by formal rules of procedure); *Pensado v. L-3 Communications Corp.*, 48 BRBS 37 (2014); *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989).

As background, following remand from the Board, on March 3, 2021, the ALJ denied Claimant's claim for benefits, finding she failed to establish by a preponderance of the evidence that Decedent's death was caused by his maritime employment. In an "Order Denying Reconsideration" dated May 25, 2021, the ALJ denied Claimant's motion for modification of the March 3, 2021 decision because "the application neither alleges a mistake of fact, nor states how evidence would support the request for modification." Order at 3; *see* 33 U.S.C. §922. Supported by the Director, Office of Workers' Compensation Programs, Claimant moved for reconsideration of the ALJ's May 2021 order, prompting the ALJ's issuance of his June 24, 2021 order. In the June 2021 order, he granted Claimant's motion for reconsideration, determined "Claimant is entitled to a hearing under Section 22[,]" and scheduled a video hearing.

Meanwhile, BAE filed a motion for modification of three of the ALJ's decisions – those dated April 19, 2017, June 13, 2017, and March 3, 2021 – claiming he made a mistake in fact regarding Decedent's exposure to asbestos during certain years. In an order dated April 1, 2022, the ALJ determined BAE had established a mistake in a determination of fact. As he had not made a finding with respect to specific exposure dates, he modified his prior decisions solely to reflect that Decedent was not exposed to asbestos in the course of his employment from November 27, 1997, through March 25, 2005. In an April 22, 2022 order he denied Claimant's motion for reconsideration of the April 1, 2022 order.

Claimant has filed a motion for interlocutory review and summary reversal of the ALJ's April 2022 orders. She also filed an "Emergency Motion" asking the Board to hold the ALJ's Section 22 hearing, scheduled for September 27, 2022, in abeyance pending the Board's resolution of this appeal.

Pursuant to the ALJ's June 2021 order and Claimant's motion to the Board to hold the hearing in abeyance, we understand Claimant presently has a Section 22, 33 U.S.C. §922, petition for modification pending before the ALJ.¹ *See* ALJ Order Granting Reconsideration; Notice of Hearing and Pre-Hearing Order dated June 24, 2021. The subjects of this appeal, the ALJ's orders ruling on BAE's Section 22 petition for modification, address the limited issue raised by BAE as to whether Decedent, Anthony R.

¹ Claimant's Section 22 petition seeks to modify the ALJ's Decision and Order Denying Benefits After Remand (issued March 3, 2022), and the hearing on the matter is scheduled for September 27, 2022, via video conference.

Hale, Sr., was exposed to asbestos in the workplace from November 25, 1997, through March 25, 2005. This is an issue which is fully reviewable in an appeal of a final decision and order awarding or denying benefits issued upon resolution of Claimant's petition for modification. Therefore, these orders do not satisfy the collateral order doctrine. *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). Additionally, Claimant has not shown that the Board needs to direct the course of the adjudication of this case. *Newton*, 38 BRBS 23. As there is a Section 22 petition pending and a related hearing scheduled before the ALJ, it is premature to assert the Board must direct the course of the adjudicatory process. *Cf. Baroumes*, 23 BRBS 80 (Board accepted appeal of ALJ's disqualification of counsel); *see also L.D. [Dale] v. Northrop Grumman Ship Systems, Inc.*, 42 BRBS 46, *denying recon. in* 42 BRB 1 (2008). Consequently, we deny Claimant's motion for interlocutory appeal and summary reversal and dismiss this appeal without prejudice.² 20 C.F.R. §802.301(c).

Claimant may request reinstatement of her appeal within 30 days from the date the ALJ's decision on modification is filed. The motion must be identified by the Board's docket number assigned to this case, BRB No. 22-0346. *Id.* If reinstatement is requested, the Board will address only the issues raised in the petitioner's appeal of the ALJ's April 1 and 22, 2022 orders.

Any party who is aggrieved by the ALJ's decision on modification may file a notice of appeal thereof within 30 days of the date the decision on modification is filed. 33 U.S.C. §921(a); 20 C.F.R. §802.205. Any such appeal will be assigned a new docket number.

² Consequently, we also deny Claimant's motion to hold the ALJ's hearing on modification in abeyance.

Accordingly, we dismiss Claimant's appeal of the ALJ's interlocutory orders without prejudice and remand the case to the Office of Administrative Law Judges for continuation of the modification proceedings.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge