PART V

BENEFITS REVIEW BOARD POLICIES AND PROCEDURES

A. SCOPE OF REVIEW

3. FINALITY

One of the provisions of the LHWCA, as amended, 33 U.S.C. §§901-952 which is incorporated by Section 422(a) of the Black Lung Benefits Act, 30 U.S.C. §932(a), is 33 U.S.C. §921(c). That section confers on the courts of appeals jurisdiction to review "final orders of the Board." The Board has adopted the established federal practice of generally forbidding piecemeal appeals on the interlocutory matters. ***Christian v. Holmes & Narver, Inc.***, 1 BRBS 85 (1974); *see also* ***Crabtree v. Bethlehem Mines Corp.***, 7 BLR 1-354 (1984). As a general rule, an order is not final where the case has been remanded because there is usually no conclusive judgment on the merits and the proceedings on remand could either resolve existing issues or generate new appealable issues.

CASE LISTINGS

[Third Circuit dismissed Director's appeal contesting Trust Fund liability for attorney fees as Board's remand for assessment of amount of fees meant there was no final order to appeal] ***Director, OWCP v. Brodka***, 643 F.2d 159, 3 BLR 2-1 (3d Cir. 1981).

[Seventh Circuit held that Board's order remanding case to fact-finder for determination of benefits was not *final order* and therefore not appealable because not merely mechanical and could generate new appealable issues] ***Freeman United Coal Mining Co. v. Director, OWCP***, 721 F.2d 629, 6 BLR 2-7 (7th Cir. 1983).

[Fifth Circuit held in a longshore case that a final order must end litigation on the merits and leave nothing for trier-of-fact to do except execute judgment] ***Newpark Shipbuilding & Repair, Inc. v. Roundtree***, 723 F.2d 399, 16 BRBS 34 (CRT)(5th Cir. 1984).

DIGESTS

The Fourth Circuit, in two decisions, dismissed employer's appeal of the Board's Decision and Order reinstating employer as the responsible party under the 1981 Amendments and remanding the case for consideration on the merits. The Court held that employer's appeal was premature because the Board's decision was not a final order and did not fall within the collateral order exception to the final judgment rule. ***Eastern Associated Coal Corp. v. Benefits Review Board [Johnson]***, No. 85-1941 (4th Cir., Feb. 25, 1986) (unpub.); ***Eastern Associated Coal Corp. v. Benefits Review Board [Matheny]***, No. 85-1719 (4th Cir., Jan. 17, 1986) (unpub.).

The Fourth Circuit noted that piecemeal appeals under the collateral order exception to the final judgment rule would circumvent the well-established policy favoring appellate review of final judgments. ***Eastern Associated Coal Corp. v. Benefits Review Board [Matheny]***, No. 85-1719 (4th Cir., Jan. 17, 1986) (unpub.).

The Board will not consider additional information regarding successor operators in a motion for reconsideration which was not before the administrative law judge or the Board in its previous decision on appeal. ***Williams v. Humphreys Enterprises, Inc.***, 19 BLR 1-111 (1995).

The Board held that the collateral order exception to the final judgment rule applied in this appeal and thereby denied employer's Motion to Dismiss Interlocutory Appeal. Here, employer was dismissed by the administrative law judge as a party to the claim after evidence was introduced at the hearing indicating that another company was the last coal mine employer of claimant for over one full year. The administrative law judge rejected the Director's motion to retain Westmoreland as a potentially responsible operator pending further investigation and the Director's motion for reconsideration of that decision. The Board held that the Director's interlocutory appeal met the three conditions of the collateral order exception to the final judgment rule in that the administrative law judge's orders conclusively determined that Westmoreland was not a potentially responsible operator herein which was a separate issue from the merits of this case, and one that would be effectively unreviewable on appeal from a final decision on the merits. ***Cochran v. Westmoreland Coal Co.***, 21 BLR 1-89 (1998).

The Board held that the administrative law judge's denial of the Director's Motion to Remand the case to the district director to rename Clinchfield Coal Company and its insurer as an additional responsible operator/carrier constituted a reviewable collateral order as it determined a disputed question that was completely separate from the merits of the claim and too important to be denied review. The Board thus held that it could have entertained an appeal of the administrative law judge's denial of the Director's Motion to Remand, despite its interlocutory nature. ***Collins v. J & L Steel***, 21 BLR 1-177 (1999).