



BRB No. 17-0218  
Case No. 2015-LHC-00030  
OWCP No. 02-233683

MARIA JORDAN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DYNCORP INTERNATIONAL, LLC	)	
	)	DATE ISSUED: <u>Feb. 28, 2017</u>
Employer-Respondent	)	
	)	
and	)	
	)	
CONTINENTAL CASUALTY COMPANY	)	
	)	
Carrier-Respondent	)	ORDER

Claimant has filed a timely notice of appeal of Administrative Law Judge Larry S. Merck’s December 12, 2016 and January 4, 2017 Orders.<sup>1</sup> This appeal is assigned the Board’s docket number 17-0218. All correspondence pertaining to this appeal must bear this number. 20 C.F.R. §802.210. In addition, claimant’s counsel has filed with the Board a motion: (1) for expedited review; (2) to order Judge Merck to produce a copy of emails that counsel alleges were improper ex parte communications; (3) to order Judge Merck to publish the emails in the public record; (4) to order Judge Merck to issue the subpoenas requested by claimant regarding the emails; and (5) alternatively, that the Board itself issue the subpoenas.

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<sup>1</sup> Claimant’s appeal is of that portion of the December 12, 2016 Order “Denying Claimant’s Request for Release of Privileged Emails” and of the January 4, 2017 Order denying eight of claimant’s motions.

Counsel for employer and carrier have separately responded to claimant's appeal. Employer's counsel submits that the Board should dismiss claimant's appeal on the ground that there is no basis for reviewing Judge Merck's interlocutory orders, noting that the Board has dismissed all of claimant's prior appeals on this basis. Employer also notes that claimant's prior motion for a subpoena has been rejected by the Board. Carrier's counsel avers that claimant's appeal should be denied as it was filed merely for the purposes of delay and that Judge Merck properly declined to issue subpoenas with respect to the emails.

Claimant's appeal is of Judge Merck's interlocutory orders. A formal hearing was held on claimant's claim on October 25, 2016, but Judge Merck has not yet issued a decision awarding or denying benefits. The Board dismissed as interlocutory claimant's 10 prior appeals in this matter. In addition, the United States Court of Appeals for the Fifth Circuit dismissed claimant's appeal of the Board's Order in BRB No. 16-0486.<sup>2</sup>

For the reasons repeatedly expressed in the Board's prior orders, claimant's appeal is dismissed as there is no basis for the Board to engage in piecemeal review of the administrative law judge's interlocutory orders. *See Hudnall v. Jacksonville Shipyards*, 17 BRBS 174 (1985). Moreover, we deny claimant's motion that the Board order Judge Merck to produce the emails in question and issue subpoenas. We have previously stated that the administrative law judge has the authority to review documents *in camera* and the discretion to direct the pre-hearing process. *See* BRB No. 16-0486 (June 28, 2016). In addition, the Board has noted that it does not have the authority to issue subpoenas. *See* BRB No. 15-0518, slip op. at n. 6 (Mar. 7, 2016).

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<sup>2</sup> BRB Nos. 14-0277, 14-0375, 15-0518, 16-0117, 16-0139, 16-0190, 16-0231, 16-0486, 16-0585, 16-0632, and 16-0486. The Board's Order in BRB No. 16-0486 was appealed to the United States Court of Appeals for the Fifth Circuit, which dismissed the appeal on the grounds of lack of jurisdiction and lack of finality. *Jordan v. Director, OWCP*, No. 16-60576 (5<sup>th</sup> Cir. Nov. 18, 2016), *motion for clarification denied* (Dec. 8, 2016), *pet. for reh'g denied* (Jan. 24, 2017). In addition, the Board dismissed as interlocutory employer/carrier's appeal in BRB No. 17-0049.

Accordingly, we dismiss claimant's interlocutory appeal and we deny motions relating to the emails and subpoenas.

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