

BRB No. 04-389 BLA
Case No. 02-BLA-5329

BILLY D. WILLIAMS)	
)	
Claimant-Respondent)	DATE ISSUED: <u>February 24, 2004</u>
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

The Board acknowledges receipt of employer's Notice of Appeal of the administrative law judge's Order Compelling Discovery issued January 9, 2003. Employer also requests that the Board review the administrative law judge's Order, which employer recognizes as not a final Order.

By motion dated February 12, 2004, claimant requested that the Board dismiss employer's appeal.

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 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).

Inasmuch as the administrative law judge's Order does not meet the three pronged test, the Board denies employer's request and dismisses the 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. 20 C.F.R. §802.205.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge