

BRB No. 04-0100 BLA
Case No. 03-BLA-5014

TOLBY LESTER)	
)	
Claimant-Petitioner)	DATE ISSUED: <u>October 31, 2003</u>
)	
v.)	
)	
K & N COAL COMPANY, INC.)	
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS=)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

By motion dated October 8, 2003, employer has requested that the Board dismiss claimant=s appeal of the administrative law judge=s Order of Remand. In support of its motion, employer states that the administrative law judge=s Order of Remand is not appealable as it does not constitute a final order or decision. The Director has filed a response to employer=s motion to dismiss stating he supports employer=s motion.

Claimant's appeal of the administrative law judge's Order dated September 12, 2003, is interlocutory in nature. Under certain limited circumstances, the Board will consider an interlocutory appeal. The appeal must meet 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 case. Finally, the order must be effectively unreviewable on appeal from a final judgment. *See Canada Coal Co. v. Stiltner*, 866 F.2d 153 (6th Cir.1989); *See also Gulfstream Aerospace Corp. v. Mayacamus Corp.*, 485 U.S. 271, 108 S.Ct. 1133 (1988).

Inasmuch as the administrative law judge's Order of Remand does not meet the three-pronged test, the Board dismisses claimant's appeal.

Any party aggrieved by the administrative law judge's decision on the merits of the case must file a new appeal with the Board within thirty (30) days of the date the administrative law judge's decision on the merits is filed. 20 C.F.R. ' 802.205.

Service of this Order has been made on all parties, the Solicitor of Labor and the District Director.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge