

BRB No. 94-316  
Case No. 93-LHC-53  
OWCP No. 6-87043

DAVID R. HARTLEY )  
 )  
 Claimant-Petitioner ) DATE ISSUED: \_\_\_\_\_  
 )  
 v. )  
 )  
 JACKSONVILLE SHIPYARDS, )  
 INCORPORATED )  
 )  
 Employer-Respondent ) ORDER

The Board acknowledges receipt of claimant's Notice of Appeal of the administrative law judge's Order Denying Motion for Recusal of Administrative Law Judge, filed October 5, 1993. This appeal is assigned the Board's docket number BRB No. 94-316.

In his Order, Administrative Law Judge George A. Fath denied claimant's motion requesting that Judge Fath recuse himself from hearing the case. This denial is not a final order by the administrative law judge.

Generally, a Decision and Order of an administrative law judge must be final before the Board will consider an appeal from that decision. However, the Board 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 Company v. Stiltner*, 866 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 Denying Motion for Recusal of Administrative Law Judge does not meet the three-pronged test, the Board rejects claimant's interlocutory appeal.

Jurisdiction of this matter remains with the Office of Administrative Law Judges. Any party adversely affected by the final decision issued in this case may appeal that decision to the Board within thirty (30) days from the date on which the administrative law judge's Decision and Order is filed. 20 C.F.R. §802.201.

In addition, claimant's counsel filed a Motion to Consolidate the instant appeal with other appeals which concern the same facts and issue. No response to this motion has been filed. In light of the foregoing, however, the motion to consolidate is moot.

NANCY S. DOLDER  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge