IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

TYSON FOODS,	)	
Appellant,	)	
Respondent below,	)	
	)	
v.	)	**C.A. No. 05A-05-002 RFS**
	)	
WILLIAM HUDSON	)	
Appellee,	)	
Claimant below	)	

Date Submitted: October 31, 2005
Date Decided: January 31, 2005

ORDER

Appellant has moved for this Court to determine jurisdiction over an interlocutory appeal from the Industrial Accident Board. This Court finds that it does not have jurisdiction over the interlocutory appeal from the Industrial Accident Board's decision of April 18, 2005.

FACTS

On March 1, 2000 William Hudson filed a Petition to Determine Compensation Due against Willie Davis and/or Tyson Foods. On March 23, 2003 William Hudson requested a hearing on the threshold issue of who is the proper employer. On July 2, 2003 the Board conducted a hearing to determine Hudson's employment status. On July 22, 2003, the Industrial Accident Board ruled that Hudson was an employee of Willie Davis, and not Tyson at the time of his June 30, 1999 industrial accident.

On November 18, 2003, the Industrial Accident held a hearing on Hudson's Petition to Determine Compensation Due against Willie Davis, pursuant to the Board order of July 22, 2003. In a separate decision dated December 2, 2003, the Board ruled that Hudson's Petition was denied on the basis that Hudson had not met his burden of proof as to causation. On May 7, 2004, Hudson appealed both of the Industrial Accident Board decisions to the Superior Court.

On July 26, 2004, the Superior Court reversed the Board's determination that Hudson's employer was Davis and not Tyson Foods, and remanded the case back to the Industrial Accident Board to remanded the case back to the Board for further proceedings not inconsistent with the Superior Court decision.

On April 18, 2005, the Industrial Accident Board published a Decision on Remand that William Hudson was an employee of Tyson Foods and not of Willie Davis. It is from this decision that Appellant is appealing. The Board has yet to rule on a Petition to Determine Additional Compensation Due against Tyson Foods. Accordingly, the Board's decision is interlocutory and for this reason Appellant has moved for this Court to determine if it has jurisdiction over the interlocutory appeal.

Appellant filed a motion to Determine Jurisdiction over the Interlocutory Appeal in this Court on July 22, 2005. A hearing was held on August 19, 2005 in which this Court determined that the parties would have until September 6, 2005 in order to file authorities with the Court on the issue of this Court's jurisdiction over an interlocutory appeal. On September 6, 2005, William Hudson filed a supplemental brief explaining the parties' position on the issue of jurisdiction.

DISCUSSION

Interlocutory appeals from the Superior Court to the Supreme Court are governed by Supreme Court Rule 42. There is no comparable rule for interlocutory appeals from an administrative agency to the Superior Court, because the Superior Court does not have jurisdiction over such appeals.

In this regard, Our Supreme Court has held, and it has been well settled in Delaware for over three decades, "that interlocutory orders of the Industrial Accident Board are unappealable."[1] The Court explained in *Newark* that "the urgency of workmen's compensation cases, as well as the improvement of judicial administration, militates against a ruling permitting fragmentation of such litigation by interim appeals."[2]

The Court further affirmed the decision in *Newark*, six years later in *Schagrin Gas Co. v. Evans*, 418 A.2d 997 (Del. 1980), again stating in no uncertain terms that "interlocutory orders of the Industrial Accident Board are unappealable. Appellate review of an interlocutory order must await appellate review of the final determination of the Board." Neither party in this case contests that this appeal is interlocutory, and therefore, this Court must refuse jurisdiction over it.

Our Supreme Court ruled on a case with similar facts that an IAB decision regarding Claimant's employment status is interlocutory in nature.[3] In *Clendaniel v. McDaniel Construction, Inc.*, the Court determined that Clendaniel's appeal to the Superior Court of the IAB's determination of the threshold issue of whether Clendaniel was an employee of McDaniel Construction at the time of his injury was interlocutory. Accordingly, the Court ruled that, "[b]ecause Clendaniel's appeal to the Superior Court was from orders issued prior to the IAB's final determination, the appeal was interlocutory and was properly dismissed."[4]

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[1] *Newark School District v. Phoenix School Corporation*, 324 A.2d 775, 776 (Del. 1974)
[2] *Id*.
[3] *Clendaniel v. McDaniel Construction, Inc.*, 2001 WL 1560688 (Del. Supr.).
[4] *Id*.

The parties in this case make the argument that an interlocutory appeal can be made in this case due to the adoption of the Administrative Procedures Act ("APA"), because the APA permits interlocutory appeals of "case decisions." However, the decision of the Board to allow the case to proceed against Tyson, as Hudson's employer, does not constitute a case decision under the statute, as there has not been a final adjudication on the merits of the claim. A "case decision," by definition, must be a decision of "a declaratory nature respecting the payment of money or resulting in injunctive relief requiring a named party to act or refrain from acting or threatening to act some way required or forbidden by law or regulation under which the agency is operating."[5] In this case, such a "case decision" will only be available after the Industrial Accident Board has issued a ruling on a Hearing to Determine Additional Compensation Due in the case of William Hudson v. Tyson Foods.

The adoption of the APA has not been held to overturn the settled Delaware law that interlocutory orders from the IAB are not appealable. Although counsel for Hudson correctly notes that *Eastburn* was decided before the adoption of the APA, our Supreme Court upheld the *Eastburn* precedent in *Clendaniel* after the adoption of the APA and has made clear that the type of order found in this case is interlocutory, does not constitute a "case decision," and is not appealable under current Delaware law.

The parties in this case also argued that this Court should retain jurisdiction over the interlocutory appeal because both parties consent to an appeal on this issue before final judgment is entered by Industrial Accident Board. However, this issue has also previously been settled by our Supreme Court. In *Stroud v. Milliken Enters.*, 552 A.2d 476 (Del. 1989) our Supreme Court ruled, after noting that the appeal should first be dismissed for failure to comply with Supreme Court Rule 42, that, "the finality required for conferring upon parties a right of appeal to this Court without compliance with Rule 42 is clearly lacking. Parties may not convert an otherwise interlocutory order into a final order by consensual conduct or by representations of intention to take remedial action so as to render an otherwise less-than-final order final for purposes of appeal."

Considering the foregoing, this Court determines that an interlocutory appeal to this Court from the Industrial Accident Board is prohibited and no jurisdiction can be asserted. The case is remanded to the Industrial Accident Board to schedule a hearing to Determine Additional Compensation Due in the case of William Hudson v. Tyson Foods.

IT IS SO ORDERED.

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Richard F. Stokes, Judge

Original to Prothonotory
cc: Industrial Accident Board
David A. Boswell, Esq.
John J. Klusman, Esq.

[5] 29 *Del.C.* §10102 (3)