

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID CLENDANIEL,	§	
	§	No. 365, 2001
Appellant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for Sussex County in C.A.
	§	No. 01A-06-005.
McDANIEL CONSTRUCTION,	§	
INC.,	§	
	§	
Appellee Below,	§	
Appellee.	§	

Submitted: September 27, 2001

Decided: November 13, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 13th day of November 2001, upon consideration of the appellant's opening brief and the appellee's motion to affirm it appears to the Court that:

(1) This appeal is from the Superior Court's order of July 20, 2001, that dismissed, as interlocutory, the appellant's appeal from two orders issued in May 2001 by the Industrial Accident Board ("IAB"). The appellee has moved to affirm the Superior Court's judgment on the ground that it is

manifest on the face of the appellant's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) On January 30, 2001, David Clendaniel filed a petition to determine compensation due against McDaniel Construction. On April 25, 2001, the IAB conducted a hearing to determine a threshold issue, *i.e.*, whether Clendaniel was an employee of McDaniel Construction at the time of the injury. By order dated May 7, 2001, the IAB determined that Clendaniel was an employee of McDaniel Corporation and thus eligible for worker's compensation benefits. In the same order, the IAB declined to consider Clendaniel's request for an award of attorney's fees because the IAB had yet to determine the merit of Clendaniel's claim for compensation. By order dated May 25, 2001, the IAB denied Clendaniel's motion for reargument on the issue of attorney's fees.

(3) On June 15, 2001, Clendaniel appealed the IAB's May 7 and May 25 orders to the Superior Court. On June 26, 2001, McDaniel Construction filed a motion to dismiss. After a hearing on McDaniel

Construction's motion to dismiss on July 20, 2001,¹ the Superior Court dismissed Clendaniel's appeal as interlocutory.

(4) This Court has addressed the issue of interlocutory review in the Superior Court in the context of appeals from administrative agencies. In short, an interlocutory order of the IAB is not appealable.² "Appellate review of an interlocutory order must await appellate review of the final determination of the [IAB]."³ Because Clendaniel's appeal to the Superior Court was from orders issued prior to the IAB's final determination,⁴ the appeal was interlocutory and was properly dismissed.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice

¹The Court notes that the transcript of the Superior Court hearing is not a part of the record and thus was not considered by the Court.

²*Eastburn v. Newark School District*, Del. Supr., 324 A.2d 775 (1974).

³*Id.* at 776.

⁴It appears that by order dated September 18, 2001, the IAB awarded compensation to Clendaniel, but reserved judgment on an award of attorney's fees pending the outcome of this appeal.