

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: April 12, 2012

513230

In the Matter of the Claim of
ROBERT FETTER,
Respondent,

v

VERIZON,
Appellant.

WORKERS' COMPENSATION BOARD,
Respondent.

DISMISSED claimant's appeal as Board's
decision was interlocutory.

MEMORANDUM AND ORDER

Calendar Date: February 9, 2012

Before: Peters, P.J., Rose, Kavanagh, Garry and Egan Jr., JJ.

White & Williams, L.L.P., Pleasantville (Scott H. Casher of
counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York City (Iris
A. Steel of counsel), for Workers' Compensation Board,
respondent.

Egan Jr., J.

Appeal from a decision of the Workers' Compensation Board,
filed April 12, 2011, which rescinded a decision of the Workers'
Compensation Law Judge and restored the case to the trial
calendar for further development of the record.

After claimant sustained work-related injuries in a fall
from a utility pole, the employer issued a "Step 1" warning to
claimant and directed that he attend a safety compliance program.
In response, claimant filed a discrimination complaint against

the employer alleging that it violated Workers' Compensation Law § 120 by disciplining him following a work-related accident. A Workers' Compensation Law Judge (hereinafter WCLJ) summarily disposed of the matter and marked the case as "no further action." The Workers' Compensation Board subsequently rescinded the WCLJ's decision, finding – insofar as is relevant here – that the WCLJ failed to render "a reasoned oral or written decision upon the contested points" as required by 12 NYCRR 300.5 (a) and restored the matter to the trial calendar for further development of the record. This appeal by the employer ensued.

Inasmuch as the Board's decision is interlocutory in nature and neither disposes of all the substantive legal issues nor addresses a threshold legal issue that may be dispositive of the underlying claim, it is not the proper subject of an appeal (see Matter of Dow v Silver Constr. Corp., 83 AD3d 1270, 1270 [2011]; Matter of McClam v American Axle & Mfg., 79 AD3d 1315, 1316 [2010]; Matter of Carlineo v Snelling & Snelling, LLC, 73 AD3d 1247, 1248 [2010]; Matter of Rivers v Blue Ridge Farms, Inc., 36 AD3d 1132, 1133 [2007]). As we previously have observed, "piecemeal review of issues in workers' compensation cases should be avoided" (Matter of Sawyer v Orange Motors, 24 AD3d 1117, 1117-1118 [2005]; accord Matter of Ortiz v Martin Viette Nurseries, Inc., 82 AD3d 1480, 1480 [2011]; Matter of Ogbuagu v Ngbadi, 61 AD3d 1198, 1199 [2009]; Matter of Wilson v Roselli Moving & Stor. Corp., 37 AD3d 959, 959 [2007]). As the nonfinal decision now before us is reviewable upon an appeal from the Board's final determination, this appeal must be dismissed (see Matter of Dow v Silver Constr. Corp., 83 AD3d at 1271; Matter of Ortiz v Martin Viette Nurseries, Inc., 82 AD3d at 1480-1481).

Peters, P.J., Rose, Kavanagh and Garry, JJ., concur.

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ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court