

August 17, 2006

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 05-60836
Summary Calendar

HOLCIM (US), INC.,

Petitioner,

versus

DIRECTOR, OFFICE OF WORKER'S COMPENSATION PROGRAMS,
US DEPARTMENT OF LABOR,

Respondent.

Petition for Review of an Order
of the Benefits Review Board
No. 2:07-168295

Before JONES, Chief Judge, and JOLLY and OWEN, Circuit Judges.

PER CURIAM:*

Petitioner Holcim (US), Inc. ("Holcim") argues that the Benefits Review Board ("Board") erroneously denied its motion for a stay of an award pending appeal. Holcim contends that, because it does not have a legal remedy to recoup benefits paid in the event the award is later overturned on appeal, see Lennon v. Waterfront Transp., 20 F.3d 658, 661-62 (5th Cir. 1994), it will suffer irreparable injury. Holcim's contention is foreclosed by Rivere v. Offshore Painting Contractors, 872 F.2d 1187 (5th Cir.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1989). "Irreparable injury is demonstrated only when the compensation award may be too heavy for the employer [or insurer] to pay without practically taking all his property or rendering him incapable of carrying on his business, or . . . by reason of age, sickness, or other circumstances [of the payer], a condition is created which would amount to irreparable injury." Id. (citation and quotation marks omitted). Additionally, "[t]hat payment of compensation might pose a problem, or even cause serious difficulty is not enough to support a stay. Neither is the fact that the amount paid might be lost if the award is reversed on appeal." Id.

Realizing that under the current caselaw, it cannot prevail, Holcim asks this court to overturn Rivere, or alternatively to overturn our precedent and allow recoupment of benefits in the event the award is later overturned on appeal. We find no merit in Holcim's requests; accordingly, the decision of the Board denying a stay pending appeal is **AFFIRMED**.