

ELLA V. LEGGETT)
(Widow of CHARLIE C. LEGGETT))
)
v.)
)
NEWPORT NEWS SHIPBUILDING AND) DATE ISSUED: April 9, 2004
DRY DOCK COMPANY)
)
Self-Insured)
Employer-Petitioner)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) ORDER

Employer appeals the Decision and Order Denying Section 8(f) Relief (2002-LHC-2050) of Administrative Law Judge Richard K. Malamphy rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). Employer contends the administrative law judge erred in denying it Section 8(f) relief on the widow's claim for death benefits. 33 U.S.C. §908(f). The Director, Office of Workers' Compensation Programs (the Director), has filed a motion to vacate the administrative law judge's decision and to remand the case for the entry of an order awarding compensation benefits to claimant. Employer responds that it has no objection to the Director's motion.

In an undated application, claimant, the widow of the employee, and employer submitted to the district director a document entitled "Stipulation of Facts and Application for Order of Compensation." The private parties agreed that decedent was exposed to asbestos during the course of his employment with employer from 1946 to 1948, that decedent was diagnosed with asbestosis in January 1999, and that decedent's death in July 1999 was due in part to asbestosis. The parties agreed that claimant is entitled to death benefits and funeral expenses under the Act. 33 U.S.C. §909. In a separate document dated August 22, 2001, employer filed with the district director an application for Section 8(f) relief. Apparently, the district director did not issue a compensation order in accordance with the parties' filing. Employer subsequently sought

a hearing before an administrative law judge solely on the issue of its entitlement to Section 8(f) relief.

At the hearing before the administrative law judge, only counsel for employer was present, and he represented that death benefits are being paid to claimant. Tr. at 6-7. The parties' stipulations were not offered to the administrative law judge nor did he address them or award benefits in his decision denying Section 8(f) relief to employer. For the reasons stated in *Gupton v. Newport News Shipbuilding & Dry Dock Co.*, 33 BRBS 94 (1999), we grant the Director's motion to vacate the administrative law judge's decision and remand the case. In *Gupton*, the Board held, *inter alia*, held that without an underlying compensation order awarding 104 weeks of permanent disability and/or death benefits to claimant, the administrative law judge is precluded from addressing the applicability of Section 8(f). *See also Hansen v. Container Stevedoring Co.*, 31 BRBS 155 (1997).

Accordingly, the administrative law judge's Decision and Order Denying Section 8(f) Relief is vacated, and the case is remanded to the administrative law judge for the entry of an award of benefits based on the stipulations of the parties and/or findings of fact following a hearing. *See* 33 U.S.C. §919(d); 20 C.F.R. §§702.331-702.351. Employer's appeal is dismissed; employer may file a new appeal once the administrative law judge issues a final compensation order. *See generally Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994).

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge