

BRB No. 95-1268

STANLEY SOKOLOWSKI (Deceased))	
)	
Claimant)	
)	
v.)	
)	
STEPHEN RANSOM, INCORPORATED)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	DATE ISSUED:
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Charles P. Rippey, Administrative Law Judge, United States Department of Labor.

Betty J. O'Shea, New York, New York, for employer/carrier.

Mark A. Reinhalter (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (94-LHC-1139) of Administrative Law Judge Charles P. Rippey 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. *O'Keeffe v. Smith*,

Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant suffered an injury to his left knee on December 4, 1987, during the course of his employment. Subsequently, claimant underwent surgery on February 10, 1988, but was unable to return to work. Claimant died on June 17, 1993. Employer paid claimant permanent total disability compensation during the period of his incapacity and sought relief under Section 8(f), 33 U.S.C. §908(f), of the Act.

In his Decision and Order, the administrative law judge, after summarily stating that employer failed to submit a fully documented application for Section 8(f) relief to the district director and to submit evidence to meet the standards required for Section 8(f) relief, concluded that employer was not entitled to such relief from the Special Fund.

On appeal, employer challenges the administrative law judge's denial of its request for Section 8(f) relief. The Director, Office of Workers' Compensation Programs (the Director), has responded to this appeal, requesting that the case be remanded because the decision of the administrative law judge fails to satisfy the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §554, necessary for the Board to undertake a review of the decision. In a subsequent motion, employer joins with the Director in urging remand of this case on the ground that the decision fails to comport with the APA.¹

We agree that the instant case must be remanded for the administrative law judge to specifically address and consider all of the evidence of record pertaining to the issue of employer's entitlement to Section 8(f) relief. Section 8(f) of the Act shifts liability to pay compensation for permanent disability and/or death after 104 weeks from an employer to the Special Fund. Section 8(f) is applicable if employer establishes that: 1) the employee had an existing permanent partial disability prior to the employment injury; 2) the disability was manifest to employer prior to the employment injury; and 3) the current disability or death is not due solely to the most recent injury. *See generally Director, OWCP v. Luccitelli*, 964 F.2d 1303, 26 BRBS 1 (CRT)(2d Cir. 1992). In requests for Section 8(f) relief filed after September 28, 1984, employer must raise the applicability of Section 8(f) and file a fully documented application therefor while the case is before the district director unless the liability of the Special Fund could not be anticipated at that time. 33 U.S.C. §908(f)(3); 20 C.F.R. §702.321.

¹Employer's request to maintain this appeal before the Board for a period of 60 days beyond September 12, 1996, is rendered moot by our disposition of this case.

In rendering his decision denying employer's request for Section 8(f) relief, the administrative law judge stated, *in toto*:

The Employer has introduced evidence that the knee injury suffered on the job in 1987 may have aggravated the Claimant's pore-existing [sic] heart and alcohol related problems. However, a finding that such aggravation took place would not entitled [sic] an Employer to relief under §8(f) of the Act, as is apparent from an examination of the standards described in the preceding paragraph. It is apparent from the Employer's entire brief that it disagrees with the statement in the preceding statement. I can only say that, in judgment, the Employer is in error.

The Employer's application to the District Director for §8(f) relief did not assert a basis for granting the relief requested, and that failure is an absolute defense to liability of the Special Fund.

Decision and Order at 2.

Hearings of claims arising under the Act are subject to the APA, *see* 33 U.S.C. §919(d), which requires that every adjudicatory decision be accompanied by a statement of

findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record.

5 U.S.C. §557(c)(3)(A). An administrative law judge thus must adequately detail the rationale behind his decision and specify the evidence upon which he relied. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988). Failure to do so will violate the APA's requirement for a reasoned analysis. *Id.*, 20 BRBS at 187; *see Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). We hold that the administrative law judge's failure to discuss the evidence of record and adequately detail the rationale behind his decision in finding that employer was not entitled to relief under Section 8(f) makes it impossible for the Board to apply its standard of review. Accordingly, we vacate the administrative law judge's finding that employer is not entitled to relief under Section 8(f), and we remand the case for the administrative law judge to discuss all of the evidence relevant to this issue, to make appropriate findings based on the relevant law and evidence, and to give a written explanation of the reasons and basis for the determination. *See generally Esposito v. Bay Container Co.*, 30 BRBS 67 (1996); *Fullerton v. General Dynamics Corp.*, 26 BRBS 133 (1992); *Tennant v. General Dynamics Corp.*, 26 BRBS 103 (1992); 20 C.F.R. §702.321.

Accordingly, the administrative law judge's Decision and Order is vacated and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge