

BRB No. 03-767
Case No. 02-LHC-2640
OWCP No. 5-109265

DIANNE BROOKS)	DATE ISSUED: 01/29/2004
(Widow of ROBERT C. BROOKS))	
)	
Claimant-Respondent)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING)	
AND DRY DOCK COMPANY)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Respondent)	ORDER

The Director has filed a Motion Requesting that the July 8, 2003, Decision and Order Denying Employer's Request for Relief Under Section 8(f) be Vacated and Remanded to the ALJ, in the captioned case. In support of the motion, the Director states that the administrative law judge's determination regarding Section 8(f), without an underlying compensation order, is in violation of the requirements of 33 U.S.C. §908(f)(1), 33 U.S.C. §919(e) and 20 C.F.R. §702.348. No objection to the motion has been filed.

In his Decision and Order Denying Employer's Request for Relief Under Section 8(f), the administrative judge made no finding regarding claimant's entitlement to benefits. Moreover, there is no evidence in the record that establishes that a compensation order has been entered in this case. Thus, as the administrative law judge is procedurally barred from considering employer's entitlement to Section 8(f) relief where no award of benefits has been entered, *see*

Gupton v. Newport News Shipbuilding and Dry Dock Co., 33 BRBS 94 (1999), the motion to dismiss is granted.

In light of the foregoing, the administrative law judge's Decision and Order Denying Employer's Request for Relief Under Section 8(f) is vacated and the case is remanded to the Office of Administrative Law Judges for further appropriate action.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge