

BRB No. 93-1248

SALLY MURPHY)	
(Widow of TIMOTHY MURPHY))	
)	
Claimant)	
)	
v.)	
)	
GENERAL DYNAMICS CORPORATION)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Petitioner)	ORDER

The Director, Office of Workers' Compensation Programs (the Director), has filed a Motion to Remand in the captioned case, contending that the administrative law judge failed to issue a Decision and Order containing findings of fact and conclusions of law, as required by 20 C.F.R. §702.348, with respect to the employer's request for Section 8(f) relief.¹ Employer has not responded to this motion.

The parties agreed, and the administrative law judge found, that decedent suffered from work-related asbestosis and chronic obstructive pulmonary disease which resulted in a period of permanent partial disability from July 10, 1987 to July 6, 1988. In addition, the parties agreed, and the administrative law judge

¹ The Director's notice of appeal was acknowledged by the Board on March 26, 1993.

found, that decedent's death on September 16, 1990, was due to his lung injuries which arose out of and within the scope of employment. Employer contested the timeliness of decedent's application for permanent partial disability benefits under Section 8(c)(23) of the Act, 33 U.S.C. §908(c)(23), and, alternatively, requested relief from continuing compensation liability pursuant to Section 8(f), 33 U.S.C. §908(f), of the Act.

The administrative law judge found that the claim filed by decedent was timely, and he awarded permanent partial disability benefits for an 80 percent impairment of the whole person from July 7, 1988 to September 16, 1990, and death benefits to claimant thereafter. In addition, the administrative law judge granted employer relief from continuing compensation liability pursuant to Section 8(f), effective July 10, 1987, inasmuch as its request for relief was "unopposed." Specifically, the administrative law judge found that the Director acknowledged the cases docketed for October 26, 1992, including the present case, but provided no other comment respecting this case. Thus, the administrative law judge concluded employer's request for Section 8(f) relief was unopposed. Decision and Order at 4.

Section 8(f) of the Act shifts liability to pay compensation for permanent disability or death after 104 weeks from an employer to the Special Fund established in Section 44 of the Act, 33 U.S.C. §§908(f), 944. Section 8(f) is applicable if employer establishes that: 1) the employee had an existing permanent

partial disability prior to the employment injury or death; 2) the disability was manifest prior to the employment injury or death; and 3) the current disability or death is not due solely to the most recent injury. *Director, OWCP v. General Dynamics Corp. [Bergeron]*, 982 F.2d 790, 26 BRBS 139 (CRT) (2d Cir. 1992). Where there are two claims, one for permanent partial disability benefits and one for death benefits, employer must raise and show entitlement to Section 8(f) relief for each claim. *Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993); *Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78 (1989). If Section 8(f) applies to both claims, and if both the disability and death arose from the same work-related condition, employer is liable for only one 104-week period. *Graziano v. General Dynamics Corp.*, 14 BRBS 950 (1982), *aff'd sub nom. Director, OWCP v. General Dynamics Corp.*, 705 F.2d 562, 15 BRBS 130 (CRT) (1st Cir. 1983); *Bingham v. General Dynamics Corp.*, 20 BRBS 284 (1986).

Employer has the burden of proving all three of the required elements for Section 8(f) relief. *Director, OWCP v. Campbell Industries, Inc.*, 678 F.2d 836, 14 BRBS 974 (9th Cir. 1982), *cert. denied*, 459 U.S. 1104 (1983); *Green v. J.O. Hartman Meats*, 21 BRBS 214 (1988). Moreover, stipulations entered into without the participation of the Director that effect the applicability of Section 8(f) relief are not binding on the Special Fund, *McDougall v. E.P. Paup Co.*, 21 BRBS 204 (1988), *aff'd in pert. part sub nom.*

E.P. Paup Co. v. Director, OWCP, 999 F.2d 1341, 27 BRBS 41 (CRT) (9th Cir. 1993), and the Director has standing to appeal a Section 8(f) finding regardless of whether he participated before the administrative law judge. *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 353 (1984).

Furthermore, decisions rendered under the Longshore Act are required by the Administrative Procedure Act to include a statement of "findings and conclusions and the reason or basis therefor on all material issues of fact, law, or discretion presented in the record." 5 U.S.C. §557(c)(3)(A). The administrative law judge must adequately detail the rationale behind his decision; he must analyze and discuss the medical evidence of record, and explicitly set forth his reasons as to why he has accepted or rejected such evidence. See *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Hoodye v. Empire/United Stevedores*, 23 BRBS 341 (1990).

In the present case, there is no evidence that the Director did not oppose the Section 8(f) application merely because she was not represented at the hearing, and thus employer had the burden of proving the requisite elements. Because the administrative law judge in the instant case has failed to make any findings on whether employer has established the necessary elements for Section 8(f) relief, we vacate the administrative law judge's grant of Section 8(f) relief. The case is remanded to the administrative law judge to consider the evidence and render

findings of fact and conclusions of law as to employer's application for Section 8(f) relief.

Accordingly, the Director's Motion to Remand is granted and the Decision and Order of the administrative law judge is vacated insofar as it granted employer Section 8(f) relief. The case is remanded to the administrative law judge for further consideration consistent with this decision.

SO ORDERED.

Administrative Appeals Judge

Administrative Appeals Judge

Administrative Appeals Judge