

BRB No. 99-0451  
Case No. 97-LHC-2139  
OWCP No. 05-0092085

JUANITA GUPTON )  
(Widow of LESTER GUPTON) )  
 )  
 Claimant )  
 )  
 v. )  
 )  
 NEWPORT NEWS SHIPBUILDING ) DATE ISSUED:  
 AND DRY DOCK COMPANY )  
 )  
 Self-Insured )  
 Employer-Petitioner )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, )  
 UNITED STATES DEPARTMENT )  
 OF LABOR )  
 )  
 Respondent ) ORDER

Employer appeals the administrative law judge's denial of relief from continuing compensation liability pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f). The Director responds in support of the denial of Section 8(f) relief, and in addition has filed a Motion for Expedited Summary Vacatur and Remand on the ground that the administrative law judge erroneously remanded the case to district director instead of entering a compensation order awarding claimant benefits. Neither claimant nor employer has responded to this motion.

The sole issue presented to the administrative law judge for resolution was that of employer's entitlement to Section 8(f) relief. At the hearing, only counsel for employer was present. He stated that all issues between claimant and employer were resolved, but he acknowledged that no official had approved the parties' stipulations, Tr. at 6, and moreover, he had no copy to present to the administrative law judge for approval. Tr. at 7. The administrative law judge stated, therefore, that he would be remanding this case to the district director after he decided the Section 8(f) issue because he had no documentation regarding the parties' agreement. *Id.*

Employer and the Director filed post-hearing briefs. Employer's brief sets out the alleged stipulations of claimant and employer, among them, that decedent died from mesothelioma arising out of his employment; that there is both a timely *inter vivos* claim for permanent partial disability benefits and a widow's claim for death benefits; and that, although decedent was entitled to permanent partial disability benefits from March 18, 1994 through May 22, 1996, employer has not paid any disability benefits in this case.<sup>1</sup> The administrative law judge repeated these "stipulations" in his decision, and denied employer Section 8(f) relief, finding that employer failed to satisfy both the pre-existing permanent partial disability and contribution elements.

In the Order portion of his decision, the administrative law judge stated:

As it appears that all issues relating to the payment of compensation have been resolved between the Claimant and Employer, but that no order of compensation has been issued, the case is remanded to the District Director for issuance of a Compensation Order.

Decision and Order at 8. In his motion, the Director states that the district director has been unable to enter an award due to the lack of appropriate findings, and states that as far as the district director is aware, no benefits are being paid. The Director therefore contends either that the entire appeal should be dismissed as interlocutory, and that employer may file a new appeal after a final award of benefits is entered by the administrative law judge, or the Board should vacate only the "order" of the administrative law judge's decision and remand the case to him solely for any proceedings necessary to the entry of an award.

---

<sup>1</sup>The stipulations are silent as to the payment of death benefits.

We agree with the Director that the case must be remanded to the administrative law judge. It was incumbent upon the administrative law judge to inquire fully into the underlying compensation claim prior to addressing employer's entitlement to Section 8(f) relief. When the district director transferred the case to the Office of Administrative Law Judges, there was clearly no agreement between the parties, based on the parties' pre-hearing statements in the administrative file. Thus, the administrative law judge should have required the parties to submit their stipulations to him for approval and to obtain evidence necessary to resolve issues on which the parties did not agree.<sup>2</sup> In *Ledet v. Phillips Petroleum Co.*, 163 F.3d 901, 32 BRBS 212 (CRT) (5th Cir. 1998), the administrative law judge awarded the claimant permanent partial disability compensation, but remanded the case to the district director because there was no evidence in the record regarding the claimant's actual post-injury wages. The claimant was to submit such evidence to the district director who was to determine how much compensation was due. The Fifth Circuit stated that:

[t]o constitute a 'final decision and order' of the ALJ, the order must at a minimum specify the amount of compensation due or provide a means of calculating the correct amount without resort to extra-record facts which are potentially subject to genuine dispute between the parties.

*Ledet*, 163 F.3d at 905, 32 BRBS at 215(CRT), quoting *Severin v. Exxon Corp.*, 910 F.2d 286, 289, 24 BRBS 21, 23 (CRT) (5th Cir. 1990). The court stated that matters such as obtaining evidence of claimant's post-injury earnings and calculating the award was properly the role of the administrative law judge. *Id.* Similarly, in *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986), the Board held that the administrative law judge abdicated his responsibility under Section 19(d) of the Act, 33 U.S.C. §919(d), by failing to resolve the responsible carrier issue, instead remanding the case to the district director for findings of fact. Likewise, the administrative law judge herein erred in remanding the case to the district director when there were unresolved issues relating to claimant's entitlement to decedent's disability benefits and to death benefits.

Moreover, in the instant case, the administrative law judge was procedurally prevented from addressing Section 8(f) without an underlying award. First, Section 8(f) relief cannot be awarded if there is no award for permanent disability or death in excess of 104 weeks. See 33 U.S.C. §908(f)(1); *Hansen v. Container Stevedoring*

---

<sup>2</sup>For example, the "stipulations" do not state the extent of the decedent's permanent partial disability, nor do they state that claimant is entitled to death benefits.

Co., 31 BRBS 155 (1997). Furthermore, the Director must agree to the private parties' stipulations, or the administrative law judge must address all elements of entitlement based on the record evidence before addressing Section 8(f). The private parties cannot bind the Special Fund absent the Director's agreement to the stipulations. *Brady v. J. Young & Co.*, 17 BRBS 46 (1985), *aff'd on recon.*, 18 BRBS 167 (1985). Additionally, to the extent the parties may have attempted to settle the claim pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i), as opposed to an agreement based only on stipulations, *see generally* 20 C.F.R. §702.315, Section 8(i)(4) would bar the subsequent claim for Section 8(f) relief. 33 U.S.C. §908(i)(4) (1994); *Strike v. S.J. Groves & Sons*, 31 BRBS 183 (1997), *aff'd mem. sub nom. S.J. Groves & Sons v. Director, OWCP*, 166 F.3d 1206 (3d Cir. 1998)(table).

Accordingly, we grant the Director's motion. The administrative law judge's decision remanding the case to the district director is vacated, and the case is remanded to the administrative law judge for the entry of an award of benefits based on 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 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

---

JAMES F. BROWN  
Administrative Appeals Judge

---

REGINA C. McGRANERY  
Administrative Appeals Judge