

GAZELLE W. WHITE )  
(Widow of WARREN E. WHITE) )

Claimant )

v. )

NEWPORT NEWS SHIPBUILDING )  
AND DRY DOCK COMPANY )

DATE ISSUED: April 8, 2002

Self-Insured )

Employer-Petitioner )

and )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS )  
UNITED STATES DEPARTMENT )  
OF LABOR )

Respondent )

DECISION and ORDER

Appeal of the Decision and Order Granting Death Benefits and Denying Section 8(f) Relief and the Decision and Order on Motion for Reconsideration of Richard K. Malamphy, Administrative Law Judge, United States Department of Labor.

Jonathan H. Walker (Mason, Cowardin & Mason, P.A.), Newport News, Virginia, for self-insured employer.

Mark A. Reinhalter (Eugene Scalia, Solicitor of Labor; John F. Depenbrock, Jr., Associate Solicitor; Samuel J. Oshinsky, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Death Benefits and Denying Section 8(f) Relief and the Decision and Order on Motion for Reconsideration (99-LHC-3077) 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). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence and 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's husband (the decedent) was exposed to asbestos during the course of his employment with employer as a boilermaker helper in 1942. CX 5. Decedent was diagnosed as suffering from asbestosis on January 9, 1997, and he passed away on December 8, 1998. At the time of his death, in addition to pulmonary asbestosis, the decedent suffered from atherosclerotic coronary heart disease, congestive heart failure, diabetes mellitus, peripheral vascular disease, hypothyroidism and hypercholesterolemia. CX 9. On his death certificate, the cause of death was listed as pneumonia with congestive heart failure as a significant contributing factor. CX 1. In his decision, the administrative law judge awarded the permanent partial disability compensation for a 75 percent impairment of the lungs agreed to by employer at the district director level. 33 U.S.C. §908(c)(23). Finding decedent's work-related asbestosis and resulting lung disease were substantial contributing factors in his death, the administrative law judge also awarded the death benefits and funeral expenses sought by claimant. 33 U.S.C. §909. In addressing employer's request for Section 8(f) relief, 33 U.S.C. §908(f), the administrative law judge found that while employer established that the decedent suffered from a pre-existing permanent partial disability, *i.e.*, hypertensive cardiovascular disease, it failed to demonstrate that this condition contributed to the decedent's disability or death. Accordingly, the administrative law judge denied employer's request for relief from the Special Fund. Thereafter, in his Decision and Order on Motion for Reconsideration, the administrative law judge reiterated his conclusion that the medical evidence upon which he relied does not support employer's application for Section 8(f) relief. Therefore, he denied employer's motion for reconsideration.

Employer now appeals, arguing that the administrative law judge erred in denying it relief under Section 8(f).<sup>1</sup> The Director, Office of Workers' Compensation Programs (the Director), responds that although the administrative law judge's ultimate conclusion, *i.e.*, the denial of relief from the Special Fund, may be correct, his failure to provide adequate reasoning for his decision violates the Administrative Procedures Act (APA) and, therefore,

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<sup>1</sup>On appeal, employer does not address the administrative law judge's findings on its entitlement to Section 8(f) relief based on claimant's award of permanent partial disability compensation for the period prior to the decedent's death. *See* Appeal Brief at 11. These findings are therefore affirmed and will not be discussed in our ruling.

requires that the case be remanded for an additional explanation by the administrative law judge.

Section 8(f) limits employer's liability for compensation to the first 104 weeks of permanent disability or of death benefits; additional compensation is paid from the Special Fund. *See* 33 U.S.C. §944; *Stilley v. Newport News Shipbuilding & Dry Dock Co.*, 33 BRBS 224 (2000), *aff'd*, 243 F.3d 179, 35 BRBS 12(CRT)(4<sup>th</sup> Cir. 2001). In order to obtain relief under Section 8(f) in a death benefits claim, employer must affirmatively establish: 1) that the decedent had an existing permanent partial disability; 2) that the pre-existing disability was manifest to employer prior to the work-related injury;<sup>2</sup> and 3) that the decedent's death was not due solely to the final work-related injury. 33 U.S.C. §908(f)(1); *see Brown & Root, Inc. v. Sain*, 162 F.3d 813, 32 BRBS 205(CRT)(4<sup>th</sup> Cir. 1998); *Fineman v. Newport News Shipbuilding & Dry Dock Co.*, 27 BRBS 104 (1993). Regarding the third prong, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has stated that the applicable standard for determining whether a pre-existing condition contributed to the employee's death in a case such as this one, in which the work-related injury could have produced death by itself, is whether the pre-existing condition "hastened" the death. *See Sain*, 162 F.3d at 820, 32 BRBS at 211(CRT).

In the instant case, employer challenges the administrative law judge's finding that it failed to establish entitlement to relief pursuant to Section 8(f) against claimant's award of death benefits; specifically, employer alleges that the administrative law judge erred in failing to find that decedent's pre-injury cardiovascular problems constituted a pre-existing permanent partial disability which contributed to and/or hastened the decedent's subsequent death. As it was uncontroverted before the administrative law judge that claimant's hypertensive cardiovascular disease constituted a pre-existing permanent partial disability, the issue before the administrative law judge was whether that pre-existing permanent partial disability hastened the decedent's death, which the administrative law judge found to be due to a combination of his pneumonia and asbestosis.

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<sup>2</sup>The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, does not apply the manifestation requirement in cases such as the case at bar where the worker suffered from a post-retirement occupational disease. *See Newport News Shipbuilding & Dry Dock Co. v. Harris*, 934 F.2d 248, 24 BRBS 190(CRT)(4<sup>th</sup> Cir. 1990).

In reaching his conclusion that employer did not establish that the decedent's hypertensive cardiovascular disease contributed to his demise, and that consequently employer was not entitled to relief under Section 8(f), the administrative law judge addressed only two of the medical opinions contained in the record, that of an unidentified shipyard physician and the opinion of Dr. Ross. In this regard, the administrative law judge's decisions consist almost entirely of quotes taken directly from the Director's brief. In his decision, the administrative law judge noted his agreement with quoted passages and summarily concluded that the decedent did not have a pre-existing disability that contributed to his permanent partial disability or death. Specifically, the administrative law judge concurred with the Director that the opinion of the unidentified shipyard physician is insufficient to satisfy the contribution element as it was rendered prior to the decedent's death and therefore "has little bearing on contribution to the fatal event." Decision and Order at 14. The administrative law judge next quoted the Director's conclusion that if Dr. Ross's opinions that decedent did not have asbestosis and that, even if he did, that disease was not a cause of death were rejected for the purpose of awarding disability compensation, then his report "cannot be resurrected and credited for purposes of [Section] 8(f) relief... ." See Decision and Order at 15. Agreeing with this statement, the administrative law judge found that the decedent did not have a pre-existing disability that contributed to his death.

We agree with the employer and the Director that the administrative law judge's decisions violate the APA's requirements for an independent and complete analysis of the evidence on this issue.<sup>3</sup> 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 decisions and specify the evidence upon which he relied. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184 (1988); *see also Frazier v. Nashville Bridge Co.*, 13 BRBS 436 (1981). Failure to do so will violate the APA's requirement for a

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<sup>3</sup>The Director, in his response brief, avers that, while the administrative law judge's ultimate findings are correct, his decisions fail to satisfy the requirements of the APA, thereby necessitating remand. Response brief at 10.

reasoned analysis. *Ballesteros*, 20 BRBS at 187; *see Williams v. Newport News Shipbuilding & Dry Dock Co.*, 17 BRBS 61 (1985). In the instant case, the administrative law judge, in reaching his conclusions, did not independently analyze the evidence upon which he relied but merely stated his concurrence with quotes taken from the Director's brief. *See, e.g.*, Decision and Order at 11, 14, 15; Decision and Order on Reconsideration at 2, 3. An administrative law judge's failure to independently analyze or discuss the relevant evidence and to identify the evidentiary basis for his conclusions violates the APA and such a decision requires remand for further consideration. *See, e.g., Shroul v. General Dynamics Corp.*, 27 BRBS 160 (1993)(Brown, J., dissenting on other grounds); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Martiniano v. Golten Marine Co.*, 23 BRBS 363 (1990).

In addition, the administrative law judge did not address all of the evidence in the record relevant to the contribution issue; rather, the administrative law judge cavalierly stated that the record contains the "reports from Drs. Shaw, Crowder, Harris and Ross as well as others who need not be discussed."<sup>4</sup> Decision on Reconsideration at 3. Contrary to the administrative law judge's statement, there are medical opinions and reports of record which address the issue of whether the decedent's pre-existing hypertensive cardiovascular condition contributed to his death and must be discussed. Specifically, Dr. Ross opined that the decedent's underlying heart disease was 90 percent contributory to his death, EX 18 at 63, an opinion supported by that of Dr. Crowder who stated that the decedent's death was caused by his very severe heart disease.<sup>5</sup> EXS 5, 16. The administrative law judge did not address either Dr. Crowder's opinion or the decedent's death certificate, which states the cause of death as pneumonia and lists other significant factors including congestive heart failure. CX 1. Accordingly, we vacate the administrative law judge's denial of Section 8(f)

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<sup>4</sup>The records also contain the medical opinions of Drs. Old, Kane, Sanderson and Umstott who address the nature and extent of the decedent's cardiovascular disease and related surgery. *See* EX 7.

<sup>5</sup>Dr. Crowder, the decedent's treating physician, stated that the decedent's cause of death was judged to be pneumonia in a setting of severe atherosclerotic coronary disease and congestive heart failure. EX 5.

relief with regard to the award of death benefits to claimant, and we remand the case to the administrative law judge for consideration and discussion of all of the medical evidence relevant to employer's contentions on this issue. On remand, the administrative law judge must consider all the evidence relevant to the contribution issue and give an independent written explanation of the reasons and basis for his ultimate findings. *See Ballesteros*, 20 BRBS 184.

Accordingly, the administrative law judge's Decision and Order Granting Death Benefits and Denying Section 8(f) Relief and the Decision and Order on Motion for Reconsideration are affirmed in part and vacated in part. This case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge