

HERBERT GLADNEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	DATE ISSUED: <u>Aug. 9, 1999</u>
	)	
Self-Insured Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Employer's Motion to Dismiss and Granting Claimant's Motion for Withdrawal and the Order of Clarification and Denial of Employer's Petition for Reconsideration of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Hayden S. Dent (Scruggs, Millette, Bozeman & Dent, P.A.), Pascagoula, Mississippi, for claimant.

Paul M. Franke, Jr. (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Joshua T. Gillelan II (Henry L. Solano, Solicitor of Labor; Carol A. DeDeo, 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: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand Denying Employer's Motion to Dismiss and Granting Claimant's Motion for Withdrawal and the Order of Clarification and Denial of Employer's Petition for Reconsideration (93-LHC-8968) of Administrative Law Judge Richard D. Mills rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* (the Act). The Board must affirm the administrative law judge's findings of fact and conclusions of law 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).

In his decision on remand from the Board, the administrative law judge determined that Section 33(g) of the Act, 33 U.S.C. §933(g), is inapplicable to this claim on the ground that claimant is not a "person entitled to compensation." Employer appeals this finding on a number of grounds. Claimant and the Director, Office of Workers' Compensation Programs, have filed response briefs urging affirmance of the administrative law judge's decision. For the reasons stated in *Gladney v. Ingalls Shipbuilding, Inc.*, BRBS , BRB No. 98-1481 (August 4, 1999), we affirm the administrative law judge's decision. *See also Ingalls Shipbuilding, Inc. v. Director, OWCP [Yates]*, 519 U.S. 248, 31 BRBS 5 (CRT) (1997); *Brown & Root, Inc. v. Sain*, 162 F.3d 813, 32 BRBS 205 (CRT) (4th Cir. 1998); *Gladney v. Ingalls Shipbuilding, Inc.*, 30 BRBS 25 (1996) (McGranery, J., concurring in the result only); *Harris v. Todd Pacific Shipyards Corp.*, 30 BRBS 5 (1996) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting), *aff'g on recon.* 28 BRBS 254 (1994).

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge