

BRB No. 04-0309  
Case No. 03-LHC-1286  
OWCP No. 05-0103290

THOMAS H. PAYNTER	)	
	)	
Claimant-Respondent	)	DATE ISSUED: <u>February 24, 2004</u>
	)	
v.	)	
	)	
NEWPORT NEWS SHIPBUILDING AND	)	
DRY DOCK COMPANY	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

The Director has filed a Motion Requesting that the Decision and Order Denying Section 8(f) Relief 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. Employer has filed a letter stating that it does not object to the Director's motion.

In his Decision and Order denying employer's request for relief under Section 8(f), the administrative law 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 the 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. The Director's Motion Requesting that the Briefing Schedule be Suspended dated February 17, 2004, is moot.

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge