

BRB No. 93-2000

JOHN MUIR)	
)	
Claimant-Respondent)	
)	
v.)	
)	
GENERAL DYNAMICS)	DATE ISSUED:
CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT)	
OF LABOR)	
)	
Petitioner)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Stephen C. Embry (Embry & Neusner), Groton, Connecticut, for claimant.

Edward J. Murphy, Jr. (Murphy & Beane), Boston, Massachusetts, for employer.

LuAnn Kressley (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, 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 BROWN, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Decision and Order (90-LHC-515, 92-LHC-2946) of Administrative Law Judge Ralph A. Romano awarding benefits 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 if they 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 and employer stipulated that claimant sustained work-related low back injuries on August 13, 1986 and May 9, 1988. Employer voluntarily paid claimant temporary total disability benefits from May 25, 1988 through the time of the March 8, 1993, formal hearing. The parties further stipulated that claimant is entitled to permanent total disability benefits from October 3, 1988. Tr. at 4-5. The sole issue before the administrative law judge for adjudication was employer's entitlement to relief from continuing compensation liability pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f). At the hearing, the administrative law judge noted that the district director had denied employer's claim for Section 8(f) relief, and that the Director remained opposed to the granting of such relief. Tr. at 3; ALJ Exs. 1, 3.

In his Decision and Order, the administrative law judge memorialized the parties' stipulations and noted that the sole issue was the applicability of Section 8(f). The administrative law judge then proceeded to award employer Section 8(f) relief without discussing any evidence or making any legal conclusions.¹ The Director appeals, contending that the administrative law judge's Decision and Order fails to comport with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §554 *et seq.* Employer responds, agreeing that the administrative law judge's decision violates the APA. Employer, however, seeks to keep the award of Section 8(f) in effect and merely to have the case remanded for justification of the award. Employer states that if the Section 8(f) award is vacated, the award of benefits to claimant also should be vacated. Claimant responds to employer's brief, seeking to have his award affirmed as no party challenges it on appeal.

We agree that the award of Section 8(f) relief must be vacated and the case remanded for findings of fact and conclusions of law consistent with the requirements of the APA. The APA requires that an administrative law judge's decision contain "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); *see also* 33 U.S.C. §919(d). The administrative law judge must adequately detail the rationale behind his decision and specify the evidence upon which he relies. *See, e.g., McCurley v. Kiewest Co.*, 22 BRBS 115 (1989). In the instant case, the administrative law judge did not discuss any evidence of record or even allude to the elements for entitlement to Section 8(f) relief.² On remand, the administrative law judge must discuss each element of Section 8(f) and the

¹The administrative law judge ordered:

After the cessation of payments by the Employer, continuing benefits shall be paid,
pursuant to Section 8(f) of the Act, from the Special Fund established
in Section 44 of the Act until further order.

Decision and Order at 2.

²In a case where the claimant is permanently totally disabled, liability for benefits is shifted after 104 weeks to the Special Fund if employer establishes that claimant has a manifest pre-existing permanent partial disability, *see Director, OWCP v. General Dynamics Corp. [Bergeron]*, 982 F.2d 790, 26 BRBS 139 (CRT) (2d Cir. 1992), and that claimant's total disability is not due solely to the

evidence relevant thereto to determine if employer is entitled to Section 8(f) relief.

We reject employer's contention that claimant's award of benefits must be vacated if the award of Section 8(f) relief is vacated. The stipulation between employer and claimant as to claimant's entitlement to permanent total disability benefits is binding, *see Brady v. J. Young & Co.*, 17 BRBS 46 (1985), *aff'd on recon.*, 18 BRBS 167 (1985), and is unchallenged on appeal.

Accordingly, the administrative law judge's award of Section 8(f) relief is vacated, and the case is remanded for further consideration consistent with this decision. In all other respects, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge