



BRB Nos. 19-0318 and 19-0318/A
Case Nos. 2017-LDA-00385 and 2017-LDA-00386
OWCP Nos. 02-235323 and 02-302881

RAYMOND J. THOMAS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
AMEC EARTH & ENVIRONMENTAL)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	DATE ISSUED: 07/19/2019
)	
Employer/Carrier-)	
Cross-Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Petitioner)	ORDER

The Director, Office of Workers' Compensation Programs (the Director), appeals, and employer cross-appeals, the Decision and Order Approving Joint Stipulations and Setting 8(f) Relief Briefing Schedule (2017-LDA-00385, 2017-LDA-00386) of Administrative Law Judge William S. Cowell on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). By motion filed June 27, 2019, all parties jointly move the Board to vacate the administrative law judge's decision. The parties contend the administrative law judge erred by not resolving employer's request for relief under 33 U.S.C. §908(f) at the same time he approved the parties' stipulation regarding claimant's entitlement to permanent total disability compensation.

The administrative law judge adopted the private parties' stipulations, which provided that employer will pay claimant a period of temporary total disability benefits followed by ongoing permanent total disability benefits for claimant's work-related neck injury. The administrative law judge approved the stipulations and remanded the case to the district director for administrative action, but retained jurisdiction over employer's request for Section 8(f) relief. Decision and Order at 3. The administrative law judge's bifurcation of employer's Section 8(f) request from the award of permanent total disability benefits prompted the Director's appeal and employer's cross-appeal.¹

We grant the joint motion to vacate the administrative law judge's decision. Absent a showing of special circumstances, a Section 8(f) claim must be "litigated" in the same proceeding in which permanent disability is at issue. *See, e.g., Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *American Bridge Div., U.S. Steel Corp. v. Director, OWCP*, 679 F.2d 81, 14 BRBS 923 (5th Cir. 1982), *aff'g Carroll v. American Bridge Div., U.S. Steel Corp.*, 13 BRBS 759 (1981); *Serio v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 106 (1998); *Mowl v. Ingalls Shipbuilding, Inc.*, 32 BRBS 51 (1998); *Avallone v. Todd Shipyards Corp.*, 13 BRBS 348 (1981), *review denied*, 672 F.2d 901 (2d Cir. 1981); *Wilson v. Old Dominion Stevedoring Corp.*, 10 BRBS 943 (1979); *Egger v. Willamette Iron & Steel Co.*, 9 BRBS 897 (1979). If not, employer is precluded from thereafter seeking Section 8(f) relief on that disability claim. *Anderson v. Yusen Terminals, Inc.*, 50 BRBS 23 (2016).

The administrative law judge's decision resolved the issue of claimant's entitlement to permanent total disability benefits, but delayed action on employer's request for Section 8(f) relief. Thus, as the administrative law judge's decision improperly bifurcated these issues, we grant the parties' joint motion to vacate his decision.² The case is remanded for the administrative law judge to issue a single decision approving the parties' stipulations and addressing employer's Section 8(f) claim.³

¹After the appeals were filed, the parties filed a joint motion with the administrative law judge requesting that he vacate his decision because it did not address the Section 8(f) issue. The administrative law judge has not acted on this motion, likely because of the pending appeals.

²Thus, the parties' joint motion to suspend the briefing schedule is moot.

³Employer agrees to continue to pay claimant pursuant to the stipulations pending the issuance of a final compensation order addressing all issues. *See generally* 33 U.S.C. §914(a).

Accordingly, the administrative law judge's Decision and Order Approving Joint Stipulations and Setting 8(f) Relief Briefing Schedule is vacated in its entirety, and the case is remanded to the administrative law judge for further consideration consistent with this order.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge