

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION

Office of Workers' Compensation Programs  
Division of Longshore and Harbor Workers' Compensation

Washington, D.C. 20210

July 14, 1980



No. 43

NOTICE TO INSURANCE CARRIERS, SELF-INSURED EMPLOYERS  
UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION  
ACT, AND OTHER INTERESTED PERSONS

SUBJECT: Procedures for Applying for a Limitation of  
Liability Under Section 8(f)

This notice is to advise interested parties of the current procedures which apply to the processing of applications from employers/carriers for Section 8(f) relief, including the evidence required to support such applications.

It is the responsibility of the employer/carrier to apply for relief under the second injury provisions at the District Office level. Since success on the employer's part will result in a distinct advantage to the employer/carrier, the District Office is not obligated to develop or perfect the application. The employer/carrier has the burden of submitting sufficient evidence to substantiate the application at both the District Office and National Office levels. However, if Section 8(f) is an issue, the District Office must address the issue in its informal proceedings before the case can be referred for formal hearing. No case is to be referred for a formal hearing if a determination has not been made by the District Office.

It is the Deputy Commissioner's prerogative to deny Section 8(f) relief at the District Office level if the application is not in proper posture. To evaluate such application, the Deputy Commissioner must very carefully review the evidence submitted by the employer/carrier. Unless adequate and persuasive evidence is submitted and contained in the file, and unless the employer/carrier is willing to accept a compensation order defining and establishing all issues except the actual issue of second injury under Section 8(f), the application will be denied at the District Office level. Negotiation by the employer/carrier to agree to approval of the application of Section 8(f) prior to or at the same time as issues of disability or death is not appropriate. The issue of extent of disability must be finalized by means of a compensation order before

serious consideration can be given to the 8(f) application. Extent of disability will be determined by the medical and economic facts of the case and not on the condition that a Section 8(f) application will be approved.

After a compensation order has been issued (pursuant to stipulations executed by the parties), the employer/carrier may make application for Section 8(f) relief. Documentation of evidence needed to support the application shall include the following:

- (a) Factual and/or medical evidence of pre-existing permanent partial disability.
- (b) Evidence to show the impact of the pre-existing disability, which combined with the current injury causes greater disability than the current injury would have caused of itself.
- (c) Current medical report which establishes the extent of all impairment and the date of maximum improvement. (This may be the medical data used as the basis for the compensation order). If the current disability is less than total, the medical evidence must show that the disability is materially and substantially greater than that which would have resulted from the subsequent injury alone.
- (d) Either factual or observable evidence to show that the pre-existing disability was manifest to the employer and in what manner.
- (e) Evidence that the permanent disability is not due solely to the subject injury.

Upon receipt of the above data (a) thru (e) the Deputy Commissioner shall carefully review the evidence supporting the application. If key elements are missing the omissions may be called to the attention of the employer/carrier who shall be given an opportunity to furnish them. If the employer/carrier chooses not to do so, or the data furnished does not support the application, the Deputy Commissioner may recommend denial. If the data does support the application, the Deputy Commissioner will recommend acceptance. In either case (recommendation for acceptance or denial), the compensation order for permanent disability and all evidence submitted by the employer/carrier in support of its application or that the Deputy Commissioner

believes is relevant to the recommendation, will be submitted to the National Office for consideration. Final approval or denial must be given by the National Office.

After the file, with application and supporting evidence, has been reviewed, the National Office will determine whether approval or denial is appropriate. If approved, the Deputy Commissioner will be advised by memorandum to issue a supplementary order, finding Section 8(f) applicable and describing the payments to be made by the employer/carrier. The National Office will initiate payments from the Special Fund when the appropriate notification is received from the District Office.

If the application for Section 8(f) relief is denied, the Deputy Commissioner will be advised by memorandum. The Deputy Commissioner shall inform the employer/carrier of the decision. The employer/carrier may then request a formal hearing on the application of Section 8(f). Should the employer/carrier wish, it may apply to the Deputy Commissioner pursuant to Section 22 of the Act for modification of the initial compensation order. Issues raised in such an application should be referred along with the issues regarding Section 8(f) for resolution in a single formal hearing.



NEIL A. MONTONE  
Associate Director,  
Longshore and Harbor  
Workers' Compensation