U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 24-0049 BLA

RONALD WILLIAMS Claimant-Respondent v. GREEN BRANCH MINING, INCORPORATED and SECURITY INSURANCE COMPANY OF HARTFORD c/o ARROWPOINT CAPITAL Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/30/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for the Tennessee Insurance Guaranty Association.[1]

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

The Tennessee Insurance Guaranty Association (TIGA), on behalf of Employer's Carrier (hereinafter, referred to as Employer), appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2022-BLA- 05206) rendered on a subsequent claim[2] filed on November 4, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least twenty-five years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[3] and established a change in an applicable condition of

[1] A Notice of Appeal in this case was originally filed on behalf of Employer and its Carrier by James M. Poerio (Poerio & Walter, Inc.), Pittsburgh, Pennsylvania. Subsequently, as a Delaware court declared Employer's Carrier, Arrowpoint Capital (Arrowpoint), insolvent on November 8, 2023, Counsel for the Tennessee Insurance Guaranty Association (TIGA) gave notice of his appearance on Arrowpoint's behalf as its guarantor. Employer's Brief at 1 n.1; May 7, 2024 Notice of Appearance. Under the Tennessee Insurance Guaranty Association Act, TIGA assumes the liabilities of its liquidated members in certain instances. Tenn. Ins. Code Ann. §56-12-102. Counsel for TIGA filed the Petition for Review and supporting brief in this appeal.

[2] Claimant filed two prior claims, the first of which he withdrew. Decision and Order at 3-4; Director's Exhibits 1, 2. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). The district director denied Claimant's most recent prior claim, filed on December 12, 2015, because Claimant did not establish total disability. Director's Exhibit 2.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or

entitlement.[4] 20 C.F.R. §718.309. She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established a totally disabling pulmonary impairment.[5] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response.

The Benefit Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Invocation of the Section 411(c)(4) Presumption: Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone,

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substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied Claimant's most recent prior claim for his failing to establish total disability, Claimant had to submit new evidence establishing total disability to warrant a review of his subsequent claim on the merits. *White*, 23 BLR at 1-3; Director's Exhibit 2.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least twenty-five years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4 n.3.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15; Director's Exhibit 7.

prevents him from performing his usual coal mine work and comparable gainful work.[7] A claimant may establish total disability based on qualifying pulmonary function studies, qualifying arterial blood gas studies,[8] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp*., 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the medical opinion evidence and the evidence as a whole.[9] Decision and Order at 5-13.

The ALJ considered the medical opinions of Drs. Raj and Davidson that Claimant has a totally disabling respiratory or pulmonary impairment, and the contrary opinions of Drs. Tuteur and Shamma-Othman that he does not. Decision and Order at 9-13; Director's Exhibits 12, 13, 20, 25; Claimant's Exhibits 1, 2; Employer's Exhibit 1-3, 5. She found Drs. Raj's and Davidson's opinions well-reasoned and documented because they demonstrated an understanding of the exertional requirements of Claimant's usual coal mine work and because they relied on the abnormal—albeit non-qualifying—objective testing, their examinations, and Claimant's reported symptoms. Decision and Order at 12-13. In contrast, she found Drs. Tuteur's and Shamma-Othman's opinions entitled to little probative weight because neither physician demonstrated an understanding of the exertional requirements of Claimant's usual coal mine work nor did they "meaningfully consider" whether Claimant's limitations might prevent him from performing that work. *Id.* at 11-13. Consequently, crediting Drs. Raj's and Davidson's opinions over the opinions of Drs. Tuteur and Shamma-Othman, the ALJ found the medical opinion evidence supported a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 13.

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[7] We affirm, as unchallenged, the ALJ's finding that Claimant's last coal mine employment required heavy manual labor. *See Skrack*, 6 BLR at 1-711; Decision and Order at 5.

[8] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[9] The ALJ found the pulmonary function and arterial blood gas studies do not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 6 n.6, 8-9.

Employer contends the ALJ erred in crediting the opinions of Drs. Raj and Davidson on the basis that they considered Claimant's subjective symptoms. Employer's Brief at 5-8. We disagree.

Contrary to Employer's assertion, the ALJ did not credit Drs. Raj's and Davidson's opinions merely because they relied on Claimant's symptoms. *See* Employer's Brief at 5-8. Rather, she permissibly found their opinions well-documented and reasoned because they examined Claimant, obtained an accurate work history, recorded symptoms and physical findings, and specifically compared his pulmonary capacity, as demonstrated by the abnormal objective testing, to the exertional requirements of his last coal mining job. *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *see also Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987); Decision and Order at 12-13.

Employer next contends the ALJ held Drs. Raj's and Davidson's opinions to a "lesser standard" than he did the opinions of Drs. Tuteur and Shamma-Othman. Employer's Brief at 8-10. Specifically, Employer asserts the ALJ discredited Drs. Tuteur's and Shamma-Othman's opinions because they did not have a complete understanding of the exertional requirements of Claimant's usual coal mining work but "erroneously excused" the fact that Drs. Raj and Davidson did not consider all of the medical evidence in the record and because they based their opinions, in part, on non-qualifying objective testing. *Id.* at 9-10. We are not persuaded.

Initially, contrary to Employer's and our dissenting colleague's assertions, an ALJ is not required to discredit a physician who did not review all of the medical evidence in the record when the opinion is otherwise well-reasoned, documented, and based on the physician's own examination of the miner, objective test results, and exposure histories. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984); *see also Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986) (ALJ properly considered whether the objective data offered as documentation adequately supported the medical opinion). Likewise, it is well-established that a medical opinion can support a finding of total disability despite non-qualifying objective testing results. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett*, 227 F.3d at 577 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests). The ALJ has discretion to weigh the medical evidence and draw his own inferences therefrom. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-77 (6th Cir. 2013); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-

14 (6th Cir. 2002). As the Sixth Circuit has held, we "may not reweigh [that] evidence, substitute [our] judgment for that of the administrative law judge, or reverse the administrative law judge's decision simply because 'we would have taken a different view of the evidence were we the trier of facts.'" *Shepherd v. Incoal, Inc*., 915 F.3d 392, 398 (6th Cir. 2019) (quoting *Ramey v. Kentland Elkhorn Coal Corp*., 755 F.2d 485, 486 (6th Cir. 1985)). We thus affirm the ALJ's weighing of Drs. Raj's and Davidson's opinions.

In contrast, an ALJ may discredit an opinion that concludes a miner is not totally disabled because the doctor neither has an adequate understanding of the exertional requirements of the miner's usual coal mine work nor sets forth sufficient information from which the ALJ could rationally conclude that the miner can perform such work. *See Cornett*, 227 F.3d at 578; *Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991) (physician who asserts a miner is capable of performing assigned duties should state his or her knowledge of the physical efforts required and relate them to the miner's impairment). Employer does not challenge the ALJ's findings that Drs. Tuteur's and Shamma-Othman's opinions did not adequately demonstrate an understanding of the exertional requirements of Claimant's usual coal mine work or meaningfully consider whether Claimant would be able to perform the heavy exertional requirements of that work. *See Cornett*, 227 F.3d at 578; *Eagle*, 943 F.2d at 512-13; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11-12.

Employer raises no further argument regarding the medical opinion evidence. We therefore affirm the ALJ's finding that the opinion evidence supports a finding of total disability at 20 C.F.R §718.204(b)(2)(iv). Decision and Order at 13. In addition, as Employer has raised no further arguments, we also affirm her findings that Claimant established total disability based on the evidence as a whole and, therefore, invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 725.309(c); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 13. We further affirm, as unchallenged, her finding that Employer failed to rebut the presumption. *See Skrack*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 17.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from the majority's decision to affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability 20 C.F.R. §718.204(b)(2)(iv), and that the evidence as a whole established the issue of total disability at 20 C.F.R. §718.204(b)(2). I concur with the majority that the ALJ permissibly discredited Drs. Tuteur and Shamma-Othman's medical opinions on the basis that they did not adequately demonstrate an understanding of the exertional requirements of Claimant's usual coal mine work or meaningfully consider whether Claimant would be able to perform the heavy exertional requirements of that work. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991); Decision and Order at 11-12.

However, there is merit to Employer's contention that the ALJ erred in crediting the opinions of Drs. Raj and Davidson. Employer's Brief at 8-10. As the ALJ noted, in opining Claimant is disabled, Dr. Raj relied in part on the drop in oxygenation during exercise seen on the January 20, 2020 arterial blood gas study. Decision and Order at 12; Director's Exhibits 12 at 5; 25 at 4. In addition, Dr. Raj relied on the degree of restriction shown in Claimant's pulmonary function testing, and his symptoms. Director's Exhibit 12 at 5. However, not only did Claimant's oxygenation markedly improve with exercise during the June 24, 2022 blood gas study, but the pulmonary function testing also showed some improvement. Employer's Exhibit 3 at 4. The ALJ erred by not reconciling this

improvement in oxygenation with Dr. Raj's opinion. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

Likewise, Dr. Davidson performed two arterial blood gas studies on April 12, 2022, with the initial study producing substantially lower results than the repeat study.[10] Claimant's Exhibit 1 at 17-18 (unpaginated). As Employer avers, however, Dr. Davidson based his opinion only on the initial study without explaining his reasoning for doing so. Employer's Brief at 9; Claimant's Exhibit 1 at 5 (unpaginated). While the ALJ acknowledged Dr. Davidson administered the second study, Decision and Order at 8 n.10, she erred by failing to address Dr. Davidson's selective reliance on only the study producing the lower results. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002). Moreover, as with Dr. Raj, she failed to address whether the pulmonary function testing results not considered by Dr. Davidson were consistent with his conclusions.

It is well established that, pursuant to 20 C.F.R. §718.204(b)(2), the ALJ "must weigh all relevant probative evidence together, both like and unlike, with the burden of proof always on [C]laimant to establish total respiratory disability by a preponderance of the evidence." *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); *see Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987). The "term contrary probative evidence is not limited to medical evidence of the same category or type; rather, the term refers to all evidence (medical and otherwise) which is contrary and probative." *Rafferty*, 9 BLR at 1-232.

The ALJ acknowledged the pulmonary function and arterial blood gas studies do not support a finding of total disability but failed to adequately explain her conclusion that medical opinion evidence establishes total disability nonetheless. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *Gray v. SLC Coal Co.*, 176 F.3d 382, 389 (6th Cir. 1999) ("'[A]ll relevant evidence' means just that—all evidence that assists the ALJ in determining whether [Claimant is disabled]."); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact-finder's failure to discuss relevant evidence requires remand); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). While the ALJ may consider a medical opinion well-reasoned based on the evidence the physician considered, the analysis does not end there. When considering the evidence as a whole, the ALJ must also consider the credibility of the physician's opinion in light of other evidence of record, particularly evidence that the physician did not take into account in

[10] The initial study, performed at 1:13pm, produced a PO2 of 51, PCo2 of 44.7, and pH of 7.39. Claimant's Exhibit 1 at 17 (unpaginated). The repeat study, performed at 1:29pm, produced a PO2 of 61, PCO2 of 43.0, and pH of 7.40. *Id.* at 28 (unpaginated).

rendering the opinion. If a physician depended upon certain evidence as the basis for the opinion, but record evidence the physician did not consider indicates otherwise (and could well have changed the physician's opinion), the ALJ must determine whether the opinion remains reliable. The ALJ did not do that here. The ALJ thus failed to consider all the relevant evidence, critically analyze the evidence, render necessary findings, and explain her conclusion as the Act and the Administrative Procedure Act (APA)[11] require. 30 U.S.C. §923(b); 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Rowe*, 710 F.2d 255; *Wojtowicz*, 12 BLR at 1-165.

It is neither our role nor within our authority to create an explanation for the ALJ. *See Rowe*, 710 F.2d at 254-55 (When the ALJ fails to make necessary factual findings, the proper course for the Board is to remand the case to the ALJ rather than attempt to fill the gaps in the ALJ's opinion.). Thus, I would vacate the ALJ's finding that Claimant has established disability based on the evidence as a whole at 20 C.F.R. §718.204(b)(2) and remand for the ALJ to provide the required consideration, analysis, and explanation. Because I would vacate her finding of total disability, I also would vacate her finding that Claimant invoked the Section 411(c)(4) presumption and the award of benefits.

JUDITH S. BOGGS
Administrative Appeals Judge

[11] The Administrative Procedure Act provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).