U.S. Department of Labor

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

BRB No. 24-0055 BLA

LARRY ISON Claimant-Respondent v. ARCH OF KENTUCKY/APOGEE COAL COMPANY and Self-Insured Through ARCH COAL, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/22/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Ann Marie Scarpino (Johnathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2021-BLA-05708) rendered on a claim[1] filed on June 4, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Arch of Kentucky/Apogee Coal Company (Apogee) is the responsible operator and Arch Coal, Inc. (Arch) is the responsible carrier. She found Claimant established 24.85 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she concluded 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).[2] She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Arch is the liable carrier and in excluding its liability evidence. In addition, it asserts the ALJ erred in denying its request to obtain discovery from the Department of Labor (DOL) regarding the scientific bases for the preamble to the 2001 regulatory revisions and in admitting Dr. Alam's supplemental medical report under the DOL's pilot program for obtaining such reports from physicians who perform DOL-sponsored complete pulmonary evaluations. On the merits, Employer contends the ALJ erred in finding Claimant established total disability and thus invoked

[1] Claimant filed a prior claim on September 30, 2014, but withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] 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 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.

the Section 411(c)(4) presumption. Alternatively, it argues the ALJ erred in finding it failed to rebut the presumption.

Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a limited response brief conceding the ALJ erred in declining to admit Employer's liability evidence. He therefore requests the Benefits Review Board vacate the ALJ's finding that Employer is liable for benefits and remand this case for the ALJ to consider Employer's liability evidence and readdress the liability issue.[3] Employer submitted a reply to the Director's brief, agreeing that remand is required.[4]

The 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 the law.[5] 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).

Exclusion of Liability Evidence

Employer asserts the ALJ erred in finding it is the responsible carrier because, among other reasons, the ALJ erroneously excluded its liability evidence. Employer's Brief at 23. The Director concedes the ALJ abused her discretion in excluding this evidence and thus requests the Board vacate the ALJ's responsible operator finding and remand for further consideration. Director's Response Brief at 3. We agree.

An ALJ is granted broad discretion in resolving procedural and evidentiary issues. *See Dempsey v. Sewell Coal Corp*., 23 BLR 1-47 (2004) (en banc); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc). A party seeking to overturn an ALJ's

[3] Because the Director conceded remand is required to address Employer's liability evidence, the Director declined to address Employer's remaining arguments regarding liability. Director's Response Brief at 1 n.1.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 24.85 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10-11.

[5] 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 Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 29; Director's Exhibit 4.

resolution of a procedural or evidentiary issue must show that the ALJ's action was an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co*., 24 BLR 1-109, 1-113 (2009).

Prior to the hearing, Employer sought to submit Employer's Exhibits 1-20 in support of its assertion that Arch is not the responsible carrier and of its challenge to the DOL's Bulletin 16-01. Employer's Exhibit 21 at 2-3; Employer's Post-Hearing Brief at 15. The ALJ declined to admit Employer's liability evidence, stating the Board has previously held "on many occasions" that the liability evidence Employer submitted does not support its arguments that Arch is not the responsible carrier and cited numerous published and unpublished cases in support of this conclusion. Order Excluding Employer's Exhibits 1-20 (Feb. 16, 2023) (citing *Bailey v. E. Assoc. Coal Co.*, 25 BLR 1-325 (2022) (en banc); *Howard v. Apogee Coal Co.*, 25 BLR 1-301 (2022); *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289 (2022); *Gaston v. Heritage Coal Co.*, BRB No. 20-0375 BLA (Dec. 22, 2022) (unpub.); *Ison v. Arch of Ky./Apogee Coal Co.*, BRB No. 20-0350 BLA (Nov. 30, 2022) (unpub.)).

As the Director observes, Apogee and Arch were parties in only two of the cases the ALJ cited in support of her conclusion that the Board has held Employer's liability evidence does not support its assertions that Arch is not the responsible carrier: *Howard* and *Ison*. Director's Brief at 2. The Director further correctly notes Employer's liability evidence in the present case differs from that submitted in those two cases, most notably in that, in the present case, Employer timely identified Michael Chance, Kim Kasmeier, and David Benedict as liability witnesses and submitted their depositions. *Id.* at 2-3; Director's Exhibit 32.

Because the ALJ erroneously concluded the Board has previously held that the liability evidence submitted in the present case does not support Employer's assertions that Arch is not the responsible carrier, Employer has established an abuse of discretion by the ALJ in excluding Employer's Exhibits 1-20. *See Blake*, 24 BLR at 1-113. Consequently, we vacate the ALJ's finding that Arch is the responsible carrier and remand the case to her for reconsideration of the liability evidence, including Employer's Exhibits 1-20.[6]

[6] Because we vacate the ALJ's finding that Arch is the responsible carrier and remand for reconsideration of Employer's liability evidence, we decline to address, as premature, the remainder of Employer's arguments concerning the responsible carrier. Employer's Brief at 9-30.

Evidentiary Issue: DOL's Pilot Program

Employer argues the ALJ erred in admitting and considering Dr. Alam's supplemental medical report, obtained as part of the DOL pilot program.[7] Employer's Brief at 42-47. Employer asserts the DOL has no legal authority to request supplemental opinions under the pilot program, that the pilot program deprives it of due process, that the implementation of the pilot program, without notice and comment, violates the Administrative Procedure Act (APA), and that the pilot program transforms the DOL into an advocate for claimants. *Id.* For the reasons set forth in *Smith v. Kelly's Creek Resources*, 26 BLR 1-15, 1-20-24 (2023), we reject Employer's arguments.

Evidentiary Issue: Order Denying Discovery Regarding the Preamble

While the case was pending before the ALJ, Employer sought discovery from the DOL to identify the drafters of the preamble to the 2001 revised regulations and to obtain copies of the scientific literature or medical studies the DOL relied upon to support the preamble and sought admissions concerning the definition of certain terms used in the preamble. Order Granting Motion for Protective Order at 1 (Feb. 1, 2023). In response, the Director moved for a Protective Order barring the requested discovery. *Id.* The ALJ granted the Director's motion, finding Employer's discovery requests would not lead to evidence relevant to adjudication of the present claim or to relevant information regarding the DOL's deliberative process or the science underlying the 2001 revised regulations that was not already set forth in the preamble. *Id.* at 4.

Employer asserts the ALJ violated its due process rights by preventing it from conducting discovery regarding the preamble and then discrediting its physicians as contrary to the scientific evidence cited in the preamble. Employer's Brief at 40-42. For the reasons set forth in *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-9 (2023), we reject Employer's arguments.

[7] In 2014, the DOL established a pilot program allowing the district director, in certain claims, to request a supplemental opinion from the physician who performed the DOL-sponsored complete pulmonary evaluation. *See* BLBA Bulletin No. 14-05 (Feb. 24, 2014). The program became standard procedure in 2019. *See* BLBA Bulletin No. 20-01 (Oct. 24, 2019).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish that 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, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 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); *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 pulmonary function study evidence, the medical opinion evidence, and the evidence as a whole.[8] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 16, 22.

Pulmonary Function Studies

The ALJ considered the results of two pulmonary function studies dated August 8, 2018, and March 11, 2019.[9] Decision and Order at 13-16; Director's Exhibit 14 at 8; Employer's Exhibit 24 at 1. The August 8, 2018 study produced non-qualifying values prior to the administration of a bronchodilator and qualifying values after the administration of a bronchodilator.[10] Director's Exhibit 14 at 8. The March 11, 2019 study produced qualifying values both before and after the administration of bronchodilators. Employer's Exhibit 24 at 1. The ALJ found both pulmonary function studies are valid.

[8] The ALJ found the arterial blood gas studies do not support a finding of 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 12, 18.

[9] The ALJ also considered the results of three pulmonary functional studies included in Claimant's treatment records dated September 20, 2004, July 11, 2005, and May 18, 2006. Decision and Order at 16; Employer's Exhibit 27 at 292-93, 319. We affirm, as unchallenged, her finding that these studies have "little probative value" due to their age. Decision and Order at 16; *see Skrack*, 6 BLR at 1-711.

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

Decision and Order at 15; *see* 20 C.F.R. §718.103(c). Weighing the studies together, she found the pulmonary function study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 16.

Employer argues the ALJ erred in finding the August 8, 2018 and March 11, 2019 pulmonary function studies are valid. Employer's Brief at 31-34. Employer's contentions have merit, in part.

When considering pulmonary function study evidence, the ALJ must determine whether the studies are in substantial compliance with the quality standards.[11] 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). A study need not precisely conform to the quality standards; if it is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ, as the factfinder, must determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987). "In the absence of evidence to the contrary, compliance with the [regulatory quality standards] shall be presumed." 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

We initially reject Employer's assertion that the ALJ erred by failing to address Dr. Tuteur's opinion that the August 8, 2018 and March 11, 2019 pulmonary function studies are invalid. Employer's Brief at 31 (citing Employer's Exhibit 25 at 4). Contrary to Employer's contention, the ALJ noted Dr. Tuteur provided validity opinions but declined to address them because Employer did not designate his report as rebuttal evidence to either pulmonary function study. Decision and Order at 14 n.23; Employer's Evidence Summary Form; *see* 20 C.F.R. §725.414(a)(3)(ii). As Employer does not challenge this finding on appeal, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[11] An ALJ must consider a reviewing physician's opinion regarding a miner's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

We agree, however, that the ALJ erred in discrediting Dr. Rosenberg's opinion that the August 8, 2018 and March 11, 2019 pulmonary function studies are invalid. Employer's Brief at 31-33.

Dr. Rosenberg opined the August 8, 2018 and March 11, 2019 pulmonary function studies are invalid, stating that, based on his evaluation of the flow-volume curves, the studies reflect submaximal effort. Employer's Exhibits 24 at 25; 30 at 28-33. He acknowledged the technician who performed the August 8, 2018 study documented good cooperation and effort but stated that all the technician's comments can be interpreted to mean is that Claimant was "trying," a characterization with which he agreed. Employer's Exhibit 30 at 31-32. Despite Claimant's attempts at compliance, however, Dr. Rosenberg opined the tracings show a flattening of the flow-volume curves indicating that, whether due to weakness from his history of stroke or his cardiac condition, Claimant was unable to "muster up the complete efforts" to make the tests valid. *Id.* He further opined the March 11, 2019 study is invalid for the same reasons. *Id.* at 32-33.

The ALJ discredited Dr. Rosenberg's validity opinions, stating that, because the regulations acknowledge that some miners may not be able to put forth as much effort as others and provide other means through which a miner can prove disability, Dr. Rosenberg "seeks to require performance in excess of that required by the regulations." Decision and Order at 15 (citing 65 Fed. Reg. 79,920, 79,920-21, 79,952 (Dec. 20, 2000)). Citing the Board's holdings in *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985), she found the technicians who administered the pulmonary function studies were in "the best position to judge Claimant's effort." *Id.* Thus, crediting the technicians' statements over Dr. Rosenberg's opinion, the ALJ found the August 8, 2018 and March 11, 2019 pulmonary function studies are valid. *Id.*

Contrary to the ALJ's finding, Dr. Rosenberg did not "require performance in excess of that required by the regulations," *id.*, but rather explained why, in his opinion, the flattening of the flow-volume curves demonstrate Claimant was unable to put forth sufficient effort to produce a valid pulmonary function study. While the ALJ correctly notes the preamble to the 2000 regulatory revisions acknowledges some miners may be unable to put forth the same effort as other miners, Decision and Order at 15 (citing 65 Fed. Reg 79,951), this does not provide grounds to discredit a physician's opinion for stating that a pulmonary function study does not conform to the quality standards contained in Appendix B to Part 718. *See* 20 C.F.R. §718.103(c). A reviewing physician may challenge the validity of a pulmonary function study based on his or her examination of the study's tracings. *See* 65 Fed. Reg. at 79,927 ("A party may challenge another party's [pulmonary function] study by submitting expert opinion evidence demonstrating the study is unreliable or invalid."); *see also Morrison v. Tenn. Consol. Coal*, 644 F.3d 473, 480 (6th Cir. 2011) (remand required where ALJ inaccurately characterizes evidence).

We further agree that the ALJ erred in crediting the statements of the technicians who administered the pulmonary function studies over the validity opinion of Dr. Rosenberg. Decision and Order at 15; Employer's Brief at 31-34. First, the ALJ did not accurately characterize the Board's holding in *Revnack*. The Board stated in *Revnack*, a case involving a claim arising under 20 C.F.R. Part 727, that the ALJ must consider a reviewing *doctor's* opinion that a pulmonary function study is unreliable when determining whether total disability is established and the interim presumption has been invoked pursuant to 20 C.F.R. §727.203(a)(2). 7 BLR at 1-773. It does not address the weight to which an administering technician's comments are entitled as compared to the opinion of a reviewing physician. *Id.*

Factfinders must consider the qualifications of medical experts interpreting objective evidence. *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993). An ALJ may not assume a technician is equally qualified as a reviewing physician to assess the validity of a pulmonary function study. *See Peabody Coal Co. v. Director, OWCP* [*Brinkley*], 972 F.2d 880, 885 (7th Cir. 1992). A technician's notations of good effort and cooperation do not amount to substantial evidence that a pulmonary function study is valid in the face of competent opinions showing the contrary, as it is "the interpretation of the tracings" that matters in determining the validity of a pulmonary function study. *Id.*

Because the ALJ did not provide a valid rationale for discrediting Drs. Rosenberg's validity opinions, we must vacate her findings with regard to the validity of the August 8, 2018 and March 11, 2019 pulmonary function studies. *See* 30 U.S.C. §923(b); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 17-18. Notably, however, we are not passing judgment on whether these studies are valid. Rather, the ALJ must consider the validity of these studies and render her own credibility findings. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989) (it is the ALJ's responsibility to evaluate physicians' opinions).

Because we vacate the ALJ's findings regarding the validity of the August 8, 2018 and March 11, 2019 pulmonary function studies, we must also vacate her finding that the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i).

Medical Opinions

The ALJ next considered the opinions of Drs. Alam, Rosenberg, and Tuteur. Decision and Order at 18-22. Dr. Alam opined that Claimant is disabled by a totally disabling pulmonary or respiratory impairment whereas Drs. Rosenberg and Tuteur opined he is not. Director's Exhibits 14 at 6; 27 at 1; Employer's Exhibits 24 at 26, 34; 25 at 6-7, 30 at 36. The ALJ credited Dr. Alam's opinion, noting, among other reasons, that it is

consistent with her finding that the pulmonary function study evidence supports a finding of total disability, and discredited Drs. Rosenberg's and Tuteur's opinions. Decision and Order at 18, 20-22. Thus, she determined the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(iv). *Id.* at 23.

Because the ALJ's error with respect to the pulmonary function studies may have affected her weighing of the medical opinion evidence, we must vacate her 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 overall establishes total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 32. Thus, we vacate her finding that Claimant invoked the Section 411(c)(4) presumption[12] and vacate the award of benefits.

Remand Instructions

On remand, the ALJ must reconsider whether Arch is the responsible carrier in this case. In doing so, the ALJ should address Employer's challenges to the designation of Arch as the responsible carrier and the Director's arguments in response. 20 C.F.R. §§725.408(a)(2), 725.412(a)(1). The ALJ must set forth her findings in accordance with the APA.[13] 5 U.S.C. §557(c)(3)(A); *see Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989).

The ALJ must then reconsider whether Claimant has established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b)(2), 718.305(b)(iii). In doing so, she must determine whether the August 8, 2018 and March 11, 2019 pulmonary function studies are in substantial compliance with the regulatory quality standards.[14]

[12] Therefore, we decline to address, as premature, Employer's argument that the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. Employer's Brief at 35-40.

[13] The APA, 5 U.S.C. §§500-591, requires that every adjudicatory decision 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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[14] As noted *supra*, in the absence of evidence to the contrary, compliance with the quality standards for pulmonary function studies is presumed. 20 C.F.R. §718.103(c); *see v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984); 20 C.F.R. Part 718, Appendix B. If a study that is evidence developed by a party does not conform to the quality standards, but is in substantial compliance with the standards, it may "constitute evidence of the fact for

20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B. The ALJ must address all relevant evidence and resolve any conflict in the evidence. *Rowe*, 710 F.2d at 254-55. She must then determine whether the preponderance of the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i).

The ALJ must also reweigh the medical opinions, taking into consideration her findings regarding the pulmonary function studies, blood gas studies, and other evidence of record. In weighing the medical opinions, she must consider the qualifications of the respective physicians, the explanations for their opinions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses. *See Rowe*, 710 F.2d at 255. The ALJ must also be mindful that a physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000). The relevant inquiry is whether Claimant has a respiratory or pulmonary impairment that precludes the performance of his usual coal mine work. *Id.* at 578 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"). If the ALJ determines the pulmonary function studies, medical opinions, or both, demonstrate total disability, she must consider the evidence as a whole and reach a determination as to whether Claimant is totally disabled. *See* 20 C.F.R. §718.204(b)(2)*; Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

If the ALJ finds Claimant establishes total disability, he will invoke the Section 411(c)(4) presumption and the ALJ must reconsider whether Employer has rebutted it. 20 C.F.R. §718.305(d); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015).

which it is proffered." 20 C.F.R. §718.101(b). In this case, Employer has the burden to establish the results are unreliable, as it is the party challenging the validity of the study. *See Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc); *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order on Remand Awarding Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge