U.S. Department of Labor

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

BRB No. 25-0120 BLA

LUKE HALBERT Claimant-Petitioner v. CONSOL OF KENTUCKY, INCORPORATED and CONSOL ENERGY, INCORPORATED Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/14/2026 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Luke Halbert, McDowell, Kentucky.

Joseph D. Halbert and Jason H. Halbert (Halbert Legal PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Denying Benefits on Remand (2020-BLA-05378) rendered on a subsequent claim filed on April 19, 2016,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Board for the second time.

In his initial Decision and Order Denying Benefits, the ALJ found Claimant did not establish complicated pneumoconiosis and thus did not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. He credited Claimant with twenty-four years of underground coal mine employment but found he did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). The ALJ therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),[3] establish entitlement under 20 C.F.R. Part 718, or establish a change in an applicable condition of entitlement.[4] 20 C.F.R. §725.309(c). Thus, he denied benefits.

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[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision on Claimant's behalf, but she does not represent him on appeal. *See Shelton v. Claude V. Keen Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] This is Claimant's third claim for benefits. Director's Exhibits 1, 2. On January 8, 2011, the district director denied his first claim, filed May 17, 2010, for failure to establish total disability. Director's Exhibit 1. Claimant filed a second claim on April 19, 2016, but withdrew it. Director's Exhibit 2. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). Claimant took no further action until filing his current claim.

[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 substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); 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 he 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); *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).

Pursuant to Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established twenty-four years of underground coal mine employment, that Claimant failed to establish complicated pneumoconiosis, and that the arterial blood gas study evidence did not support a finding of total disability. *Halbert v. Consol of Ky., Inc.*, BRB No. 22-0347 BLA, slip op. at 3-5 (Sep. 20, 2023) (unpub.). But the Board vacated the ALJ's findings that the pulmonary function study and medical opinion evidence do not support a finding of total disability and remanded the case for further consideration. *Id.* at 6-8; *see* 20 C.F.R. §718.204(b)(2). On remand, the ALJ again found Claimant did not establish a totally disabling respiratory or pulmonary impairment and again denied benefits.

On appeal, Claimant generally challenges the ALJ's decision. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, declined to file a substantive response.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable 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).

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)(l)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work.[6] *See*

Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing that element of entitlement to obtain review of the merits of his current claim. *See White*, 23 BLR at 1-3; Decision and Order at 2; Director's Exhibit 1.

[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); Decision and Order on Remand at 3; Director's Exhibit 5; Hearing Transcript at 12-13.

[6] The Board previously affirmed the ALJ's finding that Claimant's usual coal mine employment as a roof bolter required him to frequently lift fifty pounds and thus required "some heavy work." *Halbert v. Consol of Ky., Inc.*, BRB No. 22-0347 BLA, slip op. at 4 n.7 (Sep. 20, 2023) (unpub.); Initial Decision and Order at 16.

20 C.F.R. §718.204(b)(l). A claimant may establish total disability based on qualifying pulmonary function or arterial blood gas studies,[7] 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 failed to establish total disability by any method.[8] Decision and Order at 8, 10-11.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated May 9, 2016, January 23, 2017, and October 28, 2020. Decision and Order at 6-8. The May 9, 2016 and January 23, 2017 studies produced qualifying results before and after administration of a bronchodilator. Director's Exhibits 14 at 13; 29 at 6. The October 28, 2020 study produced nonqualifying results before and after administration of bronchodilators. Employer's Exhibit 3 at 6.

The ALJ found the May 9, 2016 study valid but found the January 23, 2017 study invalid.[9] Decision and Order on Remand at 8. Weighing the qualifying May 9, 2016 study and nonqualifying October 28, 2020 studies together, he found the pulmonary function study evidence is in equipoise. *Id.* He further stated that, even if he gave the January 23, 2017 "study less weight or adequate weight, there is still an inconsistency in the testing results" and indicated he cannot resolve that inconsistency because he is not a physician. *Id.* Thus, the ALJ concluded the pulmonary function study evidence does not support a finding of total disability. *Id.*

[7] 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 "nonqualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] The ALJ accurately noted we affirmed his findings that the arterial blood gas study evidence does not support a finding of total disability, 20 C.F.R. §718.204(b)(2)(ii), and the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 6; *see Halbert*, BRB No. 22-0347 BLA, slip op. at 5 & n.9.

[9] We affirm, as unchallenged on appeal, the ALJ's finding that the May 9, 2016 pulmonary function study produced valid results. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8.

When considering pulmonary function study evidence, the ALJ must determine whether the studies are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. 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).

Claimant underwent the January 23, 2017 pulmonary function study as part of Dr. Tuteur's examination. Director's Exhibit 29 at 6. The technician conducting the study noted Claimant "demonstrated good effort and understanding" during the diffusion capacity test, showed "maximal effort" during the slow vital capacity test, and showed "good effort" during the maximum voluntary ventilation test and the maximum inspiratory and expiratory maneuvers. *Id.* Dr. Tuteur stated he reviewed the data and opined this "study is not associated with valid spirometry," but he did not provide further explanation for that opinion.[10] *Id.* at 3. Dr. Ajjarapu considered this study in her supplemental report and, while she did not specifically indicate whether she believed the study produced valid results, she opined it showed severe obstructive impairment and that it produced qualifying values. Director's Exhibit 17 at 2. Dr. Dahhan reviewed this study and opined that it is "invalid due to poor effort," without further explanation. Employer's Exhibit 3 at 3.

[10] In a supplemental report, Dr. Tuteur discussed all the pulmonary function studies together, stated "the spirometric and lung volume values are not always valid as an assessment of maximum function," and opined the studies showing higher values are more reliable because they represent or maybe even underestimate a person's "true maximum level." Employer's Exhibit 5 at 2. Thus, because the October 28, 2020 study produced the highest values, he opined Claimant has no worse than a mild obstructive impairment. *Id.* at 2-3. We note this explanation does not address why the January 23, 2017 study in particular is invalid. In addition, because pneumoconiosis is a chronic condition, a miner's functional ability on a pulmonary function study may vary and could thus measure higher on any given day than its typical level. *See Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991).

The ALJ noted Dr. Tuteur "administered the test" and opined it is invalid, that Dr. Dahhan also opined it is invalid, and that there is no contrary evidence. Decision and Order on Remand at 8. Thus, he found the January 23, 2017 pulmonary function study did not produce valid results. *Id.* We are unable to affirm this finding.

Initially, the ALJ correctly observed Dr. Tuteur "did not discuss how he determined the study [is] invalid." Decision and Order at 8; Director's Exhibit 29 at 3. Dr. Dahhan likewise did not provide any further explanation for his opinion beyond stating that there was "poor effort." Employer's Exhibit 3 at 3. The ALJ thus failed to adequately explain how their opinions invalidate the January 23, 2017 pulmonary function study, given that it is Employer's burden to establish the study is not in substantial compliance with the regulatory quality standards. *See* 20 C.F.R. §718.103(c); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (determination of whether an opinion is reasoned and documented requires fact finder to examine the physician's reasoning in light of studies conducted and objective indications upon which medical conclusion is based); *Vivian*, 7 BLR at 1-360.

In addition, contrary to the ALJ's finding, the record contains contrary evidence. The technician who conducted the January 23, 2017 study stated Claimant understood instructions and provided "good" and "maximal effort" throughout the testing, and the technician identified no component of the study during which Claimant failed to provide good effort. Director's Exhibit 29 at 6. Likewise, while Dr. Ajjarapu did not specifically comment on the validity of this study, she relied on it in opining it produced qualifying results and demonstrated Claimant has a totally disabling obstructive impairment.[11] Director's Exhibit 17 at 2. Because the ALJ did not consider this contrary evidence, we cannot affirm his finding that the January 23, 2017 pulmonary function study is invalid. *See Director, OWCP v. Congleton*, 743 F.2d 428, 430 (6th Cir. 1984) (finding which does not encompass discussion of contrary evidence does not warrant affirmance); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (factfinder's failure to discuss relevant evidence requires remand).

[11] Notably, in finding the May 9, 2016 pulmonary function study is valid, the ALJ observed Dr. Ajjarapu had not specifically discussed whether the study produced valid results. Decision and Order at 8; Director's Exhibit 14 at 6-7, 13. However, he determined her reliance on the study in opining Claimant is disabled demonstrates she believed the testing to be valid. Decision and Order at 8. It is unclear why the ALJ did not apply the same rationale when considering the January 23, 2017 study.

We are further unable to affirm the ALJ's alternative inference that "even if [he gave the January 23, 2017] study less weight or adequate weight, there is still an inconsistency in the testing results." Decision and Order at 8. The mere presence of a nonqualifying study does not render the pulmonary function study evidence equivocal; rather, it is the function of the ALJ to resolve conflicts and inconsistencies in the evidence. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 272-76 (1994); *Tenn. Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Rowe*, 710 F.2d at 254-55. Thus, his finding with respect to the pulmonary function study evidence does not satisfy the explanatory requirements of the Administrative Procedure Act (APA).[12] *See Wojtowicz*, 12 BLR at 1-165. Consequently, we vacate the ALJ's finding that the pulmonary function study evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i) and remand the case for further consideration of the pulmonary function study evidence. Decision and Order at 6-8.

Medical Opinions

Dr. Ajjarapu maintains that Claimant is totally disabled, while Drs. Dahhan and Tuteur maintain he is not. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-11; Director's Exhibits 14, 17, 29; Employer's Exhibits 3, 5. The ALJ indicated Dr. Ajjarapu's opinion is "well-reasoned based on the evidence she reviewed," but he nevertheless gave it less weight because she did not review the nonqualifying October 28, 2020 pulmonary function study. Decision and Order at 9. He found Dr. Tuteur's opinion equivocal and gave it no weight because it is "unclear if [Dr. Tuteur] is stating that Claimant's pulmonary condition plays a part in his disability." *Id.* at 10. Finally, he gave Dr. Dahhan's opinion "less weight" because he opined the 2016 pulmonary function study is invalid, contrary to the ALJ's finding it is valid. Decision and Order at 10. Having determined all three medical opinions are entitled to "less weight," and that there is no reason to give either Dr. Ajjarapu's or Dr. Dahhan's opinion more weight than the other, the ALJ found the medical opinion evidence is equivocal and does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 10-11.

[12] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of "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).

But the ALJ was not required to discount Dr. Ajjarapu's opinion on the sole basis that she did not review all the evidence of record. Rather, a physician can render a reasoned and documented opinion regarding total disability based on her own examination of a miner, review of objective test results, or both. 20 C.F.R. §718.204(b)(2)(iv); *see Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984). In addition, the ALJ's inference that the opinions of Drs. Ajjarapu and Dahhan are entitled to equal weight and his apparent reliance on a head count of opinions fails to properly resolve the conflict in the medical opinions or adequately explain why he found the medical opinion evidence equivocal. Decision and Order at 10; *see Wojtowicz*, 12 BLR at 1-165.

While a claimant fails to meet his burden of proof when the evidence is equally balanced, *see Ondecko*, 512 U.S. at 279-81, the ALJ must nevertheless explain his rationale for reaching that conclusion. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). The mere fact that the relevant evidence may be conflicting does not authorize the ALJ to declare Claimant failed to establish total disability. *See generally Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010) ("[ALJ] has a duty to explain, on scientific grounds, why a conclusion cannot be reached"). It is the ALJ's duty to evaluate conflicting evidence, draw appropriate inferences, and assess probative value. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 254-55; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Because the ALJ's error in weighing the pulmonary function studies may have affected his weighing of the medical opinion evidence, and because he did not properly resolve the conflict in the medical opinions or adequately explain his findings, we must vacate his determination that the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11.

We thus vacate the ALJ's determination that the evidence as a whole does not establish total disability and that Claimant did not invoke the Section 411(c)(4) presumption or establish a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 718.305, 725.309(c). Consequently, we vacate the ALJ's denial of benefits and remand the case for further consideration.

Remand Instructions

On remand, the ALJ must reconsider the validity of the January 23, 2017 pulmonary function study, giving consideration to the explanations provided by the physicians, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions. *See Rowe*, 710 F.2d at 255; *Vivian*, 7 BLR at 1-361. He must then reconsider whether Claimant established total disability based on the pulmonary function study evidence, providing an adequate rationale for his determinations and resolving the

conflict in the evidence without regard to mere recency. *See Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-49-52 (2023); *Smith*, 26 BLR at 1-27-28; 20 C.F.R. §718.204(b)(2)(i). The ALJ must then reconsider the medical opinions, taking into account his findings regarding the pulmonary function study evidence and the exertional requirements of Claimant's usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *see 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); *supra*, note 6. He must resolve the conflict in the medical opinion evidence by addressing the physicians' comparative credentials, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. The ALJ must then weigh the categories of evidence together to determine whether Claimant has established total disability based on a preponderance of the evidence as a whole. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b)(2). In rendering his determinations on remand, the ALJ must explain his rationale and conclusions as the APA requires. *See Wojtowicz*, 12 BLR at 1-165.

If Claimant satisfies his burden to establish total disability, he will establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and will invoke the Section 411(c)(4) presumption. The ALJ will then need to address whether Employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d)(1)(i), (ii). If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge