U.S. Department of Labor

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

BRB No. 25-0148 BLA

EDWARD C. TOMASIK Claimant-Petitioner v. CONSOL ENERGY, INCORPORATED Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/29/2026 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Second Modification of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Mathew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

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

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits on Second Modification (2024-BLA-05624) rendered on a claim

filed on November 21, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

In a June 9, 2020 Decision and Order Denying Benefits, the ALJ credited Claimant with twenty-six years of coal mine employment, based on the parties' stipulation, and determined that at least fifteen years was spent underground or in substantially similar surface mining. Although the ALJ found Claimant established the existence of legal pneumoconiosis, he determined Claimant did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.202(a), 718.204(b)(2). Thus, he found Claimant could 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),[1] or establish entitlement to benefits under 20 C.F.R. Part 718. He therefore denied benefits.

Claimant timely requested modification of the denial and submitted new evidence.[2] In a January 19, 2023 Decision and Order Denying Benefits on Modification, the ALJ again determined that the evidence established the existence of legal pneumoconiosis but did not establish a totally disabling respiratory or pulmonary impairment. Consequently, Claimant did not establish a mistake in fact or a change in conditions, and the ALJ again denied benefits.

Claimant timely requested modification of the second denial and submitted additional evidence. In a January 3, 2025 Decision and Order Denying Benefits on Second Modification, which is the subject of the current appeal, the ALJ found Claimant established the existence of legal pneumoconiosis but did not establish a totally disabling respiratory or pulmonary impairment. He therefore found Claimant could not invoke the Section 411(c)(4) presumption or establish entitlement to benefits under 20 C.F.R. Part 718 and denied benefits.

[1] 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); *see* 20 C.F.R. §718.305.

[2] When evaluating a request for modification, the ALJ "must consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact." 20 C.F.R. §725.310(c).

On appeal, Claimant argues the ALJ erred in finding the medical opinion evidence does not establish total disability.[3] Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a substantive response.

The Benefits 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.[4] 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 (1965).

An ALJ may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). When a request for modification is filed, the ALJ may correct any mistake of fact, including the ultimate fact of entitlement to benefits. *Keating v. Director, OWCP*, 71 F.3d 1118, 1123 (3d Cir. 1995). The ALJ is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc*., 404 U.S. 254, 256 (1971).

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, prevents him from performing his usual coal mine work and comparable gainful work. *See* 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*

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established at least fifteen years of qualifying coal mine employment and the existence of legal pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Second Modification at 8, 20.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director*, *OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

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).

Claimant does not challenge, and we therefore affirm, the ALJ's findings that Claimant did not establish total disability based on the pulmonary function studies, blood gas studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Second Modification at 21-22. Rather, Claimant asserts the ALJ erred in finding that the medical opinion evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(iv).

Before weighing the medical opinions, the ALJ found Claimant's usual coal mine work was as an electrician. Decision and Order on Second Modification at 26. He noted that he took official notice of the *Dictionary of Occupational Titles* (DOT) at the hearing and found the DOT classifies an electrician as requiring "medium exertional labor." *Id*. at 26 n.11. He further referred to the DOT for the definition of medium work. *Id.* (citing DOT, Appendix C, Part IV (defining medium work as requiring exerting twenty to fifty pounds of force occasionally and/or ten to twenty-five pounds of force frequently to move objects)).

The ALJ then considered the medical opinions of Drs. Lenkey, Saludes, Aulick, Fino, Vuskovich, and Basheda. Decision and Order on Second Modification at 26-33. Drs. Lenkey, Saludes, Aulick, and Fino[5] opined Claimant is totally disabled from a respiratory or pulmonary impairment, while Drs. Vuskovich and Basheda opined he is not totally disabled. Director's Exhibits 15, 17, 57-59, 73, 97, 116; Claimant's Exhibits 1, 2; Employer's Exhibits 11, 15, 16. The ALJ found the opinions of Drs. Lenkey, Saludes, Vuskovich, and Aulick not well reasoned and found Dr. Basheda's opinion better reasoned than Dr. Fino's opinion. Decision and Order on Second Modification at 30-33. Consequently, the ALJ determined Claimant failed to prove he is totally disabled "by a preponderance" of the medical opinion evidence. *Id.* at 33; *see* 20 C.F.R. §718.204(b)(2)(iv).

Claimant asserts the ALJ erred in discrediting Drs. Aulick's and Fino's opinions. Claimant's Brief at 6-8. In addition, Claimant specifically argues the record establishes his job as an electrician requires heavy labor, which conflicts with the ALJ's finding of moderate labor. *Id.* at 7. Claimant's contentions have merit.

[5] As we explain below, *infra* at 5, Dr. Fino initially opined that Claimant is not totally disabled due to a respiratory or pulmonary impairment but later opined that he is totally disabled.

Dr. Aulick examined Claimant on June 15, 2021, and November 7, 2023, and reviewed his occupational history, noting his last coal mine job as an electrician at the face of the mine. Director's Exhibit 73; Claimant's Exhibit 2. He diagnosed Claimant with a moderately severe obstructive respiratory defect as well as a mild restrictive defect and opined Claimant is unable to perform his last coal mining job based on his review of the objective study results. Director's Exhibits 73 at 5, 118 at 3; Claimant's Exhibit 2 at 3-4.

Dr. Fino examined Claimant on December 30, 2019, and September 29, 2022, and noted Claimant described his last coal mine job as an electrician, requiring twenty to thirty percent very heavy labor, forty to fifty percent heavy labor, fifteen to twenty percent moderate labor, and five to twenty percent light labor. Director's Exhibits 58 at 4, 116 at 3. Based on the results of his December 30, 2019 examination, Dr. Fino opined Claimant has a moderate obstructive respiratory impairment but could perform his last coal mining job or a job requiring similar effort. Director's Exhibit 58 at 12. After the September 29, 2022 examination, Dr. Fino again diagnosed Claimant with a moderate respiratory impairment. Director's Exhibit 116 at 12. He also noted Claimant has a reduced diffusing capacity and observed Claimant's FEV1 values fell from "well above disability standards" to values qualifying[6] for total disability. *Id.* at 11-12. Thus, Dr. Fino concluded Claimant is totally disabled from performing his last coal mine employment. Claimant's Exhibit 1 at 20-21.

The ALJ discredited Dr. Aulick's opinion in part because he did not address the exertional requirements of Claimant's usual coal mine employment. Decision and Order on Second Modification at 31. He noted Dr. Aulick's consideration of Claimant's last job as an electrician but found Dr. Aulick failed to "list, specify, or otherwise indicate any of the exertional factors relating to his last coal mine job." *Id.* Further, the ALJ discredited Drs. Aulick's and Fino's opinions because he found them inconsistent with the most recent pulmonary function study, which was non-qualifying and conducted by Dr. Basheda on June 25, 2024. *Id.* at 31-33.

[6] 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).

Claimant specifically argues the ALJ erred in discrediting Dr. Aulick's opinion[7] because he failed to list the exertional requirements of Claimant's last coal mine job. Claimant's Brief at 7-8. Claimant's argument has merit.

A medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer a miner is unable to do his usual coal mine employment. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97 (3d Cir. 2002); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion."); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may find total disability by comparing physician's impairment rating and any physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). Thus, Dr. Aulick was not required, contrary to the ALJ's determination, to specifically list the exertional requirements of Claimant's usual coal mine work. Further, as the ALJ acknowledged, Dr. Aulick identified Claimant's usual coal mine work as an electrician, consistent with the ALJ's finding, and the ALJ did not adequately explain why this notation alone was insufficient to conclude that Dr. Aulick did not have an adequate understanding of the exertional requirements of this job. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713 (6th Cir. 2002) (if a physician lists a miner's job title, ALJ may rationally conclude physician understands the exertional requirements of common mining jobs, even absent explicitly identifying them); Decision and Order on Second Modification at 31; Director's Exhibit 73; Claimant's Exhibit 2.

In addition, while the ALJ indicated Claimant's work as an electrician required only medium labor as defined in the DOT concerning the amount he had to lift or carry in his job, the ALJ failed to render the necessary factual findings regarding all of the exertional requirements of Claimant's usual coal mine employment[8] which would allow him to

[7] Claimant asserts a similar argument concerning the ALJ's weighing of Dr. Fino's opinion. Claimant's Brief at 7-8. However, as the ALJ did not give less weight to Dr. Fino's opinion for failure to list exertional requirements, we need not address this assertion. *See* Decision and Order on Second Modification at 32-33.

[8] We note that, contrary to the ALJ's finding, Claimant states his "last coal mine employment was [as an] electrician being a job which the record evidence establishes required heavy labor." Claimant's Brief at 7. On Claimant's Description of Coal Mine

properly consider Dr. Aulick's opinion. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-54 (4th Cir. 2016); *Eagle v. Armco Inc.*, 943 F.2d 409, 512-13 (4th Cir. 1991). The ALJ also failed to compare those exertional requirements with Dr. Aulick's assessment to determine whether his opinion supports a finding of total respiratory disability. *See Scott*, 60 F.3d at 1141; *Poole*, 897 F.2d at 894; *Budash*, 9 BLR at 1-51-52.

Next, Claimant contends the ALJ erred in discrediting Drs. Aulick's and Fino's opinions based on the most recent June 25, 2024 pulmonary function study, which was non-qualifying. Claimant's Brief at 6-7. We agree.

The regulations provide that despite non-qualifying pulmonary function studies or blood gas studies, total disability may be established if a physician, exercising reasoned medical judgment based on medically acceptable diagnostic techniques, concludes the miner's respiratory or pulmonary condition prevented him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). Thus, a physician may offer a reasoned medical opinion diagnosing total disability even though the objective studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); *Cornett*, 227 F.3d at 587 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties").

The ALJ found Dr. Aulick's opinion is not well-reasoned because Dr. Aulick relied on qualifying pulmonary function study results submitted on second modification even

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Work and Other Employment, CM-913, form, Claimant states that in addition to lifting and carrying items that weighed five to two hundred pounds "varied times per day[,]" he sat for three hours a day and stood for seven hours a day. Director's Exhibit 4 at 1. At his April 29, 2019 deposition, Claimant testified his job as an electrician required walking and carrying tool bags and parts, including wrenches weighing thirty to fifty pounds. Director's Exhibit 60 at 14-15. At the January 28, 2020 hearing, Claimant testified that in addition to lifting parts (some of which were heavy enough to require help in carrying them), he had to walk approximately five or six miles a day, and, when above ground, would climb to the top of silos that are approximately two hundred to two hundred and fifty feet. Director's Exhibit 62 at 16-17. Further, the physicians' opinions detail the exertional requirements of Claimant's role as an electrician and, if credited, may support that Claimant performed at least heavy labor. *See* Director's Exhibits 15 at 6, 58 at 4, 59 at 18, 57 at 3, 108 at 18, 116 at 3; Claimant's Exhibit 1 at 16-17; Employer's Exhibit 11 at 2. Thus, the ALJ did not address all relevant evidence concerning the exertional requirements required by Claimant's job as an electrician in determining it required medium exertion, and we therefore vacate this finding. 30 U.S.C. §923(b) (ALJ must address all relevant evidence).

though the most recent June 25, 2024 pulmonary function study was non-qualifying. Decision and Order on Second Modification at 31. But contrary to the ALJ's finding, an expert need not consider all the evidence of record for an ALJ to find their opinion well-reasoned and documented. *See Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (that a physician reviewed less data in forming his opinion does not render his opinion insufficient to establish total disability); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 51- 52 (4th Cir. 1992) (it is irrational to credit later evidence solely on the basis of recency if that evidence shows a miner's condition has improved); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50-51 (2023). Thus, the ALJ failed to adequately explain why a more recent non-qualifying pulmonary function study necessarily rendered Dr. Aulick's opinion not well-reasoned and entitled to no weight, especially because, as stated above, a medical opinion can establish total disability despite non-qualifying studies. *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997) (ALJ must adequately explain his credibility determinations); *Killman*, 415 F.3d at 721-22; *Cornett*, 227 F.3d at 587; Decision and Order on Second Modification at 31.

The ALJ noted that Dr. Fino's opinion that Claimant is totally disabled "could be well-reasoned" if it was based solely on the qualifying FEV1 values of the September 29, 2022 pulmonary function study and not its accompanying FVC or FEV1/FVC ratio values, which rendered the study non-qualifying as a whole. Decision and Order on Second Modification at 32; *see* Claimant's Brief at 6-7. The ALJ next stated that he determined whether the medical opinions support a finding of total disability by comparing Drs. Fino's and Basheda's opinions.[9] Decision and Order on Second Modification at 32. Noting that both physicians have "roughly equivalent qualifications," the ALJ further noted Dr. Basheda "was the last physician to examine Claimant and was able to consider Claimant's most recent non-qualifying diagnostic testing results, while Dr. Fino was not." *Id.* The ALJ also again stated that Dr. Fino's opinion is undermined by the most recent non-qualifying pulmonary function study if Dr. Fino based that opinion on a belief that Claimant's pulmonary function results are qualifying. *Id.* at 33. The ALJ then concluded that Dr. Basheda's opinion is better reasoned and entitled to more weight.[10] *Id.* But as

[9] The ALJ explained that when evaluating the opinions he found are entitled to some weight, Drs. Saludes' and Fino's opinions support a finding of total disability while Drs. Vuskovich's and Basheda's opinions do not. Decision and Order on Second Modification at 32. He indicated that because Drs. Saludes' and Vuskovich's opinions are given limited weight and are contrary to each other, they "are effectively in equipoise." *Id.*

[10] The ALJ noted Dr. Fino was initially designated as Employer's expert and considered whether to give his opinion more weight because it is contrary to Employer's interest. Decision and Order on Second Modification at 33. However, the ALJ declined

Claimant asserts, despite attempting to qualify his determinations, the ALJ appears to have based his discrediting of Dr. Fino's opinion, at least in part, on his belief that Dr. Fino relied on qualifying pulmonary function study values, contrary to the most recent study, to which he gave the most weight. Claimant's Brief at 6-7. Dr. Fino clearly stated, though, that Claimant "would be disabled because of his FEV1 based on the Department of Labor tables." Director's Exhibit 116 at 10; *see also* Claimant's Exhibit 1 at 18-19. Thus, the ALJ did not adequately explain his reasoning for giving less weight to Dr. Fino's opinion given that he acknowledged that Dr. Fino's opinion could be well-reasoned if based solely on the FEV1 values.[11] *See Witmer*, 111 F.3d at 354; *Killman*, 415 F.3d at 721-22; *Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989); Decision and Order on Second Modification at 33. Consequently, we vacate the ALJ's findings that Drs. Aulick's and Fino's opinions are not well-reasoned.

Based on the foregoing errors, we vacate the ALJ's finding that the medical opinion evidence does not support a finding of total disability, 20 C.F.R. §718.204(b)(2)(iv), and remand the case for further consideration. *See Wojtowicz*, 12 BLR at 1-165; Decision and Order on Second Modification at 33. In addition, we vacate his findings that Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2) and therefore failed to invoke the Section 411(c)(4) presumption. Decision and Order on Second Modification at 8, 33.

Remand Instructions

In weighing the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv) on remand, the ALJ must first determine the exertional requirements of Claimant's usual coal mine work based on all relevant evidence and then must consider the medical opinions in light of those requirements. *See Gonzales v. Director, OWCP*, 869 F.2d 776, 779 (3d Cir. 1989); *Cornett*, 227 F.3d at 578. In addition, the ALJ must compare the findings regarding the exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and resulting limitations. *See Scott*, 60 F.3d at 1141; *Poole*, 897 F.2d at 894; *Budash*, 9 BLR at 1-51-52; *see also Cornett*, 227 F.3d 578.

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to give it more weight on this basis, and Claimant has not challenged this finding. *See Skrack*, 6 BLR at 1-711; Decision and Order on Second Modification at 33.

[11] The ALJ alternatively found that even assuming Drs. Fino's and Basheda's opinions are entitled to equivalent weight, Claimant would not have met his burden to establish total disability because the "two opinions would, at best, be in equipoise." Decision and Order on Second Modification at 33. However, we cannot affirm on this alternate ground given that we have vacated the ALJ's weighing of Dr. Aulick's opinion, which, if credited on remand, could support a finding of total disability.

When weighing the medical opinions, the ALJ must address the comparative credentials of the physicians, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions. *See Balsavage*, 295 F.3d at 396-97; *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986). In reaching his credibility determinations, he must set forth his findings in sufficient detail and explain his rationale as the Administrative Procedure Act[12] requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

After determining whether the medical opinion evidence supports a finding of total disability, the ALJ must then weigh the evidence as a whole to determine whether Claimant has established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); *Defor*e, 12 BLR at 1-28-29; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987).

If Claimant establishes total disability, he will have invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.305. The ALJ must then determine whether Employer has rebutted the presumption. 20 C.F.R. §718.305(d); *Minich v. Keystone Coal Mining Corp.*, 26 BLR 1-149, 1-150 (2015). In that event, the ALJ must reconsider the evidence with the burden shifting to Employer to affirmatively establish that "no part of [Claimant's] respiratory or pulmonary total disability" was caused by his legal pneumoconiosis as defined in [20 C.F.R.] § 718.201.[13] 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 1-155.

If Claimant is unable to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

[12] The Administrative Procedure Act requires the ALJ to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[13] Because we have affirmed the ALJ's unchallenged finding that Claimant has legal pneumoconiosis, the ALJ need not determine whether Employer rebutted the presumption of pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge