

U.S. Department of Labor

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



BRB Nos. 25-0156 BLA  
and 25-0156 BLA-A

RICHARD W. NAYLOR )  
 )  
 Claimant-Petitioner )  
 Cross-Respondent )  
 )  
 v. )  
 )  
 CONSOL PENNSYLVANIA COAL )  
 COMPANY, LLC )  
 )  
 and )  
 )  
 CONSOL ENERGY, INCORPORATED )  
 c/o SEDGWICK CLAIMS MANAGEMENT )  
 )  
 Employer/Carrier- )  
 Respondents )  
 Cross-Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 04/17/2026

DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Denying Benefits of Drew A. Swank, Administrative Appeals Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

Victoria Yee (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

Claimant appeals and Employer and its Carrier (Employer) cross-appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2024-BLA-05445) rendered on a claim filed on May 10, 2023,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation to twenty-seven years of coal mine employment and found Claimant established legal but not clinical pneumoconiosis.<sup>2</sup> 20 C.F.R. §718.202(a). He further found Claimant failed to establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore did not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).<sup>3</sup> Because Claimant failed to establish an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.

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<sup>1</sup> As Employer notes in its cross-appeal, the ALJ incorrectly indicated Claimant filed his claim on May 10, 2022. Employer's Brief at 18; Decision and Order at 2; Director's Exhibit 2.

<sup>2</sup> "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

<sup>3</sup> 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.

On appeal, Claimant argues the ALJ erred in denying his request for an extension of time to submit rebuttal x-ray evidence post-hearing. On the merits, he argues the ALJ erred in finding he failed to establish total disability and clinical pneumoconiosis. Employer responds in support of the denial of benefits; on cross-appeal, it argues the ALJ erred in admitting Dr. Smith's rebuttal reading of the June 7, 2023 x-ray and in finding Claimant established legal pneumoconiosis. Claimant has not filed a response to Employer's cross-appeal. The Director, Office of Workers' Compensation Programs (the Director), has declined to respond to Claimant's appeal but filed a response to Employer's cross-appeal, urging the Benefits Review Board to reject its evidentiary argument.<sup>4</sup>

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 applicable law.<sup>5</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

### **Evidentiary Issues**

Claimant and Employer both raise challenges to the ALJ's evidentiary rulings regarding the x-ray evidence. Claimant's Brief at 11-14; Employer's Brief at 18-19.

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

### **Claimant's Appeal**

At the hearing, the ALJ provided the parties until December 27, 2024, to submit outstanding evidence, including Claimant's Exhibits 5 and 6, which constituted proposed rebuttal readings by Drs. DePonte and Smith of the August 15, 2024 x-ray. Hearing

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<sup>4</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-seven years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

<sup>5</sup> The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 12.

Transcript at 8, 32. Employer reserved the right to object to the exhibits. *Id.* at 8. At the conclusion of the hearing, the ALJ advised the parties, “If you need more time, just send me a real simple request, and I’ll be happy to give you an extension as long as I get it before the close of business.” *Id.* at 33.

On January 25, 2025, Claimant submitted correspondence to the ALJ, requesting additional time to submit his outstanding evidence. Claimant’s Motion for Extension. Claimant’s counsel indicated that while the x-ray was submitted to Dr. DePonte for interpretation on October 2, 2024, her reading still had not been received. *Id.* She also indicated firm staffing issues resulted in the firm’s calendar not properly noting the deadline, as well as preoccupation due to a family emergency. *Id.* In response, the ALJ issued an order denying Claimant’s request as submitted after the evidentiary deadline. Order Denying Request for Evidentiary Extension and Extending Briefing Deadline (Order Denying Extension).

Claimant argues the ALJ erred in denying its request for an extension of time to submit its rebuttal x-ray evidence. Claimant’s Brief at 12-14. While acknowledging Claimant’s request for additional time was submitted after the deadline to submit evidence, Claimant contends good cause was shown, Employer was aware of the proposed evidence and thus was not prejudiced, and Employer did not object. *Id.* Employer responds, arguing that the ALJ was within his discretion to exclude late evidence and further notes it reserved the right to object to Claimant’s proposed evidence at the hearing. Employer’s Response at 7, 10-11. We agree the ALJ erred.

The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ Rules) apply in proceedings under the Act to the extent they are not inconsistent with either the Act itself or the Act’s regulations. 29 C.F.R. §18.10(a). The OALJ rules in turn adopt the Federal Rules of Civil Procedure “excusable neglect” standard for determining whether to grant an extension of time. *See* 29 C.F.R. §18.32(b)(2), *accord* Fed. R. Civ. P. 6(b)(1)(B). Specifically, when an act “must be done within a specified time,” the ALJ “may, for good cause, extend the time [o]n motion made after the time has expired if the party failed to act because of excusable neglect.” *Id.*

While Claimant is incorrect that Employer did not object to his proposed exhibits, we agree the ALJ erred as he did not address whether Claimant’s request for an extension of time should be granted due to excusable neglect. Claimant’s counsel provided multiple explanations regarding why she did not submit her request until after the evidentiary deadline and contended Employer would not be prejudiced as it was aware of the proposed

evidence.<sup>6</sup> Claimant’s Motion for Extension; Claimant’s Brief at 12-14. The ALJ did not address these points and summarily denied the request as it was submitted after the evidentiary deadline. Order Denying Extension. As the ALJ provided no analysis on the excusable neglect issue, he abused his discretion in denying Claimant’s request for an extension of time. *See Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016) (court could not “guess at what the [ALJ] meant to say, but didn’t”); *Blake*, 24 BLR at 1-113. Thus, we vacate his exclusion of the rebuttal readings of the August 15, 2024 x-ray, proposed as Claimant’s Exhibit 5 and 6, and remand the case for the ALJ to address Claimant’s arguments.

### **Employer’s Cross-Appeal**

Claimant attended his Department of Labor (DOL)-sponsored complete pulmonary evaluation on June 7, 2023. Director’s Exhibit 12. He chose Lungs at Work as the provider. Director’s Exhibit 11. As a part of the examination, he underwent a chest x-ray, which was sent to Dr. DePonte for an interpretation. *Id.* at 14. Claimant and Employer each obtained another reading of the x-ray. Claimant obtained a reading by Dr. Smith, Director’s Exhibit 17, and Employer obtained a reading by Dr. Meyer, Director’s Exhibit 18.

At the hearing, Employer objected to the admission of Dr. Smith’s reading of the June 7, 2023 x-ray, arguing that because Dr. DePonte provided her reading to Lungs at Work, which was Claimant’s lay representative at the time, her interpretation of the x-ray should be considered Claimant’s affirmative exhibit under 20 C.F.R. §725.414(a)(2)(i), rather than a part of Claimant’s DOL-sponsored complete pulmonary evaluation. Hearing Transcript at 7. Thus, it contended that Dr. Smith’s reading (Director’s Exhibit 17) was not a rebuttal reading and thus exceeded the evidentiary limitations applicable to Claimant. *Id.*

Subsequently, the ALJ issued an order overruling Employer’s objection to Director’s Exhibit 17. Evidentiary Order. The ALJ noted that Claimant’s DOL-sponsored complete pulmonary evaluation was conducted at Lungs at Work and “[w]hile the propriety

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<sup>6</sup> The United States Supreme Court has outlined four factors to consider when determining if “excusable neglect” exists: (1) prejudice to the opposing party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1996)). As the Court explained, “the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” *Id.*

of Claimant’s DOL physical examination being conducted by the entity that subsequently represents him in this claim certainly could be an issue worthy of consideration,” it was not within his scope of authority to make a finding on this issue. *Id.* He found Director’s Exhibit 17 was designated as Claimant’s rebuttal to the DOL-sponsored x-ray at Director’s Exhibit 12; thus, it was within the evidentiary limits set forth in the regulations. *Id.*; see 20 C.F.R. §725.414(a)(2)(ii).

On cross-appeal, Employer again argues that Dr. DePonte’s reading of the June 7, 2023 x-ray was developed at Claimant’s request; thus, Dr. Smith’s reading of the same x-ray, also at Claimant’s request, exceeded the evidentiary limitations. Employer’s Brief at 18. We disagree.

As the Director argues, Employer has cited no authority that prevents Claimant from attending his DOL-sponsored complete pulmonary evaluation at the clinic where he also received lay representation. Director’s Response at 2; Employer’s Brief at 19 (citing 20 C.F.R. §725.414(a)(2)(ii) (providing evidentiary limits for claimants on rebuttal)). Nor has it explained how Lungs at Work’s providing the x-ray image to Dr. DePonte – or the doctor’s returning her reading to Lungs at Work to incorporate into Dr. Celko’s report – converted her reading from evidence sponsored by the Director into evidence sponsored by Claimant.<sup>7</sup> See Director’s Response at 2.

We find no abuse of discretion as the ALJ complied with the evidentiary limitations set forth in the regulations and Employer has provided no authority to support its position. *Blake*, 24 BLR at 1-113. Thus, we affirm the ALJ’s ruling admitting Dr. Smith’s x-ray interpretation at Director’s Exhibit 17 as Claimant’s rebuttal evidence to the DOL-sponsored x-ray reading at Director’s Exhibit 12. Evidentiary Order.

### **Invocation of the Section 411(c)(4) Presumption – Total Disability**

To invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis, 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. 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

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<sup>7</sup> Dr. Celko performed the DOL-sponsored complete pulmonary evaluation at Lungs at Work. Director’s Exhibit 12. Paradoxically, Employer has not contended this fact converted Dr. Celko’s report to affirmative evidence for Claimant, nor has it contended the two affirmative medical opinions Claimant submitted exceed the evidentiary limitations.

opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must consider all relevant evidence and weigh the evidence supporting total disability against the 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). Claimant argues the ALJ erred in finding the arterial blood gas studies, medical opinion evidence, and the evidence as a whole, does not establish total disability.<sup>8</sup> Claimant's Brief at 14-16.

### **Arterial Blood Gas Studies**

The ALJ considered two resting arterial blood gases dated June 7, 2023, and August 12, 2024. Decision and Order at 21. The June 7, 2023 study was qualifying<sup>9</sup> under the regulations while the August 12, 2024 study was not. Director's Exhibit 12; Employer's Exhibit 1. Finding more weight may be given to more recent testing, the ALJ found the arterial blood gas study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 21-22.

Claimant argues the ALJ erred in according more weight to the August 12, 2024 study based solely on its recency. Claimant's Brief at 14. Employer argues the ALJ permissibly accorded the more recent study more weight.<sup>10</sup> Employer's Response at 12. We agree with Claimant.

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<sup>8</sup> We affirm, as unchallenged on appeal, the ALJ's findings that the pulmonary function study evidence does 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); *see Skrack*, 6 BLR at 1-711; Decision and Order at 21-22.

<sup>9</sup> A "qualifying" blood gas study yields results equal to or less than the applicable table values in Appendix C 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)(ii).

<sup>10</sup> Employer also contends the June 7, 2023 blood gas study should not have been found qualifying, as there is no corresponding qualifying value for a PCO<sub>2</sub> of fifty in the tables in Appendix C. Employer's Response at 4 n.2. We reject Employer's argument. Employer is technically correct that, as written, the tables in Appendix C do not account for a PCO<sub>2</sub> value of exactly fifty. 20 C.F.R. Part 718, App. C. Employer's position, however, would preclude any study that produced this value from ever being qualifying regardless of the PO<sub>2</sub> value produced, even as studies with PCO<sub>2</sub> values below and above fifty could be qualifying. *Id.* It defies logic to find the Department of Labor (DOL) would deliberately exclude a value of exactly fifty. Employer offers no reason why the tables should be read that way and we will not interpret the regulations to produce such

A long line of circuit court cases requires ALJs to evaluate disability evidence both qualitatively and quantitatively, without resorting to mechanically crediting later evidence and, when a miner's condition improves, without reference to its chronological order. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (given the progressive nature of pneumoconiosis, an ALJ must resolve conflicting evidence when the miner's condition improves "without reference to their chronological relationship"); *see also Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993) ("A bare appeal to recency" in evaluating medical opinions "is an abdication of rational decision-making."); *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993) (same); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014) (ALJs must do a qualitative analysis of conflicting disability evidence). The Board has similarly held that it is irrational to credit evidence solely based on recency when the miner's condition has improved. *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50-51 (2023).

As the ALJ's sole basis for finding the arterial blood gas studies do not support a finding of total disability is that the more recent blood gas study is not qualifying, we vacate his finding that Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 21-22; *Adkins*, 958 F.2d at 51-52; *Kincaid*, 26 BLR at 1-50-51.

### **Medical Opinions**

Claimant next argues the ALJ erred in failing to consider the relevant evidence in determining the exertional requirements of his usual coal mine work and in weighing the medical opinion evidence. Claimant's Brief at 15-16.

Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's usual coal mine work as a hoist man. Decision and Order at 22 n.17. A miner's usual coal mine employment is the most recent job he performed

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an absurd result. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available"); *Thorpe v. Borough of Jim Thorpe*, 770 F.3d 255, 263 (3d Cir. 2014). Moreover, there is evidence that when DOL introduced the current blood gas tables, it intended for any blood gas studies that produce PCO<sub>2</sub> values of *fifty or above* - not "Above 50" - to be automatically qualifying. *See* 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980) ("The [DOL] has thus decided to adopt a value of 50 mm Hg pCO<sub>2</sub> in order to establish disability independent of the pO<sub>2</sub>."). Thus, we affirm the ALJ's determination that the June 7, 2023 blood gas study is qualifying. Decision and Order at 21.

regularly and over a substantial period of time. *Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982). The parties do not challenge the ALJ's finding that Claimant's usual coal mine employment was working as a hoist man; thus, this finding is affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22.

Claimant testified that as a hoist man, he would pull cars out, supply cars, unload tractor trailers, and monitor various aspects of the work such as the fans and electricity on computers. Hearing Transcript at 13-14, 24-25. He explained a particularly difficult task for him was doing gas checks on top of the silos, which are 200 feet up. *Id.* at 14. He agreed his job required heavy labor, noting he would sometimes have to straighten and unload the cars by hand, including bundles of roof bolts and concrete mix or rock dust, involving maybe eighteen cars a day. Hearing Transcript at 15. In addition, he submitted a written work history, providing similar explanations regarding his work tasks and explaining that each bundle of roof bolts weighed fifty pounds and each bag of concrete weighed sixty pounds. Director's Exhibit 12 at 10. He indicated one of the most strenuous tasks was cleaning out the cars, which required him to lift supplies and machinery that weighed "several hundred pounds" using dollies and lifts. Director's Exhibit 12 at 10-11.

In determining the exertional requirements of Claimant's usual coal mine employment, the ALJ took official notice of the *Dictionary of Occupational Titles* (DOT) and indicated that it classifies a hoist operator as requiring medium exertional work. Decision and Order at 22 n.17.

We agree with Claimant's argument that the ALJ did not sufficiently address Claimant's testimony in determining the exertional requirements of his usual coal mine employment, nor did he consider Claimant's detailed work history. Claimant's Brief at 2, 15; Hearing Transcript at 13-15, 24-25; Director's Exhibit 12 at 10-11. The ALJ provided no explanation for how he determined the exertional requirements of Claimant's position beyond the classification in the DOT. Thus, the ALJ did not consider if the exertional requirements of Claimant's usual coal mine work were consistent with this general classification of a hoist operator in the DOT or if it required a greater level of exertion, as Claimant contends. See *Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997) (ALJ must adequately explain his reasoning); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (failure to discuss relevant evidence requires remand). Because the ALJ's analysis does not discuss all relevant evidence and is not adequately explained, we vacate his finding that Claimant's usual coal mine employment required medium labor. Decision and Order at 22 n.17.

The ALJ next considered the medical opinions of Drs. Celko, Sood, Go, Basheda, and Tuteur. Decision and Order at 23-26. Drs. Celko, Sood, and Go opined that Claimant's

mild obstruction, air trapping, and qualifying blood gas study prevented him from performing his last coal mine employment, which required heavy lifting. Director's Exhibit 12; Claimant's Exhibits 1, 3. Drs. Basheda and Tuteur opined that Claimant could perform his last coal mining job based on the non-qualifying pulmonary function tests<sup>11</sup> and the most recent arterial blood gas results. Employer's Exhibits 1, 3.

The ALJ found Drs. Celko's, Sood's, and Go's opinions were not well-reasoned because they were contrary to the ALJ's finding that the arterial blood gas evidence does not support a finding of total disability, and because they did not consider the more recent non-qualifying studies. Decision and Order at 25-26. Further, the ALJ found Dr. Celko's opinion flawed as he did not explain how Claimant's "*mild* obstructive pattern and *mild* reduction in diffusing capacity" would preclude him from performing his last coal mine employment. *Id.* at 25 (emphasis in original). The ALJ found Drs. Basheda's and Tuteur's opinions to be well-reasoned as based on the non-qualifying testing results. *Id.*

Claimant argues the ALJ erred in failing to discuss the physicians' understanding of the exertional requirements of his usual coal mine employment when evaluating their total disability opinions. Claimant's Brief at 16. He further contends the ALJ erred in dismissing Drs. Celko's, Sood's, and Go's opinions for not considering the non-qualifying arterial blood gas study. *Id.* We agree.

In determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of the miner's usual coal mine work with the physician's description of the miner's pulmonary impairment and physical limitations. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); *see also Gonzales v. Director, OWCP*, 869 F.2d 776, 779 (3d Cir. 1989) (physician's opinion that a miner's impairment is not totally disabling lacks probative value if the physician doesn't know the miner's job requirements). Further, notwithstanding non-qualifying objective testing, total disability may be established by a reasoned medical opinion that the miner is unable to perform his usual coal mining work. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005). Even a mild impairment can be disabling, depending on the exertional requirements of the miner's usual coal mining work. *Cornett*, 227 F.3d at 578.

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<sup>11</sup>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).

The ALJ's lack of findings regarding the exertional requirements of Claimant's usual coal mine work and his focus on whether the objective testing was qualifying or non-qualifying, without determining if the expert's opinions supported a finding of total disability notwithstanding these findings, undermined his findings regarding the medical opinion evidence. *Cornett*, 227 F.3d at 578; *Lane*, 105 F.3d at 172; Decision and Order at 25-26. Similarly, his error in evaluating the arterial blood gas evidence also influenced his credibility findings. Decision and Order at 25-26.

Thus, we vacate the ALJ's credibility findings regarding the medical opinion evidence, his finding that the medical opinion evidence does not support a finding of total disability, 20 C.F.R. §718.204(b)(2)(iv), and his finding that the evidence does not establish total disability in consideration of the record as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 26-27. We further vacate his finding that Claimant did not invoke the Section 411(c)(4) presumption and the denial of benefits. 30 U.S.C. §921(c)(4); Decision and Order at 7, 27.

We decline to address, as premature, the parties' arguments regarding the ALJ's assessment of clinical and legal pneumoconiosis. Claimant's Brief at 13-14; Employer's Brief at 20-27.

### **Remand Instructions**

On remand, the ALJ must first consider whether Claimant's counsel's request for an extension of time to submit rebuttal x-ray evidence should be granted due to excusable neglect and thus whether Claimant is permitted to submit this additional evidence. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1996).

The ALJ must then reconsider the arterial blood gas study evidence and resolve the conflict in the evidence without regard to its recency to determine whether Claimant established total disability at 20 C.F.R. §718.204(b)(2)(ii). *See Adkins*, 958 F.2d at 51-52; *Kincaid*, 26 BLR at 1-50-51. He must further address the exertional requirements of Claimant's usual coal mine employment and reevaluate the medical opinions to determine whether the evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). The ALJ should recognize that a physician may offer a reasoned medical opinion diagnosing total disability even if the objective studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *Cornett*, 227 F.3d at 578.

In rendering his credibility findings, the ALJ should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Witmer*, 111 F.3d 352; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). He must explain his findings in accordance with the Administrative Procedure

Act.<sup>12</sup> 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 reweigh the evidence together as a whole and determine whether Claimant has established total disability pursuant to 20 C.F.R. §718.204(b). *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

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). Because Claimant established twenty-seven years of qualifying coal mine employment, if the ALJ finds Claimant established he is totally disabled, he will invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis. The ALJ must then consider whether Employer has rebutted the presumption. 20 C.F.R. §718.305(d)(1).

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge

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<sup>12</sup> 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).