U.S. Department of Labor

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

BRB No. 25-0182 BLA

MITCHELL D. HOLBROOK Claimant-Respondent v. CONSOL OF KENTUCKY, INCORPORATED and Self-Insured Through CONSOL ENERGY, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/21/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

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

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.

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2021-BLA-06005) rendered on a subsequent claim filed on November 4, 2019,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant worked for twenty-nine years in qualifying coal mine employment and found that Claimant established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309. He further found Employer did not rebut the presumption and awarded benefits.

[1] This is Claimant's eighth claim for benefits. On September 11, 2018, the district director denied Claimant's most recent prior claim, filed February 14, 2018, because Claimant failed to establish total disability. Decision and Order at 2. Claimant withdrew his other six prior claims. Director's Exhibits 1-6. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).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. Director's Exhibit 8.

[2] Section 411(c)(4) 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.

[3] 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). 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. *Id.*

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

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.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and 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, a 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 or comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[6] 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 medical

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

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Tr. at 13.

[6] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

opinion evidence and the evidence as a whole.[7] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 20-28.

Before weighing the medical opinions, the ALJ found Claimant's usual coal employment was working as a roof bolter, which required heavy labor. Decision and Order at 5-7. As this finding is unchallenged on appeal, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ considered three medical opinions. Dr. Shah examined Claimant on behalf of the Department of Labor on February 14, 2020. Director's Exhibit 17. She noted Claimant worked as a roof bolter, a position that required moderate to heavy labor.[8] *Id.* at 6. Specifically, she opined Claimant has a disabling obstructive impairment that would preclude him from performing his usual coal mine work, based on a pre-bronchodilator pulmonary function study showing a mild obstructive ventilatory impairment and an exercise arterial blood gas study reflecting "[a]bnormal gas exchange" and ventilatory reserve exhausted with exercise. *Id.* at 6-7. Dr. Shah concluded that although Claimant could do light to minimally moderate work, he lacks the pulmonary capacity to perform the moderate to heavy labor required in his usual work as a roof bolter. *Id.* at 7. Dr. Shah authored a supplemental report after reviewing additional evidence and reiterated that Claimant has a reduced ventilatory reserve and does not retain the pulmonary capacity to perform the duties of his usual coal mine employment. Director's Exhibit 43 at 9-10.

Dr. Rosenberg reviewed Claimant's medical records and opined Claimant has a mild obstructive respiratory impairment that normalizes with a bronchodilator. Director's Exhibit 41 at 5-6. He further opined Claimant retains the pulmonary capacity to perform the tasks of his last coal mining job. *Id.*; Employer's Exhibit 1 at 1. Dr. Tuteur reviewed Claimant's medical records and noted Claimant has a mild to moderate obstructive impairment that normalizes with a bronchodilator but opined Claimant is not totally

[7] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies 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 7-9, 17.

[8] Dr. Shah documented Claimant last worked as a roof bolter and that he engaged in several physical activities, including bending bolts by hand and laying 200 to 400 pound tracks and rails with two to four other miners. Director's Exhibit 17 at 3-4. She described his work as loading 300 to 500 roof bolts, glue sticks, and plates weighing twenty to thirty pounds each shift, which she stated entailed moderate to heavy labor. *Id.* at 4, 6. Claimant's Exhibit 3 at 7-8.

disabled, noting the non-qualifying February 14, 2020 pulmonary function study results.[9] Employer's Exhibit 2 at 4-5.

The ALJ found Dr. Shah's opinion well-reasoned and documented because she explained how Claimant's reduced ventilatory reserve and exercise blood gas study results[10] demonstrate that he lacks the pulmonary capacity to perform his usual coal mine work as a roof bolter. Decision and Order at 12-13. In contrast, the ALJ found that Drs. Rosenberg and Tuteur focused unconvincingly on Claimant's post-bronchodilator pulmonary function values when the question before the ALJ was whether Claimant can perform his usual coal mine work, not whether he can do so after taking medication. *Id.* at 14, 16. In addition, the ALJ found that, despite concluding that Claimant has a mild to moderate obstructive impairment, Dr. Tuteur did not adequately address how Claimant could perform the heavy-labor duties his work as a roof bolter required. *Id.* at 14. Finding that only Dr. Shah's opinion merited probative weight, the ALJ determined that the preponderance of the medical opinion evidence established total disability. *Id.* at 17.

Employer argues the ALJ erred in crediting Dr. Shah's opinion because Claimant failed to establish total disability based on qualifying pulmonary function and arterial blood gas testing at 20 C.F.R. §718.204(b)(2)(i), (ii), and Dr. Shah relied on Claimant's symptoms and subjective measurements to demonstrate that Claimant is disabled. Employer's Brief at 5-8. We disagree.

Contrary to Employer's contention, even if total disability cannot be established with qualifying pulmonary function tests or arterial blood gas studies at 20 C.F.R. §718.204(b)(2)(i), (ii), "total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory

[9] Dr. Tuteur also referenced the non-qualifying April 23, 2018 pulmonary function study. Employer's Exhibit 2 at 3. Because that study was from a prior claim, the ALJ did not consider it in determining whether Claimant established a change in an applicable condition of entitlement. Decision and Order at 15 n.17.

[10] Because Claimant had to perform heavy labor as a roof bolter, the ALJ found the exercise blood gas study results Dr. Shah relied upon merited greater weight than the resting blood gas study results. Decision and Order at 13 n.11. Employer states that it "emphatically agrees" with the ALJ on this point, but it asserts the ALJ nevertheless erred in finding total disability based on Dr. Shah's opinion because the exercise blood gas study she conducted was non-qualifying. Employer's Brief at 8. But as we explain below, Employer ignores that a physician can render a reasoned medical opinion of total disability even where the objective studies are non-qualifying. *See* 20 C.F.R. §718.204(b)(2)(iv).

diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents" him from performing his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (explaining a claimant can establish total disability despite non-qualifying objective tests). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co*., 60 F.3d 1138, 1142 (4th Cir. 1995); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). Therefore, the ALJ permissibly concluded that Dr. Shah gave a reasoned medical opinion that Claimant is totally disabled notwithstanding non-qualifying objective tests.

Employer's remaining arguments that the ALJ should have credited the contrary opinions of Drs. Rosenberg and Tuteur over that of Dr. Shah amount to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 8-10. Because the ALJ acted within his discretion in crediting Dr. Shah's opinion and discrediting those of Drs. Rosenberg and Tuteur, and substantial evidence supports his credibility determinations, we affirm his finding that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (as the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 16.

We also affirm, as supported by substantial evidence, the ALJ's finding that all the relevant evidence, when weighed together, establishes total respiratory disability. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 17. Thus, we affirm his finding that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §§718.305, 725.309(c); Decision and Order at 17. As Employer does not challenge the ALJ's finding that it did not rebut the presumption, we affirm it. *See Skrack*, 6 BLR at 1-711.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge