



BRB Nos. 21-0582 BLA  
and 21-0583 BLA

JOYCE A. WHITAKER )  
(o/b/o and Widow of IVAN WHITAKER) )

Claimant-Respondent )

v. )

COOK & SONS MINING, )  
INCORPORATED )

and )

NATIONAL UNION FIRE/CHARTIS )

Employer/Carrier- )  
Petitioners )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )

Party-in-Interest )

DATE ISSUED: 8/24/2022

DECISION and ORDER

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

James D. Holliday, Hazard, Kentucky, for Claimant.

Timothy J. Walker (Fogle Keller Walker, PLLC), Lexington, Kentucky, for  
Employer.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2016-BLA-05742, 2019-BLA-06113) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on November 10, 2014,<sup>1</sup> and a survivor's claim filed on April 17, 2019.

The ALJ found Claimant established the Miner had twenty-three years of underground coal mine employment or surface coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act 30 U.S.C. §921(c)(4) (2018).<sup>2</sup> Further, he found Employer did not rebut the presumption and awarded benefits in the miner's claim. Because the Miner was entitled to benefits at the time of his death, the ALJ also determined Claimant is automatically entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).<sup>3</sup>

On appeal, Employer asserts the ALJ erred in finding Claimant established the Miner was totally disabled and therefore erred in finding she invoked the Section 411(c)(4)

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<sup>1</sup> The Miner died on March 28, 2019. Survivor's Claim (SC) Director's Exhibit 23. Claimant, the Miner's widow, is pursuing his claim on behalf of his estate and her survivor's claim.

<sup>2</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

<sup>3</sup> Under Section 422(l) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

presumption.<sup>4</sup> Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

The Benefit 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.<sup>5</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assoc., Inc.*, 380 U.S. 359 (1965).

### **Miner's Claim**

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

A miner was totally disabled if he had a pulmonary or respiratory impairment that, standing alone, prevented him from performing his usual coal mine work.<sup>6</sup> *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 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 did not establish total disability based on the pulmonary function or arterial blood gas studies, or through evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 4-7. However, he found Claimant established total disability based on the medical opinions. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 7-10.

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<sup>4</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-three 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.

<sup>5</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); November 9, 2020 Hearing Transcript at 21; October 25, 2017 Hearing Transcript at 12.

<sup>6</sup> Because it is not challenged, we affirm the ALJ's determination that the Miner's usual coal mine employment as an "end load operator. . . required heavy manual labor." *See Skrack*, 6 BLR at 1-711; Decision and Order at 8.

Employer challenges the ALJ's finding the medical opinion evidence establishes total disability. Employer's Brief at 14-16. The ALJ considered Dr. Alam's opinion that the Miner was totally disabled, and the opinions of Drs. Broudy and Rosenberg that he was not. Decision and Order at 8-10; Miner's Claim (MC) Director's Exhibits 11 at 5; 18; 19; 20 at 6; Employer's Exhibits 1 at 3; 4 at 17; 5 at 20, 22-24; 9 at 2. He attributed little weight to the opinions of Drs. Broudy and Rosenberg as he found them neither reasoned nor documented, and he assigned probative weight to Dr. Alam's opinion as he found it well-reasoned and documented. Decision and Order at 8-10.

Employer argues the ALJ did not adequately explain why he credited Dr. Alam's opinion over the opinions of Drs. Broudy and Rosenberg and, thus, his findings do not satisfy the explanatory requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).<sup>7</sup> Employer's Brief at 15-16. In addition, Employer argues the ALJ erred in crediting Dr. Alam's opinion and discrediting the opinions of Drs. Broudy and Rosenberg. *Id.* at 14-16. We disagree.

Dr. Alam opined the Miner was totally disabled based on FEV<sub>1</sub> values on pulmonary function testing indicating the Miner had a "moderate mixed airflow deficit," along with resting arterial blood gas studies showing "mild hypoxemia with no retention of CO<sub>2</sub>." MC Director's Exhibits 11 at 5; 18 at 2; Claimant's Exhibit 5 at 10-13, 15. The ALJ found Dr. Alam correctly understood that the Miner's usual coal mine employment as an end load operator required him to load coal on the stockpile and clean up around the yard. Decision and Order at 8; *see* MC Director's Exhibit 11 at 2. Additionally, the ALJ found Dr. Alam's opinion "that the Miner had a pulmonary impairment which would have prevented him from returning to his usual coal mine employment . . . [was] based upon relevant histories, a physical examination, and objective testing." Decision and Order at 8. Contrary to Employer's argument, the ALJ permissibly found Dr. Alam's opinion well-reasoned and documented because the doctor's opinion is "consistent with the evidence he reviewed" and he adequately explained that the Miner's respiratory symptoms and pulmonary function testing rendered him totally disabled. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000).

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<sup>7</sup> The Administrative Procedure Act (APA) provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Dr. Broudy initially opined the Miner's non-qualifying<sup>8</sup> pulmonary function and arterial blood gas studies do not support total disability, but further stated the "pulmonary function studies show[] significant respiratory impairment" and indicate the Miner "would have trouble doing some of the jobs that he described [], particularly if he had to walk up grade and do some heavy repair work." MC Director's Exhibit 20 at 6. In his supplemental opinion, Dr. Broudy reiterated his opinion that the Miner's pulmonary function and arterial blood gas studies do not support a diagnosis of total disability because they are non-qualifying. Employer's Exhibit 9 at 2. Although he stated the Miner "probably could operate heavy equipment," he also stated the Miner "may have had difficulty doing repair work which [he believes] would be more arduous." *Id.*

The ALJ found Dr. Broudy's opinion equivocal and therefore entitled to reduced weight. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882 (6th Cir. 2000); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 9-10. Because Employer does not specifically challenge this finding, we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Further, the ALJ permissibly found his opinion inadequately explained because he did not fully address whether the "significant" respiratory impairment he diagnosed would have prevented the Miner from performing his usual coal mine employment despite the objective testing being non-qualifying. *See Napier*, 301 F.3d at 713-14; *Cornett*, 227 F.3d at 578 (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv).

Dr. Rosenberg opined the Miner's pulmonary function studies "reveal a reduction of the FVC and FEV<sub>1</sub> with the latter being reduced to a somewhat greater extent. Hence, the FEV<sub>1</sub>/FVC ratio was mildly reduced." Employer's Exhibit 1 at 3. He concluded the Miner had "a mild obstruction based on the FEV<sub>1</sub>/FVC ratio" that is not totally disabling. *Id.*; *see also* Employer's Exhibit 5 at 14-16, 22-23. The ALJ discredited Dr. Rosenberg's opinion because although he acknowledged the Miner worked as a loader operator, he misunderstood the exertional requirements of that job as only requiring "light to medium" labor, contrary to the ALJ's finding that the Miner's usual coal mine employment "involved heavy manual labor." Decision and Order at 9-10; Employer's Exhibit 5 at 11-12, 15, 25; *see Napier*, 301 F.3d at 713-14; *Cornett*, 227 F.3d at 578; *Budash v. Bethlehem*

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<sup>8</sup> A "qualifying" pulmonary function study or blood gas study yields values equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

*Mines Corp.*, 16 BLR 1-27, 1-29 (1991). Employer does not challenge this specific credibility finding; we therefore affirm it.<sup>9</sup> *Skrack*, 6 BLR at 1-711.

Because we can discern the ALJ's rationale underlying his credibility findings, we are not persuaded by Employer's argument that his findings do not satisfy the APA. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 522 (6th Cir. 2002) (APA satisfied where ALJ properly addressed the relevant evidence and provided a sufficient rationale for his findings); *see also Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the APA is satisfied); Employer's Brief at 15-16, 19-20.

While Employer generally argues Dr. Alam's opinion is not adequately reasoned whereas the opinions of Drs. Broudy and Rosenberg are reasoned and documented, its arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 14-16. We thus affirm the ALJ's determination that the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 10-11. Furthermore, we affirm his finding that all of the relevant evidence, weighed together, establishes total disability. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; 20 C.F.R. §718.204(b)(2); Decision and Order at 10-11.

We therefore affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b). Because Employer does not challenge the ALJ's finding that it failed to rebut the presumption, we affirm the award of benefits in the miner's claim. *See Skrack*, 6 BLR at 1-711; Decision and Order at 18.

### **Survivor's Claim**

Employer argues Claimant is not entitled to benefits in the survivor's claim because the "Miner's death was neither caused by, hastened by, nor contributed to, by pneumoconiosis." Employer's Brief at 17-18. Because we have affirmed the award of benefits in the miner's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l). 30 U.S.C. §932(l) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

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<sup>9</sup> Because the ALJ provided a valid reason for discrediting Dr. Rosenberg's opinion, we need not address Employer's additional arguments regarding the weight the ALJ assigned his opinion. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 15.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge