U.S. Department of Labor

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

BRB No. 22-0217 BLA

LOWELL E. STALLARD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MOTIVATION COAL COMPANY[1]	)	
	)	DATE ISSUED: 8/10/2023
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of William P. Farley, Administrative Law Judge, United States Department of Labor.

Lowell E. Stallard, Clintwood, Virginia.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

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[1] Employer points out that the ALJ incorrectly listed "Powell Mountain Coal Co. Inc." as the Employer and "Progress Fuels/Duke Energy" as its Carrier in the case caption. Decision and Order at 1; Employer's Brief at 1 n.2; Director's Exhibit 40. This appears to be a scrivener's error because on page seven of the Decision and Order, the ALJ properly found Motivation Coal Company is the responsible operator. Employer's Brief at 1 n.2; *see* Decision and Order at 7.

BUZZARD, Administrative Appeals Judge:

Claimant appeals, without representation,[2] Administrative Law Judge (ALJ) William P. Farley's Decision and Order Denying Benefits (2019-BLA-05194) rendered on a claim filed on March 16, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established eighteen years of qualifying coal mine employment, based on the parties' stipulation, but failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus, the ALJ found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act[3] or establish entitlement pursuant to 20 C.F.R. Part 718. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. He therefore denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has not filed a substantive response.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a

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

[3] Section 411(c)(4) provides a rebuttable presumption that a miner is total 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); *see* 20 C.F.R. §718.305.

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

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 qualifying pulmonary function studies or arterial blood gas studies,[5] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure,[6] 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 and thus could neither invoke the Section 411(c)(4) presumption

[5] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[6] Because the record contains no evidence that Claimant suffers from cor pulmonale with right-sided congestive heart failure, the ALJ properly found Claimant cannot establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 12.

nor establish entitlement under 20 C.F.R. Part 718. Decision and Order at 17.

Pulmonary Function Studies

The ALJ considered the results of three pulmonary function studies.[7] Decision and Order at 9-10. Because the ALJ accurately found there were no qualifying studies,[8] we affirm his determination that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i). *Id.* at 10.

Blood Gas Studies

The ALJ considered the results of three arterial blood gas studies. Decision and Order at 10-11. Dr. Raj's June 9, 2017 study produced qualifying values at rest. Director's Exhibit 17 at 19. Dr. McSharry's April 16, 2018 study produced non-qualifying values at rest and with exercise. Director's Exhibit 20 at 20. Dr. Sargent's December 18, 2020 study produced non-qualifying values at rest and with exercise. Employer's Exhibit 4 at 17. The ALJ stated "[m]ore weight may be accorded to the results of a recent blood gas study over one which was conducted earlier" and found the non-qualifying exercise studies "better approximate[d] the exertional conditions of [Claimant's] job." Decision and Order at 11. The ALJ further found Dr. Raj "retracted his position regarding Claimant's pulmonary condition."[9] *Id.* Thus, the ALJ found the more recent testing was entitled to greater weight

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[7] Because two of the studies reported heights of seventy-four inches and one reported a height of seventy-seven inches, the ALJ permissibly calculated an average height of seventy-five inches. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 9. He then used the closest greater table height at Appendix B of 20 C.F.R. Part 718 of 75.2 inches in determining whether each study was qualifying. *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); Decision and Order at 9.

[8] Dr. Raj's June 9, 2017 study produced non-qualifying pre-bronchodilator and post-bronchodilator results. Director's Exhibit 17 at 12. Dr. McSharry's April 16, 2018 study produced non-qualifying pre-bronchodilator and post-bronchodilator results. Director's Exhibit 20 at 6-7. Dr. Sargent's December 18, 2020 study produced non-qualifying pre-bronchodilator and post-bronchodilator results, and he opined the study was invalid. Employer's Exhibit 4 at 10-11.

[9] Dr. Raj reviewed Dr. McSharry's blood gas study and stated that based on the "entirely different results" that "it is very difficult . . . to state any decision regarding [Claimant's] pulmonary impairment confidently." Director's Exhibit 25 at 3.

and concluded Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii). *Id.*

We are unable to affirm the ALJ's analysis of the blood gas study evidence. An ALJ must 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, 718 (4th Cir. 1993). Because it is unclear the extent to which the ALJ's reliance on the more recent non-qualifying studies impacted his overall determination that Claimant did not establish total disability based on the blood gas study evidence, we vacate his finding at 20 C.F.R. §718.204(b)(2)(ii). *See Thorn*, 3 F.3d at 718; Decision and Order at 11.

Medical Opinion Evidence

In considering the medical opinion evidence, the ALJ permissibly credited Claimant's work history statements and testimony to find his usual coal mine work required "heavy exertion."[10] *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc) (ALJ has discretion to assess witness credibility and the Board will not disturb his findings unless they are inherently unreasonable); Decision and Order at 8; Hearing Transcript at 15; Director's Exhibit 4. He then considered three medical opinions. Decision and Order at 12-16.

Dr. Raj conducted the Department of Labor (DOL) complete pulmonary evaluation of Claimant on June 9, 2017, and obtained non-qualifying pulmonary function study results and a qualifying resting blood gas study. Director's Exhibit 17. He noted Claimant's history of sputum production, cough, wheezing, and worsening shortness of breath, and reported that Claimant described shortness of breath after walking uphill for fifty feet. *Id.* at 3. He opined Claimant's pulmonary function study results showed a moderate obstructive defect with a reduced diffusion capacity and that his resting blood gas study showed severe hypoxemia. *Id.* at 4-5. Dr. Raj diagnosed coal workers' pneumoconiosis with chronic obstructive pulmonary disease (COPD) based on Claimant's respiratory

[10] The ALJ relied on Claimant's statements that his coal mine work required him to lift dynamite weighing sixty pounds and multiple casings, each weighing fifty pounds, multiple times per day. Decision and Order at 8; Hearing Transcript at 15; Director's Exhibit 4.

symptoms of cough, shortness of breath and wheezing, along with his pulmonary function study results. *Id.* at 4-5. Dr. Raj opined that Claimant's "physical capacity is greatly diminished due to total disability resulting from pulmonary impairment. [He] gets short of breath walking a 50-foot distance uphill. With such a reduced physical capacity resulting from pulmonary impairment, this patient cannot meet the exertional requirement of the last coal mine employment job." *Id.*

Dr. McSharry examined Claimant on April 16, 2018, and also reviewed his medical records. Director's Exhibit 20. He opined Claimant's pulmonary function study results showed a mild restrictive and obstructive defect with a mild diffusion abnormality and his blood gas study results showed moderate resting hypoxemia. *Id.* at 3, 6, 20. Dr. McSharry noted Claimant reported having shortness of breath at rest and that he could not walk 100 yards without having to stop due to shortness of breath. *Id.* at 4. However, Dr. McSharry opined Claimant is not totally disabled by a respiratory or pulmonary impairment because his objective test results "are well outside Department of Labor criteria for disability." *Id.* at 3.

Dr. Raj reviewed Dr. McSharry's examination report and prepared a supplemental report July 18, 2018. Director's Exhibit 25. He disagreed with Dr. McSharry's classification of Claimant's impairment on pulmonary function testing as a "mild obstructive and restrictive defect" and opined the pulmonary function studies obtained by both doctors showed a "moderate ventilatory defect." *Id.* at 3. He acknowledged, however, that Dr. McSharry's blood gas study results were non-qualifying and stated, based on the "entirely different results," that "it is very difficult . . . to state any decision regarding [Claimant's] pulmonary impairment confidently." *Id.* at 3.

At his January 8, 2021 deposition, Dr. McSharry opined Claimant has a mild to moderate respiratory impairment that would not prevent him from performing his last coal mine work. Employer's Exhibit 6 at 14, 21-22. He further explained Dr. Raj's pulmonary function study results would be "edging toward [a] mild to moderate" obstruction if the results were adjusted for the height Dr. McSharry had recorded for Claimant.[11] *Id.* at 16-17.

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[11] Dr. Raj recorded Claimant's height to be seventy-seven inches, whereas Dr. McSharry recorded his height to be seventy-four inches. Director's Exhibits 17 at 12, 20 at 7. Because the three studies reported varying heights for Claimant ranging from seventy-four to seventy-seven inches, the ALJ found Claimant's average height to be seventy-five inches. Decision and Order at 9.

Dr. Sargent reviewed Claimant's medical records and examined him on December 18, 2020. Employer's Exhibit 4. Although he noted Claimant's pulmonary function study was invalid and was likely not representative of Claimant's lung function, he opined Claimant "may" have a moderate obstructive impairment. *Id.* at 1-2, 10. He further opined Claimant's blood gas study results showed moderate hypoxemia at rest and with exertion. *Id.* at 1-2, 17. Dr. Sargent noted Claimant reported having shortness of breath while walking on level ground for approximately 200 feet. *Id.* at 4. He opined Claimant has a moderate obstructive impairment that "likely is not disabling." *Id.* at 2. At his January 4, 2021 deposition, Dr. Sargent opined that Claimant is not totally disabled. Employer's Exhibit 5 at 19.

The ALJ found each physician had an adequate understanding of the exertional requirements of Claimant's usual coal mine work. Decision and Order at 16. But the ALJ found Dr. Raj's opinion is "not supported by the record evidence, is vague and inconsistent, and is not well-reasoned." *Id.* He specifically noted Dr. Raj relied "primarily on subjective symptoms reported by Claimant" and failed to explain why Claimant's non-qualifying pulmonary function study results supported a finding of total disability. *Id.* The ALJ also observed Dr. Raj could not explain the improvements recorded during Dr. McSharry's blood gas study. *Id.* In contrast, the ALJ found Drs. McSharry's and Sargent's opinions supported by the non-qualifying objective evidence and therefore reasoned and documented and entitled to controlling weight. *Id.* Consequently, the ALJ found the medical opinions did not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv), and that Claimant did not establish a totally disabling respiratory or pulmonary impairment when considering the evidence as a whole. *Id.* at 16-17; *see* 20 C.F.R. §718.204(b)(2).

We vacate the ALJ's weighing of the medical opinion evidence as he failed to adequately explain his credibility determinations and did not perform a proper legal analysis of whether Claimant is totally disabled. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

A physician may base his total disability opinion on a miner's respiratory symptoms. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physician's identification of the miner's symptoms of shortness of breath, acute shortness of breath, and mild shortness of breath with various activities constitutes a "reasoned medical opinion"); *Jordan v. Benefits Review Bd. of the U.S. Dep't of Labor*, 876 F.2d 1455, 1460 (11th Cir. 1989) (physician's "recitation of [the miner's] symptoms" constituted relevant evidence that the ALJ must consider absent a specific "basis for a finding that the listed limitations are the patient's rather than the doctor's conclusions"). Thus, contrary to the ALJ's analysis, there is nothing suspect about Dr. Raj's opinion even if he relied primarily on Claimant's symptoms to find him totally disabled.

The ALJ further erred in stating that Dr. Raj did not explain his reliance on the non-qualifying pulmonary function study results. Decision and Order at 16. Dr. Raj specifically explained why he believed the pulmonary function study, blood gas study, and diffusion capacity test results were "abnormal" when comparing Claimant's actual results to the predicted values. Director's Exhibits 17 at 4-5, 25 at 3. Considering both Claimant's symptoms and his objective testing results together, Dr. Raj concluded Claimant would not be able to meet the exertional requirements of his last coal mine work.[12] Director's Exhibit 17 at 5. Additionally, after reviewing Dr. McSharry's objective testing, Dr. Raj maintained that Claimant has a moderate respiratory impairment. Director's Exhibit 25 at 3. Dr. Raj's opinion diagnosing a moderate impairment is consistent with Dr. Sargent's opinion diagnosing the same. *Id.*; Director's Exhibit 17 at 4-5; Employer's Exhibit 4 at 2. Only Dr. McSharry characterized Claimant's impairment as mild to moderate. Employer's Exhibit 6 at 14, 21-22.

Because the ALJ failed to properly consider the bases for Dr. Raj's opinion that Claimant is totally disabled, we vacate his discrediting of it. *See Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985) (if the ALJ misconstrues relevant evidence, the case must be remanded for reevaluation of the issue to which the evidence is relevant); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand).

Moreover, the ALJ's assessment of the medical opinions fails to properly consider that Claimant may establish total disability notwithstanding non-qualifying objective tests. 20 C.F.R. §718.204(b)(2)(iv); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) (even a nonqualifying pulmonary function study reflecting a mild impairment may be totally disabling); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997); *see also Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005). 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 usual coal mine employment. *See Scott*, 60 F.3d at 1141 (physical limitations described in a doctor's report are sufficient to establish total disability); *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

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[12] While the ALJ discredited Dr. Raj's opinion, in part, because he was unable to explain why the blood gas study results obtained by Dr. McSharry were non-qualifying for total disability, the ALJ did not explain how or whether Dr. Raj's uncertainty regarding the blood gas studies undercuts his conclusions based on the pulmonary function studies and Claimant's symptoms. Decision and Order at 16.

that conclusion."); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (description of physical limitations in performing routine tasks may be sufficient to allow the ALJ to infer total disability).

Here, the ALJ failed to address whether there is sufficient information in the record from which to conclude that Claimant's moderate respiratory impairment would preclude him from performing the "heavy exertion" required by his usual coal mine work. *See* 30 U.S.C. §923(b) (ALJ must address all relevant evidence); *Cornett*, 227 F.3d at 578; *see also Director, OWCP v. Rowe*, 710 F. 2d 251, 255 (6th Cir. 1983) ("When the ALJ fails to make important and necessary factual findings, the proper course for the Board is to remand the case . . . rather than attempting to fill the gaps in the ALJ's opinion."); Decision and Order at 16-17. Consequently, we vacate the ALJ's finding that Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the evidence as a whole. We therefore vacate the ALJ's finding that Claimant did not invoke the Section 411(c)(4) presumption.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability based on the blood gas studies and provide an adequate rationale for how he resolves the conflicting evidence. 20 C.F.R. §718.204(b)(2)(ii). The ALJ must also reconsider the medical opinions and determine whether they are reasoned and documented to support a finding of total disability. Because the physicians are in agreement that Claimant has a respiratory impairment, the ALJ must consider whether that impairment, when considered with any physical limitations or respiratory symptoms, would preclude Claimant from performing his usual coal mine employment. *Cornett*, 227 F.3d at 578; *Scott*, 60 F.3d at 1141; *Budash*, 9 BLR at 1-51-52. The ALJ must consider the qualifications of the respective physicians, the explanations for their opinions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses.[13] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). If the ALJ determines total disability has been demonstrated by the blood gas studies or medical opinions, or both, he must reach a conclusion as to whether Claimant is totally disabled based on the evidence considered as

[13] On remand, because the ALJ concluded that Claimant has a moderate impairment, he must assess the credibility of Dr. McSharry's opinion that Claimant's impairment is mild to moderate. Decision and Order at 17.

a whole. *See* 20 C.F.R. §718.204(b)(2); *Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988).

If Claimant establishes total disability, he will invoke the Section 411(c)(4) presumption and the ALJ must consider if Employer has rebutted it.[14] 20 C.F.R. §718.305(d)(1)(i), (ii). If Claimant does not establish total disability, however, the ALJ may reinstate the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. In rendering his findings on remand, the ALJ must comply with the Administrative Procedure Act.[15] 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).

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[14] We note the ALJ did not determine whether Claimant could establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. However, there appears to be no evidence in the record that Claimant has the disease.

[15] The Administrative Procedure Act 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).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.[16]

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

JONES, Administrative Appeals Judge, concurring:

Because the claimant is self-represented, the Board must assess whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law. 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). Nonetheless, the Board lacks the authority to find facts. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc) (Board's scope of review is a narrow one that can be exceeded if it engages in the initial consideration of evidence, which is the responsibility of the ALJ). Because much of the summary set forth in this

[16] While our concurring colleague agrees with our decision, she appears to take issue with our summary of the evidence – not that we've mischaracterized the evidence or impermissibly rendered findings within the ALJ's discretion but, rather, that we have simply taken the step of setting forth the relevant evidence as part of our decision. We remind our colleague that the Black Lung Benefits Act specifically mandates that "all relevant evidence shall be considered," 30 U.S.C. §923(b), while the Board's explicit statutory obligation is to consider whether the "decision under review . . . is supported by substantial evidence in the record considered as a whole." 33 U.S.C. §921(b)(3). In this case as in all others, demonstrating an understanding of the relevant evidence is consistent with our statutory obligation, it enables the parties and ALJ to better understand our rationale, and it is difficult to imagine how we could fulfill our statutory duty without it.

decision is not based upon facts found by the ALJ below and because the Board has directed the ALJ to consider the evidence identified in the majority opinion, I concur in the result only.

MELISSA LIN JONES
Administrative Appeals Judge