U.S. Department of Labor

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

BRB Nos. 24-0198 BLA, 24-0198 BLA-A,
24-0205 BLA, and 24-0205 BLA-A

FAYE A. HATFIELD (o/b/o and Widow of JACK D. HATFIELD) Claimant-Petitioner Cross-Respondent v. MCNAMEE RESOURCES, INCORPORATED and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Respondents Cross-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	**NOT-PUBLISHED** DATE ISSUED: 08/20/2025 DECISION and ORDER

Appeal of the Decisions and Orders Denying Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for Claimant.

Chris M. Green and Wesley A. Shumway (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, for Employer and its Carrier.

David Giannaula and Amanda Torres (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

GRESH, Chief Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge:

Claimant[1] appeals, and Employer and its Carrier (Employer) cross-appeal, Administrative Law Judge (ALJ) Sean M. Ramaley's Decisions and Orders Denying Benefits[2] (2020-BLA-06079 and 2021-BLA-05239) 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 subsequent claim[3] filed on November 17, 2017, and a survivor's claim filed on June 22, 2020.

[1] Claimant is the widow of the Miner, who died on January 30, 2020. Miner's Claim (MC) Claimant's Exhibit 1; Survivor's Claim (SC) Claimant's Exhibits 8, 10. She is pursuing the miner's claim on behalf of his estate and her own survivor's claim. MC Director's Exhibit 82; SC Director's Exhibit 6.

[2] Claimant's appeal, and Employer's cross-appeal, in the miner's claim were assigned BRB No. 24-0198 BLA and BRB No. 24-0198 BLA-A, respectively, and her appeal in the survivor's claim, and Employer's cross-appeal, were assigned BRB No. 24-0205 BLA and BRB No. 24-0205 BLA-A, respectively. The Benefits Review Board has consolidated these appeals for purposes of decision only. *Hatfield v. McNamee Res., Inc.*, BRB Nos. 24-0198 BLA, 24-0198 BLA-A, 24-0205 BLA, and 24-0205 BLA-A (Oct. 31, 2024) (Order) (unpub.).

[3] This is the Miner's fourth claim for benefits. *See* MC Director's Exhibits 1-3, 5. On September 29, 2003, ALJ Robert J. Lesnick denied the Miner's most recent prior claim, filed on January 26, 2001, because although the Miner established the existence of

In the miner's claim, the ALJ credited the Miner with 32.44 years of coal mine employment with at least fifteen years in underground or substantially similar surface coal mine employment but found he did not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). He therefore found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4) (2018), or establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309.[5] Based on Claimant's failure to establish total disability, an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits in the miner's claim.

In the survivor's claim, the ALJ found Claimant did not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) based on her failure to establish total disability, 20 C.F.R. §718.305, and found that the evidence does not establish the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c). Thus, he denied benefits in the survivor's claim.

On appeal, Claimant argues that the ALJ erred in finding she did not establish total disability in the miner's and survivor's claims and therefore did not invoke the presumption of total disability or death due to pneumoconiosis at Section 411(c)(4). Employer responds in support of the denial of benefits in both claims. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a response brief urging the Board to hold the

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pneumoconiosis arising out of his coal mine employment, he did not establish that he was totally disabled due to pneumoconiosis and therefore did not establish a change in an applicable condition of entitlement. MC Director's Exhibit 3.

[4] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability or death was due to pneumoconiosis if he had 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.

[5] 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 the Miner failed to establish a totally disabling respiratory or pulmonary impairment in his prior claim, Claimant had to submit new evidence establishing this element to obtain review of the merits of the Miner's current claim. *Id.*

ALJ erred in finding that the Miner was not totally disabled and therefore also erred in finding Claimant did not invoke the Section 411(c)(4) presumption in either claim. Consequently, the Director requests that the Board remand the case for the ALJ to consider whether Employer can rebut the presumption.

On cross-appeal, Employer argues in the miner's claim that if the case is remanded, the ALJ should be directed to adequately consider the non-qualifying December 20, 2017 treatment pulmonary function study and reconsider Drs. Jarboe's and Zaldivar's opinions concerning total disability. Claimant responds, stating the Board should reject Employer's arguments on cross-appeal. Employer replies, reiterating its contentions on cross-appeal.

On cross-appeal in the survivor's claim, Employer contends that if the case is remanded, the ALJ should be directed to reconsider Dr. Basheda's opinion regarding legal pneumoconiosis.[6] Claimant did not file a response to Employer's cross-appeal in the survivor's claim and the Director did not file a response in either cross-appeal.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.[7] 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, 361-62 (1965).

The Miner's Claim

Invocation of the Section 411(c)(4) Presumption - Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented 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

[6] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had 32.44 years of coal mine employment with at least fifteen years in underground or substantially similar surface coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); MC Decision and Order at 7-8; SC Decision and Order at 6, 8.

[7] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 6; SC Director's Exhibit 7.

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 the pulmonary function studies support total disability, whereas the arterial blood gas studies and medical opinions do not support total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure.[8] 20 C.F.R. §718.204(b)(2); MC Decision and Order at 23-28. He then found Claimant did not establish the Miner had a totally disabling respiratory or pulmonary impairment when weighing the evidence as a whole. MC Decision and Order at 27-28.

Claimant's Appeal

Claimant asserts the ALJ erred in finding that she did not establish that the Miner was totally disabled as the pulmonary function study evidence and Dr. Ammisetty's resting blood gas study support a finding of total disability. MC Claimant's Brief at 3-5. The Director agrees, arguing remand is required because the ALJ erred in finding that the qualifying pulmonary function study evidence was offset by the non-qualifying blood gas study evidence,[9] as they measure different types of impairment. Director's Brief at 3-4 (unpaginated). Because no contrary probative evidence exists, the Director contends that the ALJ is required to find Claimant established total disability. *Id.* at 4.

Employer responds that the ALJ's finding that total disability was not established should be affirmed because the ALJ properly weighed the blood gas study evidence and because the United States Court of Appeals for the Fourth Circuit's holding in *Lane v. Union Carbide Corp.*, 105 F.3d 166 (4th Cir. 1997) supports the ALJ's determination that, when weighing the evidence as a whole, the evidence does not support a finding of total

[8] We affirm, as unchallenged, the ALJ's finding that there is no evidence of cor pulmonale with right-sided congestive heart failure. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(iii); MC Decision and Order at 23.

[9] 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).

disability. Employer's Brief in the Miner's Claim at 8-17 (also citing *Casey v. Island Creek Coal Co.*, 165 F.3d 910 (Table) (4th Cir. 1998); *Westmoreland Coal Co. v. Dir., Off. of Workers' Comp. Programs*, 548 F. App'x 840, 841-42 (4th Cir. 2013)). We agree with the Director's position that remand is required for the ALJ to reconsider his total disability findings.

As the Director accurately states, pulmonary function and blood gas studies measure different types of impairment. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). Thus, the ALJ erred in stating that because the pulmonary function studies support a finding of total disability and the blood gas studies do not, the objective tests are, at best, in equipoise. MC Decision and Order at 27. Further, we reject Employer's contention that the Fourth Circuit's prior holdings support the ALJ's determination. In the cases Employer cites, the ALJ relied on medical opinions explaining why the objective studies are insufficient to support a finding of total disability. *See Lane*, 105 F.3d at 171-74; *Casey*, 165 F.3d 910; *Westmoreland*, 548 F. App'x at 841-42. However, in this case, the ALJ discredited all the medical opinions and therefore could not rely on them when weighing the pulmonary function study and blood gas study results. *See* MC Decision and Order at 26-27. Thus, the ALJ relied solely on the objective pulmonary function and blood gas studies, which cannot constitute contrary probative evidence of each other as they do not measure the same type of impairment. *See Sheranko*, 6 BLR at 1-798 (because blood gas studies and pulmonary function studies measure different types of impairment, the results of a qualifying pulmonary function study are not called into question by a contemporaneous normal blood gas study); *see also Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993). We therefore vacate the ALJ's findings that Claimant did not establish that the Miner had a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2),[10] and therefore did not invoke the Section 411(c)(4)

[10] To the extent it is adequately briefed, we reject Claimant's assertion that the ALJ erred in finding Claimant did not establish total disability because Dr. Ammisetty's December 13, 2017 resting blood gas study was qualifying. MC Claimant's Brief at 3-5. The ALJ considered the December 13, 2017 blood gas study that had qualifying values at rest and non-qualifying values with exercise and an August 30, 2018 blood gas study that had non-qualifying values at rest and no exercise study was performed. MC Decision and Order at 12, 25-26; MC Director's Exhibits 16, 22. The ALJ permissibly gave more weight to the non-qualifying exercise study as he found it was more representative of the Miner's ability to perform the duties of his usual coal mine work. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984) (exercise blood gas study may be provided more weight than resting blood gas studies); MC Decision and Order at 26. Thus, we affirm the ALJ's finding that the blood gas studies do not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii).

presumption or establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). MC Decision and Order at 27-28. Consequently, we also vacate the denial of benefits in the miner's claim. We decline to hold the pulmonary function tests establish total disability as a matter of law as the Director urges, however, because, as Employer argues in its cross-appeal, the ALJ did not address all of the studies in the record.

Employer's Cross-Appeal

Because we vacate the ALJ's weighing of the evidence as a whole to find total disability was not established, we address Employer's arguments on cross-appeal concerning the ALJ's weighing of the pulmonary function studies and medical opinions at 20 C.F.R. §718.204(b)(2). *See* MC Employer's Brief at 18-22.

Pulmonary Function Studies

The ALJ considered the results of two pulmonary function studies dated December 13, 2017, and August 30, 2018. MC Decision and Order at 11-12, 23-25. Applying the table values at Appendix B of 20 C.F.R. Part 718 for a male aged seventy-one years old[11] with a height of 66.75 inches,[12] the ALJ found the December 13, 2017 study produced qualifying values before the administration of a bronchodilator, but non-qualifying values after the administration of a bronchodilator. MC Director's Exhibit 16. The August 30, 2018 study produced qualifying results both before and after the administration of a bronchodilator. MC Director's Exhibit 22. The ALJ considered Dr. Jarboe's concerns regarding the acceptability of the December 13, 2017 study, as well as Drs. Jarboe's and Zaldivar's opinions relying on extrapolated qualifying values based on the Knudsen equations for ages over seventy-one. MC Decision and Order at 24-25; MC Director's Exhibit 22 at 4; MC Employer's Exhibits 1; 4 at 21-26; 5 at 21-22. However, the ALJ

[11] The ALJ permissibly used the table values at Appendix B of 20 C.F.R. Part 718 for a seventy-one-year-old to assess whether the Miner was totally disabled. *See K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008); MC Decision and Order at 24.

[12] Noting differences in the Miner's recorded height, the ALJ first permissibly resolved the conflict by averaging the recorded heights to find the Miner's height was 66.75 inches. *See Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); *Meade*, 24 BLR at 1-44; *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); MC Decision and Order at 24 n.13. He then used the closest greater height of 66.9 inches when evaluating the studies' values using Appendix B of 20 C.F.R. Part 718. MC Decision and Order at 24-25.

ultimately found that after weighing all the pulmonary function study evidence together,[13] it supports a finding of total disability. MC Decision and Order at 25.

Employer does not directly challenge this finding. Rather, it argues the ALJ failed to consider a December 20, 2017 pulmonary function study contained in the Miner's treatment records that produced non-qualifying results before the administration of a bronchodilator[14] and post-bronchodilator results were not obtained. MC Employer's Brief at 21; *see* MC Director's Exhibit 22 at 47. It states that "[s]ince this error favored the Claimant [sic], however, it offers additional support for the ALJ's ultimate conclusion that the Claimant failed to establish this element of entitlement." MC Employer's Brief at 21. Claimant generally responds, asserting the ALJ discussed this study and did not err in his consideration of it in finding the Miner totally disabled. MC Claimant's Response to Cross-Petition at 4. Employer replies, reiterating its arguments. MC Employer's Reply to Cross-Petition at 3-4. We agree with Employer that, on remand, the ALJ must address all relevant evidence.

Although the ALJ mentioned the December 20, 2017 pulmonary function study when summarizing the Miner's treatment records,[15] he did not indicate whether it produced qualifying values or weigh it when discussing the other pulmonary function studies of record or when weighing the evidence as a whole. *See* MC Decision and Order at 19. We also note that the non-qualifying December 20, 2017 treatment pulmonary function study was taken between, and close in time, to the qualifying pre-bronchodilator values on the December 13, 2017 and August 30, 2018 studies. Because the ALJ failed to consider this

[13] The ALJ indicated that he gave more weight to the qualifying pre-bronchodilator values on the December 13, 2017 study because "the test is whether a miner can perform his job duties, not whether he can perform those job duties after taking medication." MC Decision and Order at 24.

[14] The December 20, 2017 pulmonary function study values are non-qualifying when applying the height of 68 inches, noted on the study results, or the height of 66.75 inches, which the ALJ applied in evaluating the other pulmonary function studies. 20 C.F.R. §718.204(b)(2)(i).

[15] The ALJ noted that Dr. Ammisetty interpreted the December 20, 2017 pulmonary function study as showing an airway obstruction and air trapping and stated the results indicated central airway disease. MC Decision and Order at 19. Dr. Ammisetty also stated that studies with exercise would be beneficial in evaluating the presence of hypoxemia. *Id.*

relevant evidence, we must vacate his findings at 20 C.F.R. §718.204(b)(2)(i).[16] *See McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984) (failure to consider relevant evidence requires remand); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence).

Medical Opinions

The ALJ first found the Miner's usual coal mine work as a truck driver "required low to moderate amounts of physical labor."[17] MC Decision and Order at 8. As this finding is not challenged on appeal, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ then considered the medical opinions of Drs. Ammisetty, Jarboe, and Zaldivar. MC Decision and Order at 12-18, 26-27. He found Dr. Zaldivar "slightly better qualified" than Drs. Ammisetty and Jarboe, who he determined are "similarly qualified."

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[16] Unlike our dissenting colleague, we conclude that remand is appropriate for the ALJ to consider the December 20, 2017 pulmonary function study and factor it into his analysis of total disability. The ALJ must consider all relevant evidence and explain the weight he accords it. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 254 (4th Cir. 2016); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533-34 (4th Cir. 1998). In this case, the ALJ did not fail to discuss evidence that was "merely cumulative or concerned an uncontested point." *Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 697 (4th Cir. 2024) (quoting *Addison*, 831 F.3d at 254). Instead, he failed to weigh a non-qualifying pulmonary function study that potentially could make a difference on the issue in dispute: whether Claimant is totally disabled. *Id.* While it is possible the "ALJ may have come to the same conclusion" at total disability even considering the non-qualifying December 20, 2017 pulmonary function study, "we cannot be sure." *Id.* at 694 (quoting *Am. Energy, LLC v. Director, OWCP,* [*Goode*], 106 F.4th 319, 334 (4th Cir. 2024)). Therefore, as it the role of the ALJ to weigh the evidence, we instruct him to do so on remand. *See McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984) (failure to consider relevant evidence requires remand).

[17] The ALJ indicated the Miner stated his last job as a slate truck driver required him to sit for 12.5 hours a day, stand for thirty minutes a day, and lift and carry 10-15 pounds at varied times per day. MC Decision and Order at 8; MC Director's Exhibit 7. The ALJ also pointed to the Miner's employment history form, where he stated he "didn't have to lift much as a driver" and "really didn't have to do much work as a truck driver." MC Decision and order at 8 (citing MC Director's Exhibit 7 at 2).

Id. at 26. Dr. Ammisetty opined that the Miner was totally disabled, but the ALJ found he failed to state whether he believed the Miner had the pulmonary capacity to drive a truck. *Id.*; *see* MC Director's Exhibits 16, 23. Thus, the ALJ found his opinion poorly reasoned and poorly documented and entitled to "little weight."[18] MC Decision and Order at 26. Drs. Jarboe and Zaldivar both opined that the Miner was not totally disabled from performing the exertional requirements of his job as a truck driver.[19] MC Director's Exhibit 22; MC Employer's Exhibits 1, 4, 5. However, the ALJ gave their opinions "little weight" because he found them poorly reasoned and documented, given that they questioned the reliability of the Department of Labor's predicted values tables for pulmonary function studies as an adequate indicator of total disability for miners over seventy-one years old. MC Decision and Order at 27; MC Director's Exhibit 22 at 4, 12; MC Employer's Exhibits 1 at 9-10; 4 at 30, 37; 5 at 22, 26-27, 31, 38-41. Because the ALJ discredited all the medical opinions on the issue of total disability, he found they did not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). MC Decision and Order at 27.

On cross-appeal, Employer asserts the ALJ erred in discrediting Drs. Jarboe's and Zaldivar's opinions as they both sufficiently explained that despite the pulmonary function study results, the Miner could still perform the exertional requirements of his job driving slate trucks. MC Employer's Brief at 18-20. Claimant responds, generally stating that the Board should affirm the ALJ's discrediting of their opinions. MC Claimant's Response to Cross-Appeal at 4-6. Employer replies, reiterating its arguments. MC Employer's Reply to Cross-Appeal at 3. We reject Employer's assertion that the ALJ must reconsider Drs. Jarboe's and Zaldivar's opinions on remand.

Contrary to Employer's contention, the ALJ permissibly discredited Drs. Jarboe's and Zaldivar's opinions because in assessing whether the Miner had a totally disabling respiratory or pulmonary impairment, they relied on the Knudsen equations in evaluating whether the pulmonary function study values are qualifying for the Miner's age.[20] MC

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[18] Claimant does not challenge the ALJ's discrediting of Dr. Ammisetty's opinion, and we therefore affirm it. *See Skrack*, 6 BLR at 1-711.

[19] Dr. Zaldivar initially opined that the Miner's mild airway obstruction would prevent him from performing the job of tipple foreman, which required him to lift 100 pounds. MC Employer's Exhibit 1 at 10. However, during his deposition, Dr. Zaldivar clarified that the Miner would be able to perform, from a pulmonary standpoint, the exertional requirements required by his job as a truck driver. Employer's Exhibit 5 at 31.

[20] In concluding that the Miner "retains the functional pulmonary capacity to perform his last job of hauling slate," Dr. Jarboe indicated the Miner's pulmonary function

Director's Exhibit 22 at 12; *see also* MC Employer's Exhibits 1 at 9; 4 at 30-31, 37; 5 at 22, 26-27, 31. However, the ALJ found that Dr. Jarboe did not sufficiently demonstrate that his calculation method, upon which Dr. Zaldivar also relied, "was more reliable or accurate than the Department's reliance on the Appendix B table" – a finding Employer does not challenge and which we therefore affirm. *See Skrack*, 6 BLR at 1-711; MC Decision and Order at 27. Because the physicians believed that the Miner had normal lung function, based on his age and Dr. Jarboe's extrapolated values, the ALJ rationally discredited their opinions that the Miner would have been able to perform the exertional requirements of his usual coal mine work. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08 (4th Cir. 2000); MC Decision and Order at 27. Thus, we affirm the ALJ's discrediting of Drs. Jarboe's and Zaldivar's opinions and his finding that the medical opinion evidence as a whole does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv).

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §§718.305(b)(1)(iii), 718.204(b)(2).

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study values exceed disabling values using the Knudsen equations, the blood gas values were within normal limits, and there is no indication that the Miner had a diffusion impairment leading to exercise-induced hypoxemia. MC Director's Exhibit 22 at 12. In his deposition, Dr. Jarboe agreed that the values obtained on the August 30, 2018 pulmonary function study he conducted would be qualifying using the Department of Labor chart at Appendix B of 20 C.F.R. Part 718 ending at age seventy-one. MC Employer's Exhibit 4 at 37. However, using the Knudsen values, Dr. Jarboe concluded the Miner's values "were quite a bit over that" and therefore he "could drive a truck and haul slate without any problem with those numbers, and again, with the blood gases that we know he has." *Id.* at 30-31. Dr. Zaldivar indicated that "[i]t is unfortunate that the Department of Labor ceased to take into consideration age after age 71 regarding the normal predicted values for pulmonary functions" because "[a]t age 87, there are no reliable normals because few individuals have reached that age." MC Employer's Exhibit 1 at 9. At his deposition, Dr. Zaldivar reiterated that individuals in their eighties should be compared to the normal for an individual in their eighties or "they might be considered to have a lung disease when in fact they don't have any." MC Employer's Exhibit 5 at 22. Dr. Zaldivar then evaluated the pulmonary function study values by opining what would be "normal" for an eighty-seven-year-old male. *Id.* at 26-27, 31.

First, he must address whether the pulmonary function studies establish total disability. 20 C.F.R. §718.204(b)(2)(i). In doing so, he must consider all relevant evidence including the December 20, 2017 treatment pulmonary function study. 30 U.S.C. §923(b); *Hicks*, 138 F.3d at 533; *McCune*, 6 BLR at 1-998.

Next, he must weigh all relevant supporting evidence against all relevant contrary evidence to determine whether Claimant can establish total disability at 20 C.F.R. §718.204(b)(2). *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198. He must also explain his findings in accordance with the Administrative Procedure Act.[21] 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).

If Claimant establishes total disability, then she will have invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305(b)(1), 725.309(c). The ALJ must then determine whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1)(i), (ii). If Employer is unable to rebut the Section 411(c)(4) presumption pursuant to either 20 C.F.R. §718.305(d)(1)(i) or (ii), Claimant will have established entitlement to benefits in the miner's claim.[22]

Alternatively, if the ALJ finds Claimant cannot establish the Miner had a totally disabling respiratory impairment, the ALJ may reinstate the denial of benefits as total disability is an essential element of entitlement under 20 C.F.R. Part 718. *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).

[21] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision 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).

[22] If, on remand, the ALJ awards benefits in the miner's claim, Claimant will be entitled to derivative benefits under Section 422(*l*) of the Act, which provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of the miner's 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). Employer does not identify any reasons that Claimant does not meet the eligibility requirements for automatic entitlement if the miner's claim is awarded. 30 U.S.C. §932(*l*).

Survivor's Claim

Regarding the survivor's claim, the ALJ applied similar reasoning[23] as he did in the miner's claim to conclude Claimant did not establish the Miner was totally disabled at the time of his death. SC Decision and Order at 23. Thus, for the same reasons we vacated the ALJ's finding Claimant did not establish total disability in the miner's claim, we also vacate his finding Claimant did not establish total disability in the survivor's claim, as well as the denial of benefits.[24] *See Tussey*, 982 F.2d at 1040-41; *Sheranko*, 6 BLR at 1-798.

[23] In the survivor's claim, the ALJ considered an additional April 24, 2002 pulmonary function study that produced non-qualifying values before and after the administration of bronchodilators; an additional April 24, 2002 blood gas study that had non-qualifying values at rest and with exercise; lay testimony from the Miner's brother; and the medical opinions of Drs. Ammisetty, Basheda, and Fino. SC Decision and Order at 9-16, 19-23. However, he again concluded that the pulmonary function study evidence supports a finding of total disability, the arterial blood gas studies do not support a finding of total disability, none of the medical opinions are credible, and there is no evidence of cor pulmonale with right-sided congestive heart failure. SC Decision and Order at 19-23.

[24] As the burden of proof could change on remand, we decline to address, as premature, Employer's cross-appeal requesting that the ALJ be instructed to reconsider Dr. Basheda's opinion concerning legal pneumoconiosis at 20 C.F.R. §718.205. *See* SC Decision and Order at 30-31; SC Employer's Brief at 15-16. We note that although the December 20, 2017 treatment pulmonary function study was also submitted in the survivor's claim, Employer does not similarly argue that the ALJ should have considered it when weighing the pulmonary function study evidence in the survivor's claim. 20 C.F.R. §802.211(b); *see* SC Employer's Exhibit 5.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

ROLFE, Administrative Appeals Judge, concurring and dissenting:

I concur with my colleagues' finding that because pulmonary function tests and blood gas studies measure different types of impairment, the ALJ erred in concluding the objective tests are, at best, in equipoise. I also concur in their affirmance of the ALJ's discrediting of the medical opinions of record. As my colleagues correctly recognize, the only remaining issue regarding the existence of disability thus becomes whether the pulmonary function tests, standing alone, qualify for it. And I write separately because I disagree with their conclusion that Employer has met its burden in its cross-appeal to establish that the unconsidered December 20, 2017 pulmonary function test contained in the miner's treatment records could make a difference to that inquiry.

As the majority correctly notes, the ALJ considered the results of two pulmonary function studies dated December 13, 2017, and August 30, 2018: the December 2017 test produced qualifying values before the administration of a bronchodilator and non-qualifying after; the August 2018 test produced qualifying results both before and after medication. Permissibly giving more weight to the qualifying pre-bronchodilator values on the earlier study because "the test is whether a miner can perform his job duties, not

whether he can perform those duties after taking medication," MC Decision and Order at 24, the ALJ correctly determined both tests qualify for disability.

Crucially, Employer in its cross-appeal raised no challenge to the validity of those tests, nor did it argue the ALJ erred in giving more weight to the pre-bronchodilator values. Instead, it simply pointed to the ALJ's failure to weigh the non-qualifying December 20, 2017 test (during which no medication was administered) without attempting to explain how that test could make a difference. But the failure to even attempt to offer that rationale dooms its position. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant may not just identify an alleged error without explaining how the "error to which [it] points could have made any difference"). And, regardless, I don't think the test *could* make a difference in this context -- as a matter of law.

Long-settled precedent establishes a factfinder must perform both a qualitative and a quantitative analysis when weighing pulmonary function studies. *See Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 149 n.23 (1987) (ALJ must "weigh the quality, and not just the quantity, of the evidence"); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-54 (4th Cir. 2016); *Sunny Ridge Min. Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014) (an ALJ may consider "quantitative differences in the evidence so long as qualitative differences [are] also considered").

Qualitatively, Employer has failed to establish any error in the ALJ's determination to fully credit two tests that both indicate disability, which, by virtue of this decision, becomes the law of the case. So quantitatively -- even assuming the ALJ determined on remand that the treatment record test was sufficiently reliable to be admissible and then further decided to give it equal weight as a subsequent qualifying test taken eight and a half months later -- the December 17, 2017 test would still be outweighed by a majority of fully

credited, qualifying tests. *See Addison*, 831 F.3d at 256-57; *see also Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995).[25]

I therefore agree with the Department of Labor the miner has established disability as a matter of law and would remand the miner's claim for the sole purpose of establishing whether Employer can rebut the Section 411(c)(4) presumption.

JONATHAN ROLFE
Administrative Appeals Judge

[25] While my colleagues recognize that remand is only appropriate where undiscussed evidence "potentially could make a difference" to an outcome, *see* n.16, they do not further acknowledge it is an appellant's burden to establish how that evidence could make a difference, *Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 697 (4th Cir. 2024), and that Employer indisputably did not even attempt such an explanation here. Moreover, while contending they "cannot be sure" the evidence could make a difference themselves, similarly absent from their discussion is any explanation *how* it could in these circumstances.