U.S. Department of Labor

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

BRB No. 24-0302 BLA

SHERMAN JUSTUS Claimant-Respondent v. IAEGER COAL SALES and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/06/2025 DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2020-BLA-05026) rendered on a subsequent claim filed on August 9, 2017,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant established a change in an applicable condition of entitlement[2] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled and invoked the Section 411(c)(4) presumption. Alternatively, it argues the ALJ erred in finding it did not rebut the presumption.[4] Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, has filed a response.

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[1] The district director denied Claimant's prior claim, filed on June 20, 2016, for failure to establish total disability. Director's Exhibit 1 at 7-9.

[2] 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 she 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); *see 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 district director denied Claimant's prior claim for failing to establish total disability, Claimant was required to establish a totally disabling respiratory or pulmonary impairment in order to obtain a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1 at 7-9.

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

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 20.

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 & 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, 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. 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 is totally disabled based on the pulmonary function studies, medical opinion evidence, and the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 14, 20.

Employer does not challenge the ALJ's finding that the pulmonary function studies support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i); thus, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11-14. However, it argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 7-14. Its contentions have merit, in part.

Before weighing the medical opinions, the ALJ found Claimant's usual coal mine employment pulling and loading coal from the mines to the beltline and operating a miner required a medium level of exertion. Decision and Order at 8-9 (citing *Dictionary of Occupational Titles* (4th ed., rev. 1991)). As this finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

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[5] 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); Hearing Transcript at 15.

[6] The ALJ found Claimant did not establish total disability based on the arterial blood gas studies or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 15.

The ALJ next considered the medical opinions of Drs. Habre, Spagnolo, and Basheda. Decision and Order at 15-20. Dr. Habre opined Claimant has a totally disabling pulmonary or respiratory impairment, while Drs. Spagnolo and Basheda opined he is not disabled from a respiratory or pulmonary standpoint. Director's Exhibits 14, 21, 24; Employer's Exhibits 1, 4-6. The ALJ noted that all the physicians are Board-certified pulmonologists and "well-qualified" to offer an opinion on total disability. Decision and Order at 16. She found Dr. Habre's opinion well-reasoned and documented, whereas she found Drs. Spagnolo's and Basheda's opinions poorly reasoned. *Id.* at 16-19. Thus, crediting Dr. Habre's opinion over the contrary opinions of Drs. Spagnolo and Basheda, she found the medical opinion evidence supports a finding of total disability. *Id.* at 19-20.

Employer initially argues the ALJ erred in crediting Dr. Habre's opinion because he did not consider the most recent objective test results from Dr. Basheda's examination and therefore did not have a complete picture of Claimant's pulmonary status. Employer's Brief at 11, 13. We disagree.

Contrary to Employer's contention, an expert need not consider all the evidence of record for an ALJ to find their opinion well-reasoned and documented. *See Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (that a physician reviewed less data in forming his opinion does not render his opinion insufficient to establish total disability); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (it is irrational to credit later evidence solely on the basis of recency if that evidence shows a miner's condition has improved); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50-51 (2023) (same).

Dr. Habre opined Claimant could not perform strenuous labor based on a decline in his FEV1 and FVC values on the September 26, 2017 and April 18, 2018 pulmonary function studies as well as the abnormal PO2 and PCO2 values from the September 27, 2017 arterial blood gas study. Director's Exhibits 14 at 5; 24 at 3-5. The ALJ permissibly found Dr. Habre's opinion well-documented and reasoned because he "adequately identified the data on which he based his opinion, and that data is sufficient to support his conclusion." Decision and Order at 17; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441(4th Cir. 1997); *Church*, 20 BLR at 1-13; *see also* 20 C.F.R. §718.204(b)(2)(iv) (medical opinion evidence may establish total disability "if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques," concludes a claimant is totally disabled). Consequently, we affirm the ALJ's crediting of Dr. Habre's opinion as supported by substantial evidence.

We agree, however, that the ALJ erred in her consideration of Drs. Spagnolo's and Basheda's opinions. Employer's Brief at 7-13. First, while the ALJ discredited Drs. Spagnolo's and Basheda's opinions as "poorly reasoned," Decision and Order at 18-19, she failed to consider the physicians' deposition testimony transcripts, both of which were identified on Employer's Evidence Summary Form and admitted at the hearing. Hearing Transcript at 9-11; Employer's Evidence Summary Form at 9; Employer's Exhibits 5, 6. Thus, the ALJ failed to consider all relevant evidence and provide an adequate basis for her conclusions as the Administrative Procedure Act (APA) requires.[7] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (ALJ's failure to consider all relevant evidence requires remand).

We also agree the ALJ failed to adequately consider Dr. Basheda's opinion. Employer's Brief at 12. Relying on American Medical Association (AMA) guidelines, Dr. Basheda diagnosed Claimant with a Class II impairment, based on his FEV1, FVC, FEV1/FVC ratio, and diffusion measurement values on pulmonary function testing, but opined this impairment would not prevent him from performing his last coal mining work "sitting eight hours a day" as a motor man. Employer's Exhibits 1 at 25; 5 at 21. The ALJ did not discuss this rationale, however, but instead discredited Dr. Basheda's opinion because she found it impermissibly relied on the "premise that the effects of smoking and coal mine dust can be distinguished." Decision and Order at 18-19 (citing Employer's Exhibit 1 at 24-25). As Employer contends, however, the ALJ conflated Dr. Basheda's total disability opinion with his disability causation opinion and failed to address his rationale for opining Claimant retains the capacity to perform his usual coal mine work.[8] *See* 20 C.F.R. §718.204(b), (c); Decision and Order at 18-19. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See* 20 C.F.R. §718.204(b), (c); *see also*

[7] 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).

[8] The issues of total disability and disability causation are distinct inquiries. The inquiry into the presence of a totally disabling respiratory or pulmonary impairment is governed by 20 C.F.R. §718.204(b), and the cause of the impairment is governed by 20 C.F.R. §§718.204(c) or 718.305(d)(1).

Bosco v. Twin Pines Coal Co., 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Mabe v. Bishop Coal Co*., 9 BLR 1-67, 1-68 (1986); *Sisak v. Helen Mining Co*., 7 BLR 1-178, 1-181 (1984). The ALJ's consideration of Dr. Basheda's total disability opinion thus does not satisfy her duty of explanation under the APA. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support conclusions and render necessary credibility findings); *Hicks*, 138 F.3d at 533; *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-11 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023); *Wojtowicz*, 12 BLR at 1-165.

Thus, we vacate the ALJ's weighing of Drs. Spagnolo's and Basheda's opinions as well as her findings that Claimant established total disability based on the medical opinion evidence and the evidence as a whole. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19-20. Consequently, we vacate her finding that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement, as well as the award of benefits.[9] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309(c); Decision and Order at 20, 25.

Remand Instructions

On remand, the ALJ must reconsider whether the medical opinion evidence supports a finding of total disability without regard to the underlying cause of that impairment. 20 C.F.R. §718.204(b)(2)(iv); *see Johnson*, 26 BLR at 1-11. Specifically, the ALJ must reconsider Drs. Spagnolo's and Basheda's opinions in their entirety, including their deposition testimony. She must evaluate the physicians' qualifications, the documentation underlying their medical judgments, all relevant portions of their opinions, and the sophistication of and bases for their conclusions. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. In addition, the ALJ must compare the exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and resulting limitations. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine work). In rendering her findings, the ALJ must explain her determinations in compliance with the requirements of the APA. 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165. The ALJ must then weigh all the relevant evidence together to determine whether Claimant has established a

[9] Because we vacate the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, we decline to address, as premature, Employer's contentions regarding whether it rebutted the presumption. Employer's Brief at 14-24.

totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

If Claimant establishes total disability, he will have established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(c)(1). The ALJ must then determine whether Employer rebutted the presumption. 20 C.F.R. §718.305(d)(1); *see Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-150 (2015).

If the ALJ determines Claimant has not established total disability, Claimant will have failed to establish a change in an applicable condition of entitlement, and the ALJ must deny benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge