



BRB No. 25-0188 BLA

DARRELL L. JOHNSON

Claimant-Petitioner

v.

KOKOSING CONSTRUCTION
COMPANY, INCORPORATED

Employer-Respondent

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/13/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Steven
D. Bell, Administrative Law Judge, United States Department of Labor.

Darrell L. Johnson, London, Kentucky.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,¹ Administrative Law Judge (ALJ) Steven
D. Bell's Decision and Order Denying Benefits on Remand (2020-BLA-05843), rendered

¹ On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain
Health Services of St. Charles, Virginia, requested the Benefits Review Board review the

on a claim filed on January 18, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Board for a second time.

In his initial Decision and Order Denying Benefits, the ALJ found Claimant failed to establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2).² Therefore, he concluded Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),³ or establish entitlement to benefits at 20 C.F.R. Part 718. Thus, the ALJ denied benefits.

In consideration of Claimant's first appeal, the Board affirmed the ALJ's finding that Claimant failed to establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of cor pulmonale with right-sided congestive heart failure. *Johnson v. Kokosing Construction Co.*, BRB Nos. 23-0402 BLA and 23-0402 BLA-A, slip op. at 3-4 (June 11, 2024) (unpub.). However, the Board held the ALJ erred in weighing the medical opinion evidence and the evidence as a whole on the issue of total disability. *Id.* at 7. Thus, the Board vacated the ALJ's finding that Claimant failed to establish total disability and remanded the case for further consideration. *Id.* at 7-9.

On remand, the ALJ again found Claimant failed to establish total disability. He therefore found Claimant could not invoke the Section 411(c)(4) presumption or establish entitlement to benefits under 20 C.F.R. Part 718 and 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 (the Director), did not file a response brief.

ALJ's decision, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

² As there was no evidence Claimant suffers from complicated pneumoconiosis, the ALJ found and the Board affirmed that Claimant could not invoke the Section 411(c)(3) irrebuttable presumption that he is totally disabled due to pneumoconiosis. 20 C.F.R. 718.304; *Johnson v. Kokosing Construction Co.*, BRB Nos. 23-0402 BLA and 23-0402 BLA-A, slip op. at 2 n.2 (June 11, 2024) (unpub.); Decision and Order at 4.

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); 20 C.F.R. §718.305.

In an appeal that a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are 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).

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

To invoke the Section 411(c)(4) presumption or establish entitlement to benefits under 20 C.F.R. Part 718, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). 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 consider all relevant evidence and weigh the evidence supporting total disability against all 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 Board previously affirmed the ALJ's determination that the pulmonary function studies and arterial blood gas studies do not establish total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure. *Johnson*, BRB Nos. 23-0402 BLA and 23-0402 BLA-A, slip op. at 3-4. However, the Board vacated the ALJ's weighing of the medical opinion evidence because the ALJ failed to resolve the conflict in the evidence, made findings inconsistent with the law, and did not account for all the relevant evidence. *Id.* at 6-7. On remand, the ALJ was instructed to determine the exertional requirements of Claimant's usual coal mine employment and then reweigh the medical opinion evidence. *Id.* at 8.

On remand, before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's usual coal mine employment. Decision and Order on Remand at 4-5. A miner's usual coal mine employment is the most recent job he performed

⁴ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 10; Director's Exhibit 3.

regularly and over a substantial period of time. *Pifer v. Florence Mining Co.*, 7 BLR 1-153, 1-155 (1985); *Daft v. Badger Coal Co.*, 7 BLR 1-124, 1-127 (1984); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

The ALJ considered Claimant's Form CM-913 Description of Coal Mine Work, his testimony, and the reports of the examining physicians. Decision and Order on Remand at 4. He also took official notice of the *Dictionary of Occupational Titles* (DOT). *Id.* at 5.

On his CM-913 form, Claimant indicated his most recent job of five years was working as a heavy equipment operator, requiring him to use a shovel and operate a dozer and loader, and that his sitting, standing, crawling, lifting, and carrying on the job was "varied." Director's Exhibit 4. Claimant also testified that his last job was cleaning and loading coal, which required him to clean the coal with a loader and sometimes a sweeper and grader, fetch coal with an excavator, and load coal on to trucks with a loader. Hearing Transcript at 12. He further testified that he did not perform any maintenance on the truck or equipment and did not perform any type of physical lifting. *Id.* at 12. Dr. Forehand reported Claimant last worked as a heavy equipment operator, using a front-end loader, dozer, sweeper, and excavator, and indicated the job required a heavy level of exertion. Director's Exhibit 12 at 1. Dr. Dahhan noted Claimant cleaned and loaded coal using a grader, sweeper, and end loader. Director's Exhibit 28 at 3. Dr. Broudy testified Claimant's last job as a heavy equipment operator required moderate exertion. Employer's Exhibit 1 at 1; Employer's Exhibit 4 at 8.

The ALJ found Claimant's usual coal mine job was a front-end loader operator⁵ based on Claimant's testimony and the physicians' reports. Decision and Order on Remand at 4-5. However, he found "there is no description of Claimant's specific exertional requirements in the record." *Id.* at 4.

The ALJ permissibly found Dr. Forehand's opinion that Claimant's job required heavy exertion is not well reasoned as he provided no explanation for how he came to that

⁵ Initially we note that it is unclear why the ALJ found Claimant's usual coal mine employment was as a front-end loader when his CM-913 form, his testimony, and the reports of the physicians all indicated he operated multiple types of heavy equipment including the front-end loader, a sweeper, a grader, and an excavator. Director's Exhibits 4, 12, 28; Employer's Exhibits 1, 4. However, as the ALJ relied on the Dictionary of Occupational Titles to conclude that this job required medium labor, and both jobs are classified as requiring the same level of work, any error is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Dictionary of Occupational Titles, Front-End Loader Operator and Operating Engineer (4th rev. ed. 1991).

conclusion and did not describe the requirements of Claimant's job. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); Decision and Order on Remand at 4. Thus, the ALJ permissibly relied on the DOT to determine the exertional requirements of Claimant's usual coal mine work as a loader operator required medium exertion. *See Heavilin v. Consolidation Coal Co.*, 6 BLR 1-1209, 1-1213 (1984) (determination of nature of usual coal mine work and its physical requirements is for the factfinder); Decision and Order on Remand at 4. We therefore affirm the ALJ's determination that Claimant's usual coal mine work required medium exertional labor. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Rowe*, 710 F.2d at 255; Decision and Order on Remand at 5.

Next, the ALJ considered the medical opinions of Drs. Forehand, Dahhan, and Broudy. Decision and Order on Remand at 7-14. Dr. Forehand examined Claimant on April 29, 2019, and opined his pulmonary function testing, blood gas testing, and shortness of breath with exercise demonstrate a significant and totally disabling impairment. Director's Exhibit 12 at 4. Dr. Dahhan examined Claimant on August 20, 2019, and opined Claimant has a mild respiratory impairment but is not totally disabled from performing his usual coal mine job as the objective studies he administered produced "normal," non-qualifying⁶ values. Director's Exhibit 28 at 2-3; Employer's Exhibit 3 at 8-12. Dr. Broudy examined Claimant on January 11, 2021, and diagnosed Claimant with a mild to moderate restrictive ventilatory defect but opined he maintains the respiratory capacity to perform the exertional requirements of his usual coal mine work based on the non-qualifying objective studies. Employer's Exhibits 1 at 4, 4 at 13-15.

The ALJ discredited Dr. Forehand's diagnosis of total disability because 1) he "failed to address" that the pulmonary function study he conducted was non-qualifying, 2) he relied on his opinion that Claimant's job required heavy rather than moderate exertion, 3) he did not review the most recent arterial blood gas study, and 4) he did not adequately address the changes in the blood gas studies he did review. Decision and Order on Remand at 7-8. Conversely, he found the opinions of Drs. Broudy and Dahhan to be consistent with the evidence and therefore found them reasoned and documented. *Id.* at 8-9. For the following reasons, we vacate the ALJ's findings.

⁶ A "qualifying" pulmonary function study or arterial 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).

Dr. Forehand conducted a complete pulmonary evaluation of Claimant as part of the Department of Labor sponsored evaluation. Director's Exhibit 12. Initially, he noted symptoms of a productive cough, wheezing, and dyspnea after walking three yards. *Id.* at 2. He diagnosed a restrictive impairment based on Claimant's shortness of breath and his April 29, 2019 pulmonary function study as Claimant's FEV1 was only 59% of predicted. *Id.* at 4. Further, he diagnosed arterial hypoxemia based on an exercise blood gas study performed the same day that showed a drop in the pO2 after three minutes of walking at a fast pace. *Id.* at 15-18. Dr. Forehand concluded that "[a] significant, work-limiting respiratory impairment is present," with "insufficient residual ventilatory and gas exchange capacities" to meet the physical demands of Claimant's job. *Id.* at 4. He further explained, "An FEV2 of 59% [on pulmonary function testing] and a pO2 of 55 [with exercise on blood gas testing] leave claimant with insufficient 'wind' (the ability to increase ventilation in response to an increase in physical activity) and oxygen" to perform his usual coal mine employment. *Id.* In addition, Dr. Forehand reviewed Dr. Dahhan's subsequent September 9, 2019 testing but reaffirmed his prior opinion. Director's Exhibit 22. He further explained that Dr. Dahhan's exercise blood gas study was not sufficient to determine if Claimant has exercise-induced arterial hypoxemia as he was exercised to a peak of only 12 watts of work, which is not a significant level of physical activity.⁷ Director's Exhibit 22 at 2-3.

Thus, contrary to the ALJ's findings, rather than failing to address the non-qualifying pulmonary function, Dr. Forehand explained that the study reflected a disabling impairment based on the facts of this case. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *see also Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests). Moreover, while Dr. Forehand relied upon his belief that Claimant's job required heavy exertion, the ALJ failed to consider whether his diagnosis of "[a] significant, work-limiting respiratory impairment" would render Claimant disabled from performing medium exertion. *See Cornett*, 227 F.3d at 578; *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991) (in determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of the miner's usual

⁷ At Dr. Forehand's April 29, 2019 blood gas study, Claimant walked down a hallway at a fast pace for three minutes before the testing was terminated due to shortness of breath, wheezing, and a bad back. Director's Exhibit 12 at 18. At Dr. Dahhan's August 20, 2019 study, Claimant exercised on a bicycle for two minutes before the testing was terminated due to shortness of breath. Director's Exhibit 28 at 14. At Dr. Broudy's January 11, 2021 study, Claimant walked for two minutes before the study was terminated due to shortness of breath. Employer's Exhibit 1 at 14.

coal mine work with the physicians' description of the miner's pulmonary impairment and physical limitations).

Nor can we affirm the ALJ's finding that Dr. Forehand's opinion is entitled to less weight because he did not review the most recent blood gas study or address all of the differences between his blood gas study and Dr. Dahhan's. A physician's opinion is not inherently entitled to more weight because he or she reviewed the most recent evidence or more evidence than the other physicians. *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). Moreover, Dr. Broudy, who conducted the most recent blood gas study, stated that the results of the testing he conducted were "about the same" as Dr. Dahhan's; the results revealed a decrease in pO₂ after "only [two] minutes of walking;" and, like Dr. Dahhan's testing, exercise was stopped after two minutes because of Claimant's "shortness of breath." Employer's Exhibit 1 at 3, 13-15; Director's Exhibit 28 at 11-17. Thus, the ALJ has not adequately explained why the failure to consider one of two similar tests renders Dr. Forehand's findings inadequately explained. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Finally, the ALJ is correct that Dr. Forehand did not specifically address the fact that Claimant's resting pO₂ level on blood gas testing was 6.3 mmHg lower than Dr. Dahhan's. Decision and Order on Remand at 8. However, the ALJ did not address the underlying rationale of Dr. Forehand's opinion that Claimant has disabling arterial hypoxemia based on the drop in the pO₂ after three minutes of walking at a fast pace, and Dr. Dahhan's two-minute test was not strenuous enough to determine whether a drop in the pO₂ occurred.⁸ Director's Exhibit 12 at 15-18. Consequently, his findings are not adequately explained. *Wojtowicz*, 12 BLR at 1-165 (factfinder is required to examine the validity of the reasoning of a medical opinion in light of the objective evidence upon which the opinion is based).

Thus, we vacate the ALJ's finding that the opinions of Drs. Dahhan and Broudy are entitled to more weight than Dr. Forehand's opinion. *See* 20 C.F.R. §718.204(b)(2)(iv); *see also Martin*, 400 F.3d at 305 (substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion).

⁸ Claimant's pO₂ dropped 8 mmHg after three minutes of exercise with Dr. Forehand's blood gas test, Director's Exhibit 12 at 15-18, 0.3 mmHg after two minutes of exercise with Dr. Dahhan, Director's Exhibit 28 at 14-18, and 9 mmHg after two minutes of exercise with Dr. Broudy, Employer's Exhibit 1 at 13-15.

The ALJ further considered Claimant's treatment records, noting they include reports of symptoms including dyspnea, shortness of breath at rest and with exertion, coughing, and wheezing. Decision and Order at 9; Claimant's Exhibit 5. He also noted they include diagnoses of decreased breath sounds, significant air trapping and restriction on pulmonary function testing, severe restriction based on lung volumes, and air trapping based on the RV/TLC result. *Id.* However, he concluded that the treatment records do not establish total disability as they do not "discuss Claimant's ability to perform his last coal mine job, discuss the severity or any specific limitations that he had." *Id.* We are unable to affirm this finding.

A physician need not phrase his or her opinion in terms of "total disability" to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *see also Black Diamond Coal Co. v. Benefits Review Board [Raines]*, 758 F.2d 1532, 1534 (11th Cir. 1985) ("[i]t is not essential for a physician to state specifically that an individual is totally impaired . . ."). Treatment records may support a finding of total disability if they provide sufficient information from which the ALJ can reasonably infer Claimant is unable to do his last coal mine job. *See Cornett*, 227 F.3d at 578; *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). Even a mild pulmonary impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment. *See Cornett*, 227 F.3d at 578. Thus, the ALJ should have considered the findings in Claimant's treatment records in conjunction with the exertional requirements of Claimant's usual coal mine employment in assessing the extent of his impairment. *See McMath*, 12 BLR at 1-10 (ALJ must identify the miner's usual coal mine work and then compare evidence of the exertional requirements of the miner's usual coal mine employment with the medical opinions as to his work capabilities).

Thus, we vacate the ALJ's finding that the medical opinion evidence does not establish total disability. *See* 20 C.F.R. §718.204(b)(2)(iv); *see also Martin*, 400 F.3d at 305. Consequently, we vacate his finding that Claimant failed to establish total disability as a whole, did not invoke the Section 411(c)(4) presumption, and could not establish entitlement to benefits under 20 C.F.R. Part 718. Decision and Order on Remand at 9-10.

Remand Instructions

On remand, the ALJ must reconsider whether the medical opinion evidence and Claimant's treatment records support a finding of total disability, taking into account the exertional requirements of Claimant's usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv); *see McMath*, 12 BLR at 1-10. In doing so, 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. *Rowe*, 710 F.2d at 255. He must set forth his findings in detail and explain his determinations, findings of fact, and conclusions of law in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A).⁹ *Wojtowicz*, 12 BLR at 1-165.

If Claimant establishes total disability based on the medical opinion evidence, the ALJ must weigh the evidence as a whole to determine whether Claimant is totally disabled by a respiratory or pulmonary impairment. *See* 20 C.F.R. §718.204(b)(2); *see also* *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, the ALJ will need to determine whether Claimant invoked the Section 411(c)(4) presumption or address the additional elements of entitlement pursuant to 20 C.F.R. Part 718. However, if the ALJ finds the evidence insufficient to establish total disability, he may reinstate the denial 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, 1-2 (1986) (en banc).

⁹ The APA requires every adjudicatory decision “include a statement of . . . findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record.” 5 U.S.C. §557(c)(3)(A).

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

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge