



BRB No. 25-0234 BLA

CARL E. GARDNER, SR.

Claimant-Respondent

v.

DRUMMOND COMPANY,
INCORPORATED

Self-Insured Employer-
Petitioner

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/25/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lystra A. Harris,
Administrative Law Judge, United States Department of Labor.

John R. Jacobs and J. Thomas Walker (Maples Tucker & Jacobs, LLC),
Birmingham, Alabama, for Claimant.

P. Andrew Laird, Jr. and Katie Marie McEntyre (Rushton, Stakely, Johnston
& Garrett, P.A.), Birmingham, Alabama, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2022-BLA-05011). This case involves a request for modification¹ of Claimant's subsequent claim filed on March 1, 2019,² pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant established at least fifteen years of qualifying coal mine employment. She further found Claimant has a totally disabling respiratory or pulmonary impairment and therefore invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),³ and thus established a change in a condition of entitlement. 20 C.F.R. 725.309. The ALJ further found Employer failed to rebut the presumption, and awarded benefits.

On appeal, Employer argues the ALJ erred in finding that Claimant is totally disabled and therefore invoked the Section 411(c)(4) presumption, that Employer failed to rebut the presumption, and that modification should be granted. Claimant responds in

¹ This case involves Claimant's request for modification of the district director's denial of benefits. Director's Exhibit 61. In a case involving a request for modification of a district director's decision, the ALJ proceeds de novo and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

² Claimant filed three prior claims for benefits. Director's Exhibits 2-4. On June 9, 2016, the district director denied Claimant's third claim for benefits for failure to establish total disability. Director's Exhibit 4 (LM 3 Director's Exhibit 32 at 3).

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 Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element of entitlement to obtain review of the merits of his current claim. *Id.*

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.

support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response.⁴

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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption

Total Disability

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.⁶ See 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. See *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant

⁴ We affirm, as unchallenged, the ALJ's finding that Claimant established at least fifteen years of underground coal mine employment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 17.

⁵ This case falls under the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant performed his coal mine employment in Alabama. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6; Hearing Transcript at 18.

⁶ The ALJ found Claimant's usual coal mine employment was working as a belt installer. Decision and Order at 9. The ALJ found this job involved heavy labor as it required regularly walking approximately six miles per day, shoveling coal weighing between twenty-five and thirty pounds, and lifting fifty-to-seventy-five-pound bags of rock dust. *Id.* We affirm these findings as unchallenged on appeal. See *Skrack*, 6 BLR at 1-711.

established he is totally disabled based on the medical opinion evidence and when weighing the evidence as a whole.⁷ Decision and Order at 22-27.

The ALJ considered the medical opinions of Drs. Barney, Connolly, Hasson, and Rosenberg. Decision and Order at 22-28; Director's Exhibits 18, 26; Claimant's Exhibit 8; Employer's Exhibits 6A, 7A. Drs. Barney and Connolly opined Claimant is totally disabled from a pulmonary perspective. Director's Exhibits 18, 26; Claimant's Exhibit 8. Dr. Rosenberg opined Claimant is not totally disabled from a pulmonary perspective but is disabled as a "whole person" due to his underlying coronary artery disease, musculoskeletal injuries, and lung cancer. Employer's Exhibit 7A. Dr. Hasson ultimately opined that Claimant had normal oxygen saturation and mild obstruction, opining there was no significant pulmonary impairment. Employer's Exhibit 6A.

The ALJ gave probative weight to the opinions of Drs. Barney and Connolly, finding them well-reasoned and consistent with the evidence. Decision and Order at 26. In contrast, she gave little weight to Dr. Hasson's opinion because he did not clearly opine whether Claimant could perform his usual coal mining work given his symptoms and objective testing results. *Id.* at 26-27. She also afforded little weight to Dr. Rosenberg's opinion because he discounted the validity of certain pulmonary function tests he reviewed due to Claimant's variable efforts, whereas the ALJ credited the "firsthand observations of the physicians who performed those pulmonary function tests" and determined they were valid. *Id.* at 19, 27. Thus, the ALJ found Dr. Rosenberg's opinion that Claimant's pulmonary function testing is not indicative of total disability due to his variable efforts is not well reasoned or well documented. *Id.* at 27. Further, the ALJ also afforded little weight to Dr. Rosenberg's opinion because he did not adequately explain why Claimant's chronic bronchitis did not contribute to his disability. *Id.* Therefore, the ALJ found the medical opinion evidence supports a finding of total disability based on Drs. Barney's and Connolly's opinions. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 27.

Employer argues that the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 6-17. We address Employer's arguments in turn.

Initially, Employer contends the ALJ erred in discrediting Dr. Hasson's opinion because it asserts that, contrary to the ALJ's findings, Dr. Hasson provided an opinion as

⁷ The ALJ determined the pulmonary function and arterial blood gas studies do not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 17-22. We affirm these findings as supported by substantial evidence. *See Bradberry v. Director, OWCP*, 117 F.3d 1361, 1367-68 (11th Cir. 1997).

to whether Claimant was totally disabled. Employer's Brief at 11-14. Specifically, it contends Dr. Hasson opined that Claimant's pulmonary function was normal; thus, there was no limitation he was required to assess relative to the exertional requirements of Claimant's usual coal mine employment. *Id.* at 12-14.

Contrary to Employer's argument, while Dr. Hasson indicated in 2019 that Claimant's pulmonary function and blood gas studies were "normal," he acknowledged the lung volumes demonstrated mild restriction and the diffusion capacity was "severely reduced." Employer's Exhibit 6A at 17. In more recent opinions, he noted "mild" obstructive impairment, restriction, and "severely reduced" diffusion capacity, with normal response in oxygenation. *Id.* at 30, 52, 57. Dr. Hasson stated that Claimant did not have *severe* or *significant* impairment but never addressed whether Claimant could perform his usual coal mine employment requiring heavy labor given his acknowledged limitations. Employer's Exhibit 6A at 31, 52, 57; Decision and Order at 26-27. Thus, the ALJ permissibly found Dr. Hasson's opinion did not adequately address total disability. *See U.S. Steel Mining Co. v. Director, OWCP [Jones]*, 386 F.3d 977, 992 (11th Cir. 2004); (determinations regarding whether the medical opinions are sufficiently reasoned are within the discretion of the fact-finder); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment can be disabling, depending on the exertional requirements of the miner's usual coal mining work); Decision and Order at 24-27. We therefore affirm the ALJ's weighing of Dr. Hasson's opinion on the issue of total disability.

We agree with Employer's argument, however, that the ALJ erred in analyzing Dr. Rosenberg's opinion. Although Dr. Rosenberg opined that some of the pulmonary function tests he reviewed showed "variable efforts" and were "often . . . invalid," Employer's Exhibit 7A at 14, the pulmonary function tests that he did rely on, in part, to reach his conclusion that Claimant is not totally disabled from a pulmonary perspective were, as the ALJ also found, non-qualifying.⁸ *See* Employer's Exhibit 7A at 437-38 (Claimant's pulmonary function tests "at worst demonstrate a mild reduction" of his ventilatory measurements and were "well above qualifying levels"); Decision and Order at 19-21. Thus, as Employer argues, it is unclear why the ALJ discredited Dr. Rosenberg's opinion in part because the doctor opined some of the pulmonary function studies show variable effort. *See* 20 C.F.R. §718.101(b) (A study need not precisely conform to the quality standards; if it is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered."); Employer's Brief at 16-17; Employer's Exhibit 7A.

⁸ A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

Moreover, even assuming Dr. Rosenberg concluded the pulmonary function studies could not be relied upon to render a disability finding, the ALJ has not explained how the “firsthand observations of the physicians who performed” the pulmonary function tests establish the tests were valid and therefore outweigh Dr. Rosenberg’s opinion. Decision and Order at 27; Employer’s Brief at 16. A review of the three designated pulmonary function tests submitted into the record not as part of treatment records indicate that while Dr. Barney certified that the May 9, 2019 pulmonary function test conducted as part of his examination of Claimant was “conducted and reported in compliance with specifications and instructions provided by the Department of Labor,” *see* Director’s Exhibit 18 at 10, the other two pulmonary function tests only provide reliability notations from the technicians who administered the studies. *See* Employer’s Exhibits 5 at 4; 6A at 36-37. To the extent the ALJ is referring to the statements made by the administering technicians, the ALJ misapplies the Board’s holding in *Revnack* to afford those statements more weight than Dr. Rosenberg’s opinion. Decision and Order at 27 (citing *Revnack v. Director, OWCP*, 7 BLR 1-771 (1985)). *Revnack* does not support the proposition that technicians’ observations outweigh those of a reviewing physician; rather, it indicates the ALJ must consider a reviewing physician’s opinion that a study is unreliable. 7 BLR at 1-773. It does not address the weight administering technicians’ comments are entitled to as compared to a reviewing physician’s opinion. *Id.*

In any event, the ALJ is required to consider all relevant evidence on the issue. *See Bradberry*, 117 F.3d at 1367-68 (it is the ALJ’s responsibility to make credibility findings and weigh conflicting evidence; however, findings must be reasoned and supported by substantial evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). In finding the designated pulmonary function studies were valid, the ALJ cited to and relied on 20 C.F.R. §718.103(c), which states that “[i]n the absence of evidence to the contrary, compliance with the requirements of Appendix B [of 20 C.F.R. Part 718] shall be presumed.” *See* Decision and Order at 19. But in this case, there is “contrary evidence,” as Dr. Rosenberg opined that some of the pulmonary function tests he reviewed were “invalid.” Employer’s Exhibit 7A at 14.

The ALJ also did not sufficiently explain her second reason for discrediting Dr. Rosenberg’s opinion: that he did not address the relationship between Claimant’s chronic bronchitis and his total disability. Employer’s Brief at 15; Decision and Order at 27. But while Dr. Rosenberg indicated Claimant has chronic bronchitis “unlikely to be related to past coal mine dust exposure,” Employer’s Exhibit 7A at 438, the doctor specifically concluded Claimant is not disabled from a pulmonary perspective, *id.* at 15, 437. Moreover, the issue here is not the cause of any impairment, but rather the extent. 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); *Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 691-92 (4th Cir. 2024); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). As Employer points out, Dr. Rosenberg opined that Claimant does not have an impairment from a pulmonary standpoint and has the capacity to perform even very heavy labor. Employer's Brief at 15, 24-25; Employer's Exhibit 7A at 15.

The Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an ALJ independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). We agree with Employer that the ALJ failed to sufficiently explain why she found Dr. Rosenberg's opinion not well-reasoned. *Id.* at 1-165. Thus, we vacate her findings as to the weight accorded to Dr. Rosenberg's opinion on the issue of total disability. Because we vacate the ALJ's findings regarding her weighing of Dr. Rosenberg's opinion, we also vacate her finding as to the weight of the medical opinion evidence as a whole. 20 C.F.R. §718.204(b)(2)(iv).

Further, insofar as the ALJ did not adequately address the evidence regarding the reliability of the designated pulmonary function studies submitted into the record not as part of treatment records,⁹ and this could affect her weighing of the other medical opinion evidence, we also vacate her weighing of Drs. Barney's and Connolly's¹⁰ opinions. Decision and Order at 26. Thus, we vacate her finding that Claimant invoked the Section 411(c)(4) presumption¹¹ and vacate the award of benefits. *Id.* at 30, 51.

⁹ We affirm as unchallenged the ALJ's findings that the pulmonary function studies within the treatment records are sufficiently reliable regarding the issue of total disability. See *Skrack*, 6 BLR at 1-711; *J.V.S. [Stowers] v. Arch of W.Va.*, 24 BLR 1-78, 1-92 (2008); Decision and Order at 20.

¹⁰ Employer argues Dr. Connolly's deposition testimony should not have been considered part of his medical opinion at 20 C.F.R. §718.204(b)(2)(iv). Employer's Brief at 17-18. Contrary to Employer's argument, a physician who prepared a medical report may testify with respect to the condition of the miner. 20 C.F.R. §§718.414(c), 725.456(c)(2).

¹¹ Therefore, we decline to address, as premature, Employer's argument that the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption and in granting modification. Employer's Brief at 26-33.

Remand Instructions

The ALJ must reconsider whether Claimant has established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b)(2), 718.305(b)(iv). In weighing the medical opinions, she 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. *See Jones*, 386 F.3d at 992; *see also Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). While the parties have not challenged the ALJ's finding that the pulmonary function studies are non-qualifying, the ALJ should determine if the studies underlying the medical opinions are in substantial compliance with the regulations¹² and thus determine if these findings undermine the medical opinions of Drs. Rosenberg, Barney, and Connolly. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc); *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are suspect or unreliable); *Rowe*, 710 F.2d at 255 (ALJ must examine the medical opinions' reasoning in light of studies and objective indications upon which the medical conclusions are based).

After determining whether the medical opinion evidence supports a finding of total disability, the ALJ must then weigh the evidence as a whole to determine whether Claimant has established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); *Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987).

If the ALJ finds Claimant establishes total disability, then he will invoke the Section 411(c)(4) presumption, and the ALJ must determine whether Employer has rebutted it. 20 C.F.R. §718.305(d); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). If Claimant is unable to establish total disability, an essential element of entitlement, the ALJ must deny benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). In making her determinations, the ALJ must set forth her findings and conclusions as the APA requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

¹² We provide no opinion as to the adequacy of the evidence on this issue; rather, the ALJ must make these findings in the first instance. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case 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