



BRB No. 25-0264 BLA

RODNEY W. GRIMES

Claimant-Petitioner

v.

CUMBERLAND CONTURA, LLC

and

SUMMITPOINT INSURANCE COMPANY

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/05/2026

DECISION and ORDER

Appeal of the Notice of Reassignment and Decision and Order Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

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

Stephen Shannon (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; Olgamaris Fernandez, Acting Deputy Associate Solicitor; William M. Bush, Acting Counsel for Administrative

Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Notice of Reassignment¹ and Decision and Order Denying Benefits (2022-BLA-05605) rendered on a claim filed on November 3, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation that Claimant worked forty-three years in qualifying coal mine employment but found Claimant does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established legal pneumoconiosis,³ but his failure to establish total respiratory disability precluded his

¹ ALJ Patricia J. Daum held a telephonic formal hearing in this case on November 30, 2022. Due to ALJ Daum's retirement, the Office of Administrative Law Judges reassigned the case to ALJ Drew A. Swank (the ALJ) to adjudicate the claim and render a decision. Decision and Order at 2.

² Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

³ "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

entitlement to benefits. 20 C.F.R. §§718.202(a), 718.203(b). Thus, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding the arterial blood gas study evidence and medical opinion evidence do not establish total disability and thus did not invoke the Section 411(c)(4) presumption.⁴ Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response agreeing with Claimant and urging the Benefits Review Board to remand this case for further proceedings.⁵

The 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.⁶ 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 Disability⁷

To invoke the Section 411(c)(4) presumption, a 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,

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

⁵ As Claimant does not challenge the ALJ's findings that the pulmonary function studies are not qualifying for total disability and that there is no evidence of cor pulmonale with right-sided congestive heart failure, we affirm the ALJ's determinations that he did not establish total disability at 20 C.F.R. §718.204(b)(2)(i) and (iii). *Skrack*, 6 BLR at 1-711; Decision and Order at 19-21.

⁶ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

⁷ Claimant argues the ALJ erred in finding he is unable to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304; Claimant's Brief at 10-11. Nevertheless, Claimant concedes the record contains no evidence of complicated pneumoconiosis; therefore, we reject his argument.

prevents him from performing his usual coal mine work or comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁸ 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant failed to establish total disability by any method. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 18-25.

Arterial Blood Gas Studies

The ALJ considered two arterial blood gas studies dated December 23, 2020 and May 19, 2021. Decision and Order at 19-21. The December 23, 2020 study produced qualifying values both at rest and with exercise, while the May 19, 2021 study produced non-qualifying values at rest and no exercise study was conducted. Director's Exhibits 15, 23. Dr. Gaziano separately opined the December 23, 2020 arterial blood gas study is technically acceptable. Director's Exhibit 18.

In assessing the two arterial blood gas studies, the ALJ found the December 23, 2020 resting arterial blood gas test qualifying but the December 23, 2020 exercise test and May 19, 2021 resting test non-qualifying. Decision and Order at 21. Giving greater weight to the May 19, 2021 study as more recent than the December 23, 2020 study, the ALJ concluded the arterial blood gas study evidence does not support a finding of total disability. *Id.*

Claimant and the Director assert the ALJ erred in finding the December 23, 2020 exercise arterial blood gas study produced non-qualifying results and contend he further erred in finding the May 19, 2021 arterial blood gas study more probative than the December 23, 2020 study solely because of its recency. Claimant's Brief at 8-9; Director's Letter Response Brief at 1-2. Moreover, the Director argues the ALJ also erred by not determining if the May 19, 2021 study substantially complies with the regulatory standards – he notes an exercise test must be offered if the results of the resting test are non-qualifying, unless an exercise test is medically contraindicated, and the record contains no

⁸ A “qualifying” pulmonary function study or blood gas study yields results equal to or less than the applicable table values 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).

“exercise results or evidence of medical contraindication.” Director’s Letter Response Brief at 3-4 (citing 20 C.F.R. §718.105(b); Decision and Order at 21; Director’s Exhibit 40 at 8). These arguments have merit.

To establish total disability at 20 C.F.R. §718.204(b)(2)(ii), a miner’s arterial pO₂ value must be “equal to or less than” the stated numerical table value associated with the corresponding pCO₂ table value. 20 C.F.R. Part 718, App. C; 20 C.F.R. §718.204(b)(2)(ii). The ALJ correctly noted the December 23, 2020 exercise blood gas study was performed at an altitude between 0 and 2,999 feet above sea level and produced an arterial pCO₂ value of 49.8 and an arterial pO₂ value of 73. Decision and Order at 20; Director’s Exhibit 15 at 29-32.

The ALJ used the line in the table for a pCO₂ value of “40-49,” but Claimant’s arterial pCO₂ value of 49.8 is between 49 and 50. Director’s Exhibit 15 at 29-32. Because the measured pCO₂ value of 49.8 is not equal to or less than 49, the study must be analyzed using the next line in the table. That is, a pCO₂ value between 49 and 50 corresponds to “Above 50” in the Appendix C tables, not “40–49”, *Jackson v. Drummond Co.*, BRB No. 16-0250 BLA, 2017 WL 1103807, at *5 (2017) (unpub.), and a pCO₂ value “above 50” qualifies for total disability with a corresponding arterial pO₂ of “any value.” 20 C.F.R. Part 718, App. C. Therefore, contrary to the ALJ’s determination, the December 23, 2020 exercise blood gas study is qualifying, and we reverse the ALJ’s finding it produced non-qualifying results. *See Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 310 (4th Cir. 2012); Decision and Order at 21.

In addition, we agree that the ALJ’s explanation for crediting the May 19, 2021 study over the December 23, 2020 study is inadequate. Although an ALJ may consider the chronology of conflicting medical evidence, he must explain why the later evidence is entitled to greater weight. The United States Courts of Appeals for the Fourth Circuit and the Sixth Circuit and the Board have all held it irrational to credit evidence that shows a miner’s condition has improved solely because the evidence is more recent. *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993) (given the progressive nature of pneumoconiosis, a fact-finder must evaluate evidence without reference to its chronological order when the evidence shows a miner’s condition has improved); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718-19 (4th Cir. 1993) (a bare appeal to ‘recency’ is an abdication of rational decision-making); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (it is irrational to credit evidence *solely* because of recency when the miner’s condition has improved); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50-52 n.14 (2023) (ALJ erred by “not provid[ing] a reason other than recency to credit the non-qualifying testing and in so doing failed to resolve the actual conflict in the medical opinions regarding which test more accurately reflected the miner’s pulmonary capacity”).

Here, the ALJ identified no reason for finding the May 19, 2021 study more probative than the December 23, 2020 study other than that it was conducted later in time. Decision and Order at 21. Because the ALJ did not adequately explain his resolution of the conflicting arterial blood gas evidence, his finding does not satisfy the Administrative Procedure Act (APA).⁹ 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).

We also agree with the Director's argument that the ALJ's consideration of the May 19, 2021 study is not well reasoned. Director's Response Brief at 3-4. If the results of the blood gas test at rest do not satisfy the requirements of Appendix C to Part 718, an exercise blood gas test "shall be offered to the miner unless medically contraindicated." 20 C.F.R. §718.105(b). Because the May 19, 2021 study's resting results did not qualify under Appendix C, an exercise study should have been offered unless medically contraindicated. See Director's Exhibit 23 at 6. The record, however, does not include exercise study results, any indication one was offered, nor any evidence of medical contraindication. See Decision and Order at 21 (noting the 2021 examination does not include exercise data); Director's Exhibit 40 at 8 (explaining that although the objective testing administered by Dr. Fino was submitted, no medical report by Dr. Fino was submitted into the record). Thus, the arterial blood gas study does not conform to the quality standards.

Nevertheless, an ALJ has discretion to consider whether an arterial blood gas study in substantial compliance with the regulations "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ did not determine whether Dr. Fino's resting study was in substantial compliance with the quality standards before assigning it weight. This was error. *Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987); see Decision and Order 18-25.

We therefore vacate the ALJ's finding that the blood gas studies do not support finding total disability at 20 C.F.R. §718.204(b)(2)(ii). See Decision and Order at 21.

Medical Opinion Evidence

In weighing the medical opinion evidence, the ALJ initially determined Claimant's last coal mine job as a mobile equipment and locomotive operator required "heavy

⁹ The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented" 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

exertional” labor. Decision and Order at 22 n.17. We affirm this finding as unchallenged. *Skrack*, 6 BLR at 1-711.

The ALJ considered four medical opinions. Drs. Celko, Go, and Sood opined Claimant is totally disabled based on the December 23, 2020 qualifying arterial blood gas study and other objective testing. Director’s Exhibit 15; Claimant’s Exhibits 1, 3. Conversely, Dr. Rosenberg opined Claimant is not disabled based on the May 19, 2021 non-qualifying arterial blood gas study and pulmonary function testing. Employer’s Exhibit 1.

The ALJ acknowledged Drs. Celko, Go, and Sood each provided multiple reasons for concluding Claimant is totally disabled, but found they relied primarily on the December 23, 2020 qualifying arterial blood gas study. Decision and Order at 22-24. The ALJ noted these physicians did not review the later May 19, 2021 arterial blood gas study. *Id.* Thus, he indicated it was unknown whether reviewing this study would have altered the physicians’ assessments, and he assigned their opinions no weight. *Id.* at 24. By contrast, the ALJ found Dr. Rosenberg’s opinion better reasoned and entitled to great weight because it was based on his review of the medical records and the results of the objective testing. *Id.* Thus, he found the medical opinion evidence did not support finding total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 23-25.

Claimant asserts the ALJ erred in discrediting the opinions of Drs. Celko, Go, and Sood, and in crediting Dr. Rosenberg’s opinion. Claimant’s Brief at 10. We agree.

As we held above, the ALJ may not credit Dr. Rosenberg’s opinion as better reasoned solely because it is based on the more recent, non-qualifying blood gas study. *See Kincaid*, 26 BLR at 1-50-52 n.14. Further, as Claimant asserts, the ALJ’s finding that the opinions of Drs. Celko, Go, and Sood are not well-reasoned because they did not review later-developed evidence is not, standing alone, a rational basis for discrediting those opinions. Claimant’s Brief at 10. An ALJ is not required to discredit a physician who did not review all medical evidence of record when the opinion is otherwise 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). Rather, the ALJ must explain why the later evidence undermines the physicians’ conclusions. *See Kincaid*, 26 BLR at 1-50-52 n.14. Because the ALJ’s improper assignment of greater weight to the May 19, 2021 arterial blood gas study based solely on recency affected his weighing of Drs. Celko’s, Go’s, Sood’s, and Rosenberg’s medical opinions at 20 C.F.R. §718.204(b)(2)(iv), we vacate his credibility determinations as to their opinions. Decision and Order at 23-25; Claimant’s Brief at 10; *see Thorn*, 3 F.3d at 718.

Here, the ALJ also erred in finding Drs. Go and Sood did not review the May 19, 2021 non-qualifying pulmonary function and blood gas studies as both physicians listed this diagnostic testing in their reports. *See* Claimant's Exhibits 1 at 3-4; 3 at 1, 5-6; Decision and Order at 24. Moreover, as the Director correctly asserts, the ALJ's discrediting of the opinions of Drs. Celko, Go, and Sood is predicated on his incorrect analysis of the blood gas study evidence and as such, does not constitute a rational basis for discrediting these opinions. Director's Response Brief at 3.

Therefore, we vacate the ALJ's finding the medical opinions do not support finding total disability at 20 C.F.R. §718.204(b)(2)(iv) and that Claimant did not establish total disability based on consideration of the evidence as a whole. Decision and Order at 25. Consequently, we vacate the ALJ's denial of benefits and remand the case for further consideration.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability based on a preponderance of the blood gas studies at 20 C.F.R. §718.204(b)(2)(ii). In resolving the conflict in evidence, the ALJ may not credit the more recent, non-qualifying resting study over the earlier resting and exercise studies on the basis of recency alone. *See Thorn*, 3 F.3d at 718; *Adkins*, 958 F.2d at 51-52. Rather, he must independently weigh the reliability of each piece of evidence¹⁰ and indicate why he assigns greater weight to one study over the other in accordance with the requirements of the APA. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; *see also Addison*, 831 F.3d at 256; *Gray v. Director, OWCP*, 943 F.2d 513, 520-21 (4th Cir. 1991). In doing so, the ALJ must specifically address Claimant's assertion that the December 23, 2020 qualifying exercise study better reflects his capacity to perform the exertional requirements of his last coal mine job than does the May 19, 2021 non-qualifying resting study. Claimant's Brief at 9-10.

In weighing the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), the ALJ must reconsider the physicians' conclusions on total disability and determine whether the degree of Claimant's respiratory impairment or any physical limitations they identify would preclude Claimant from performing his usual coal mine work. *Gonzales v. Director, OWCP*, 869 F.2d 776, 779 (3d Cir. 1989). In rendering his credibility findings, the ALJ must consider the comparative credentials of the physicians, the explanations for their

¹⁰ Before assigning any probative weight to the May 19, 2021 blood gas study, the ALJ must first determine whether it is in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.105(b).

conclusions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 162-63 (3d Cir. 1986). The ALJ may not credit or discredit the physicians' opinions solely because they do or do not rely on the more recent non-qualifying blood gas study. *See Kincaid*, 26 BLR at 1-50-52 n.14; *Smith*, 26 BLR at 1-28; *Church*, 20 BLR at 1-13.

The ALJ must also reweigh the evidence as a whole and determine whether Claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, he will invoke the Section 411(c)(4) rebuttable presumption, and the ALJ must consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1)(i), (ii). If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *See 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). In rendering his findings on remand, the ALJ must explain his decision in compliance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

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

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge