U.S. Department of Labor

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

BRB No. 25-0045 BLA

JACKIE A. JOHNSON)
)
Claimant-Respondent)
)
v.)
)
WESLEY LEASING, INCORPORATED)
)
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: 12/11/2025

DECISION and ORDER

Appeal of the Decision and Order on Remand Granting Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Granting Benefits (2020-BLA-05162) rendered on a claim filed on July 30, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.

In her initial Decision and Order Granting Benefits dated February 10, 2022, the ALJ credited Claimant with nineteen years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore concluded Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). The ALJ further found Employer did not rebut the presumption and awarded benefits.

Pursuant to Employer's appeal, the Board affirmed the ALJ's findings that Claimant established nineteen years of qualifying coal mine employment and that Employer's evidence was insufficient to rebut the Section 411(c)(4) presumption to the extent it was invoked. *Johnson v. Wesley Leasing, Inc.*, BRB No. 22-0251 BLA, slip op. at 2 n.2 (Mar. 13, 2023) (unpub.). However, the Board held the ALJ erred in weighing the medical opinion evidence on the issue of total disability. *Id.* at 4-5. Thus, the Board vacated the ALJ's finding that Claimant established total disability and therefore invoked the Section 411(c)(4) presumption; we remanded the case for further consideration. *Id*. at 5-6.

On remand, the ALJ again found the medical opinion evidence establishes total disability. Decision and Order at 12 (unpaginated). Thus she found Claimant invoked the Section 411(c)(4) presumption and, as the Board had affirmed the ALJ's original finding that Employer failed to rebut it, awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability. Claimant responds in support of the award of benefits. The Acting Director,

[1] 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); 20 C.F.R. §718.305.

Office of Workers' Compensation Programs, declined to file a substantive response brief. Employer has filed a reply, reiterating its contentions.

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.[2] 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 and comparable gainful 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 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 established total disability based on the medical opinion evidence and the record as a whole.[3] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 6-12 (unpaginated).

Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 17-34. Its arguments have merit, in part.

The ALJ considered the opinions of Drs. Forehand, Raj, Rajbhandari, Jarboe, and Zaldivar. Decision and Order at 8-12 (unpaginated). Dr. Forehand opined Claimant is

[2] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 10, 12, 15.

[3] In her initial Decision and Order, the ALJ determined the pulmonary function study and arterial blood gas study evidence 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).

totally disabled based on the October 31, 2018 blood gas study he obtained and the exertional requirements of Claimant's usual coal mine employment. Director's Exhibit 8. Drs. Raj and Rajbhandari opined Claimant is totally disabled based on his x-rays demonstrating complicated pneumoconiosis, an abnormal pulmonary function study, and abnormal resting blood gas study results. Claimant's Exhibits 2 at 6 (unpaginated); 3 at 5 (unpaginated). Drs. Jarboe and Zaldivar opined Claimant has a "mild compensated respiratory acidosis" based on his blood gas studies but his pulmonary function studies are normal and he is not disabled. Employer's Exhibits 2 at 4; 4 at 4-5.

The ALJ found Dr. Forehand's opinion reasoned and documented and gave the opinions of Drs. Raj and Rajbhandari "some weight" because they are supported by Claimant's symptoms and objective testing results, but she noted their diagnoses of complicated pneumoconiosis were contrary to her finding Claimant does not have the disease. Decision and Order at 9-10 (unpaginated). She further found the contrary opinions of Drs. Jarboe and Zaldivar are not adequately reasoned. *Id.* at 10-11. Thus the ALJ found the opinions of Drs. Forehand, Raj, and Rajbhandari outweigh the opinions of Drs. Jarboe and Zaldivar and therefore that the medical opinion evidence supports a finding of total disability. *Id.* at 11-12.

Employer argues the ALJ erred in crediting Dr. Forehand's opinion because it relies on the October 31, 2018 blood gas study whereas the ALJ found the blood gas study evidence overall does not support a finding of total disability. Employer's Brief at 17-18. We disagree.

Dr. Forehand noted Claimant's usual coal mine employment as a general inside laborer required very heavy exertion. Director's Exhibit 8 at 1. He opined Claimant's October 31, 2018 blood gas testing demonstrates arterial hypoxemia and that he has "insufficient residual gas exchange capacity" to perform his usual coal mine employment. *Id*. at 3-4.

Contrary to Employer's argument, even if total disability cannot be established at 20 C.F.R. §718.204(b)(2)(i) or (ii), "total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents" him from performing his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job, as in this case. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *see also Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). Thus the ALJ permissibly found Dr. Forehand's opinion credible because it is reasoned and

documented and based on the doctor's consideration of Claimant's usual coal mine employment.[4] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 8-9 (unpaginated).

Additionally, we reject Employer's argument that the ALJ erred in crediting Dr. Forehand's opinion because he did not review as many medical records as Drs. Zaldivar and Jarboe. Employer's Brief at 19-20. An ALJ may credit a physician who did not review all of a miner's medical records when that physician's opinion is otherwise reasoned, documented, and based on an examination of the miner and objective test results. 20 C.F.R. §718.204(b)(2)(iv); *see Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

We agree with Employer's argument, however, that the ALJ erred in weighing the opinions of Drs. Raj and Rajbhandari. Employer's Brief at 20-24.

Drs. Raj and Rajbhandari both noted Claimant's usual coal mine employment required heavy exertion and based their total disability opinions, in part, on Claimant having complicated pneumoconiosis. Claimant's Exhibits 2; 3. Dr. Raj observed Claimant "gets short of breath walking about [twenty] to [thirty] feet of distance uphill," and Dr. Rajbhandari stated Claimant has "dyspnea less than [fifty] feet and less than [one] flight of stairs. *Id.* In addition, Dr. Raj opined Claimant's pulmonary function studies demonstrate a moderate obstructive lung defect, while Dr. Rajbhandari opined they show a mild obstruction and mild to moderately reduced diffusion capacity. *Id.* Both physicians opined the blood gas studies demonstrate hypoxemia and concluded Claimant's "physical capacity is greatly diminished due to pulmonary impairment" so that he cannot meet the exertional requirements of his usual coal mine employment. *Id.*

The ALJ acknowledged Drs. Raj and Rajbhandari diagnosed complicated pneumoconiosis, contrary to her finding that Claimant does not have the disease. Decision and Order at 9-10 (unpaginated). But she found their "diagnos[es] of [chronic obstructive pulmonary disease] based on a moderate obstructive defect and pulmonary symptoms sufficient to support [their] finding[s] of total disability." *Id.* Further, she found Claimant's usual coal mine employment required heavy labor[5] and summarily concluded the opinions

[4] Thus we also reject Employer's argument that the ALJ erred in crediting the opinions of Drs. Raj and Rajbhandari because they relied on the pulmonary function and blood gas study evidence. Employer's Brief at 20-24.

[5] As it is unchallenged on appeal, we affirm the ALJ's finding that Claimant's usual coal mine employment as a scoop operator and various other jobs required heavy labor.

of Drs. Raj, Rajbhandari, and Forehand are "better reasoned in light of the medical evidence and the exertional requirements of the Claimant's last coal mining job." *Id.* at 11-12.

The Board previously determined this finding does not satisfy the explanatory requirements of 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).[6] *Johnson*, BRB No. 22-0251 BLA, slip op. at 4; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Specifically, we held the ALJ "did not explain why she concluded their diagnoses of a moderate obstruction necessarily precludes Claimant from performing his usual job duties." *Johnson*, BRB No. 22-0251 BLA, slip op. at 4. Additionally, while the ALJ stated the opinions of Drs. Raj and Rajbhandari are "better reasoned" based on the medical evidence and the exertional requirements of Claimant's usual coal mine employment, she failed to explain how she reached this determination. Decision and Order at 12 (unpaginated). Because the ALJ repeated the same credibility finding she made in her original decision and did not provide any additional explanation, we conclude she failed to follow the Board's remand instructions, and we therefore again vacate her decision to credit the opinions of Drs. Raj and Rajbhandari. *Sullivan v. Hudson*, 490 U.S. 877, 886 (1989); *Wojtowicz*, 12 BLR at 1-165.

We also agree with Employer's argument that the ALJ erred in discrediting the opinions of Drs. Jarboe and Zaldivar. Employer's Brief at 25-32.

Dr. Jarboe opined Claimant has normal pulmonary function testing results, but abnormal resting blood gas testing results. Employer's Exhibit 2. Specifically, he opined Claimant's blood gas studies reveal "an elevated pCO2" value, mild hypoxemia, and "mild compensated respiratory acidosis." *Id.* at 3-4. He concluded Claimant "does not have a disabling impairment of gas exchange" caused by his coal mine dust exposure and "fully retains the functional pulmonary capacity to perform his last coal mining job or one of similar physical demand in a dust free environment." *Id*. at 4.

The ALJ quoted the portion of Dr. Jarboe's opinion stating Claimant could perform employment substantially similar to his usual coal mine employment in a dust free

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See Skrack v. Island Creek Coal Co., 6 BLR 1-710, 1-711 (1983); Decision and Order at 11-12 (unpaginated).

[6] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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).

environment and then discredited his opinion because "the matter to be decided is whether the Claimant could perform his last coal mine employment, not employment in an entirely different environment." Decision and Order at 11 (unpaginated). She thus found Dr. Jarboe's opinion does not sufficiently establish Claimant has the pulmonary capacity to return to his previous coal mine employment. *Id.* Because Dr. Zaldivar explicitly stated Claimant "fully retains the functional pulmonary capacity to perform his last coal mining job or one of similar physical demand in a dust free environment," the ALJ's conclusion is not supported by substantial evidence and therefore we must vacate her finding his opinion is not credible. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion); Employer's Exhibit 2 at 4.

Dr. Zaldivar noted Claimant has hypoxemia and hypercarbia with exercise and opined, in agreement with Dr. Jarboe's opinion, that Claimant's elevated pCO2 value on blood gas testing "is best explained by [Claimant] taking opioids for pain" and potential sleep apnea. Employer's Exhibit 4 at 5. He further opined the abnormality seen on Claimant's "breathing test is very minimal" and insufficient to prevent him from performing very heavy manual labor. *Id.*

The ALJ discredited Dr. Zaldivar's opinion because he opined opioid intake and untreated sleep apnea are the cause of Claimant's impairment "in contrast of the other medical opinions in the record," and because he did not discuss whether pneumoconiosis contributed to Claimant's impairment. Decision and Order at 11 (unpaginated).

The relevant inquiry with respect to total disability at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary impairment. The cause of the impairment is addressed at 20 C.F.R. §718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption at 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). Thus we must vacate the ALJ's finding as it conflates the issues of totally disability and disability causation by focusing on whether Dr. Zaldivar's opinion regarding the cause of Claimant's impairment is reasoned rather than whether he has credibly explained his opinion that Claimant is not totally disabled. *Id.*; 20 C.F.R. §718.204(b); Decision and Order at 11 (unpaginated).

Because of these errors, we vacate the ALJ's finding that the medical opinion evidence supports a finding of total disability and that the evidence as a whole establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11-12 (unpaginated). Consequently, we vacate her conclusion that Claimant invoked the Section 411(c)(4) presumption and remand the case for reconsideration. *Id.*

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv). In doing so, the ALJ must take into consideration the exertional requirements of Claimant's usual coal mine work and determine whether the opinions of Drs. Raj, Rajbhandari, Jarboe, and Zaldivar are reasoned and documented. *See McMath*, 12 BLR at 1-9 (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 the miner's work capabilities). The ALJ must explain the weight accorded to each opinion after considering the physicians' comparative credentials, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions. *See Hicks*, 138 F.3d at 533 (ALJ must consider all relevant evidence and adequately explain a rationale for crediting certain evidence); *Akers*, 131 F.3d at 441.

If Claimant establishes total disability based on the medical opinions at 20 C.F.R §718.204(b)(2)(iv), the ALJ must then weigh the evidence supporting a finding of total disability against the contrary evidence to reach a conclusion as to whether Claimant has a totally disabling respiratory or pulmonary impairment and thereby invokes the Section 411(c)(4) presumption. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

If Claimant invokes the Section 411(c)(4) presumption, the ALJ may reinstate the award of benefits as Employer has not challenged her determination that Employer's evidence is insufficient to rebut the presumption. 20 C.F.R. §718.305(d)(1); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Alternatively, if the ALJ finds Claimant is not totally disabled, benefits must be denied as Claimant will have failed to establish an essential element of entitlement. *See Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987). In rendering all findings on remand, the ALJ must comply with the APA. *See Wojtowicz*, 12 BLR at 1-165.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge