



BRB No. 25-0046 BLA

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| KENNETH D. TAYLOR   | ) |                         |
|   | ) |                         |
| Claimant-Petitioner   | ) |                         |
|   | ) |                         |
| v.  | ) |                         |
|   | ) |                         |
| JUSTIN CONSTRUCTION COMPANY,<br>INCORPORATED  | ) |                         |
|   | ) |                         |
| and   | ) |                         |
|   | ) |                         |
| WEST VIRGINIA COAL WORKERS'<br>PNEUMOCONIOSIS FUND  | ) | DATE ISSUED: 12/18/2025 |
|   | ) |                         |
| Employer/Carrier-   | ) |                         |
| Respondents   | ) |                         |
|   | ) |                         |
| DIRECTOR, OFFICE OF WORKERS'<br>COMPENSATION PROGRAMS, UNITED<br>STATES DEPARTMENT OF LABOR | ) |                         |
|   | ) |                         |
| Party-in-Interest   | ) | DECISION and ORDER      |
|   | ) |                         |

**NOT-PUBLISHED**

Appeal of the Decision and Order Denying Benefits of Lauren C. Boucher,  
Administrative Law Judge, United States Department of Labor.

Kenneth D. Taylor, Bud, West Virginia.

Wesley A. Shumway and Charity K. Lawrence (Spilman Thomas & Battle,  
PLLC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,<sup>1</sup> Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Denying Benefits (2022-BLA-05787) rendered on a claim filed on September 1, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not 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); 20 C.F.R. §718.304. She further found Claimant did not establish a totally disabling pulmonary or respiratory impairment and, therefore, found he failed to establish an essential element of entitlement.<sup>2</sup> 20 C.F.R. §718.204(b)(2). Thus, she denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer and its Carrier (Employer) respond in support of the denial of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response.

In an appeal 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.<sup>3</sup> 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).

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<sup>1</sup> On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the Administrative Law Judge (ALJ)'s decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

<sup>2</sup> While the ALJ did not make a specific finding regarding Claimant's length of coal mine employment, she noted he worked underground from 1971 to 1997. Decision and Order at 5.

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14.

## **Invocation of the Section 411(c)(3) Presumption**

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-rays, biopsy, computed tomography (CT) scans, and medical opinion evidence do not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a)-(c); Decision and Order at 9-10. Thus, she found the evidence when considered as a whole does not establish complicated pneumoconiosis. Decision and Order at 11.

### **20 C.F.R. §718.304(a) - X-rays**

The ALJ considered eleven interpretations of five x-rays dated June 19, 2020, February 4, 2021, September 10, 2021, September 21, 2022, and December 15, 2022. Decision and Order at 8. She correctly found all the physicians who interpreted these x-rays are dually qualified as B readers and Board-certified radiologists and therefore determined their interpretations are entitled to equal weight. *Id.* at 7-8; Director's Exhibits 18, 21; Claimant's Exhibits 2-4.

Dr. Crum read the June 19, 2020 x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, while Dr. Seaman read the x-ray as completely negative. Claimant's Exhibit 1; Employer's Exhibit 11. Thus, the ALJ found this x-ray in equipoise for simple pneumoconiosis and negative for complicated pneumoconiosis. Decision and Order at 8.

Dr. Ramakrishnan read the February 4, 2021 x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis, while Dr. Seaman read the x-ray as completely negative. Claimant's Exhibit 5; Director's Exhibit 21. Dr. DePonte interpreted the x-ray as 0/1 profusion and noted no large opacities. Director's Exhibit 18 at 9. Thus, the ALJ correctly found that Dr. DePonte's reading is negative for pneumoconiosis. *See* 20 C.F.R. §718.102(d)(3); Decision and Order at 8 n.11. As two of

the three dually-qualified physicians interpreted the x-ray as negative for pneumoconiosis, the ALJ determined the February 4, 2021 x-ray is negative for both simple and complicated pneumoconiosis. Decision and Order at 8.

Dr. Crum read the September 10, 2021 x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, while Dr. Seaman read the x-ray as negative for both diseases. Claimant's Exhibit 3; Employer's Exhibit 1. Thus, the ALJ found the x-ray in equipoise as to simple pneumoconiosis and negative for complicated pneumoconiosis. Decision and Order at 8.

Dr. Ramakrishnan read the September 21, 2022 x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, while Dr. Seaman read the x-ray as negative for both diseases. Claimant's Exhibit 4; Employer's Exhibit 3. The ALJ therefore determined this x-ray is in equipoise as to simple pneumoconiosis and negative for complicated pneumoconiosis. Decision and Order at 8.

Dr. Alexander read the December 15, 2022 x-ray as positive for simple and complicated pneumoconiosis, Category A opacity, while Dr. Seaman read the x-ray as negative for both diseases. Claimant's Exhibit 2; Employer's Exhibit 12. Consequently, the ALJ found the December 15, 2022 x-ray in equipoise as to both simple and complicated pneumoconiosis. Decision and Order at 8.

The ALJ accurately found the June 19, 2020, February 4, 2021, September 10, 2021, and September 21, 2022 x-rays are negative for complicated pneumoconiosis because the negative readings for the disease are unrebutted. Decision and Order at 8. The ALJ also permissibly found the December 15, 2022 x-ray does not support a finding of complicated pneumoconiosis because an equal number of dually-qualified radiologists read the x-ray as positive and negative for complicated pneumoconiosis, rendering the readings of the x-ray in equipoise.<sup>4</sup> See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281

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<sup>4</sup> The ALJ also noted the December 15, 2022 x-ray is the most recent x-ray of record and considered whether Dr. Alexander's positive interpretation "reflects the progression from simple to complicated pneumoconiosis." Decision and Order at 8. However, she found that Dr. Alexander's reading is "qualitatively different" from the rest of the readings because he observed a "significantly" higher profusion of opacities. Decision and Order at 9; Claimant's Exhibits 1-5. Thus, the ALJ declined to give Dr. Alexander's reading of the December x-ray more weight based on recency and found it outweighed by the other interpretations (including Dr. Seaman's reading of the same x-ray), which were all negative for complicated pneumoconiosis. Decision and Order at 9.

(1994); *Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 9.

The ALJ properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians’ radiological qualifications. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 8-9. Having found four x-rays negative for complicated pneumoconiosis and one x-ray in equipoise, the ALJ permissibly found the x-ray evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Ondecko*, 512 U.S. at 281; *Addison*, 831 F.3d at 256-57; Decision and Order at 9. As it is supported by substantial evidence, we affirm the ALJ’s finding that the x-ray evidence does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 9.

### **Biopsy Evidence – 20 C.F.R. §718.304(b)**

Claimant submitted a pathology report dated May 21, 2019, describing a procedure that included bronchoscopy and a needle biopsy of his right lung. Claimant’s Exhibit 7. The report noted “+RML pneumoconiosis appearing discoloration,” and a significantly enlarged right hilar node. *Id.* at 1. The report further documented anthracotic pigment, birefringent particles consistent with silica and a “cluster of small lymphoid cells containing anthracotic pigment,” and it presented differential diagnoses including “infection, mixed dust nodule, and other etiologies.” *Id.* at 5. As the ALJ found, the report did not identify pneumoconiosis, “much less ‘massive lesions’” in Claimant’s lungs; thus, we affirm her finding that the biopsy evidence does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(b). Decision and Order at 9.

### **Other Medical Evidence – 20 C.F.R. §718.304(c)**

The ALJ next considered whether the computed tomography (CT) scans or medical opinions support a finding of complicated pneumoconiosis. Decision and Order at 9-10.

The ALJ considered ten interpretations of five CT scans dated April 16, 2019, May 30, 2019, December 10, 2019, September 8, 2020, and October 5, 2021. Decision and Order at 9. Dr. Ahmed read the April 16, 2019 CT scan and identified a spiculated eight-millimeter nodule in the right upper lobe which “could represent malignancy,” enlarged lymph nodes in the right hilum measuring up to two centimeters, and a “suspect[ed]” five-millimeter nodule in the right middle lobe with adjacent atelectasis. Claimant’s Exhibit 8. Dr. Olson read the May 30, 2019 positron emission tomography/CT scan and similarly identified a spiculated eight-millimeter nodule in the right upper lobe, prominent right hilar nodes, and a five-millimeter nodule in the right middle lobe. Claimant’s Exhibit 9. He noted that the nodules he observed are not hypermetabolic and concluded there were no findings “strongly suggestive of hypermetabolic neoplasm.” *Id.*

Dr. Schlarb read the December 10, 2019 CT scan and observed calcified granuloma within the anterior segment of the left upper lobe; bibasilar scarring or atelectasis; a persistent linear opacity within the medial segment of the right lower lobe consistent with scarring or atelectasis; and nodules in both lungs, including an irregular noncalcified nodule in the right upper lobe measuring seven millimeters. Claimant's Exhibit 10. Dr. Crum read the September 8, 2020 scan and found bilateral subcentimeter nodules consistent with simple pneumoconiosis and borderline mediastinal and hilar lymph nodes with scattered calcifications, which he stated are "highly consistent with pneumoconiosis especially silica exposure," but found no evidence of a large opacity suggesting complicated pneumoconiosis. Claimant's Exhibit 11. Dr. Schlarb also read the October 5, 2021 scan and observed a small amount of basilar scarring or atelectasis and "several stable small nodules," including a nodule in the right upper lobe measuring seven millimeters and a nodule in the right lower lobe measuring five millimeters. Claimant's Exhibit 12.

Dr. Seaman read the April 16, 2019, May 30, 2019, December 10, 2019, September 8, 2020, and October 5, 2021 CT scans and found no nodules indicating the presence of pneumoconiosis and no large opacities. Employer's Exhibits 4, 7-10. In each reading, she identified scattered, discrete, solid pulmonary nodules with a representative nodule measuring up to four millimeters in the right upper lobe, which she stated is likely sequelae of a prior infection, as well as calcified right hilar lymph nodes. *Id.*

The ALJ accurately found that none of the CT scan readings support a finding that Claimant has complicated pneumoconiosis. Decision and Order at 9. She noted that although all of Claimant's experts observed small nodules, only Dr. Crum specifically diagnosed simple pneumoconiosis and "notably," he stated that there is no evidence that Claimant has a large opacity of sufficient size to constitute complicated pneumoconiosis. *Id.* at 9-10. Thus, we affirm the ALJ's conclusion that the CT scan evidence does not support a finding that Claimant has complicated pneumoconiosis. See 20 C.F.R. § 718.204(c); Decision and Order at 10.

The ALJ also considered Drs. Ajjarapu's, Basheda's, and Zaldivar's medical opinions. Dr. Ajjarapu conducted the Department of Labor (DOL)-sponsored exam on February 4, 2021, and determined Claimant did not have simple or complicated pneumoconiosis. Director's Exhibit 18 at 8. Further, as the ALJ noted, Drs. Basheda and Zaldivar testified that based on their review of the x-ray and CT scan evidence, including Dr. Alexander's positive reading of the December 2022 x-ray, Claimant does not have complicated pneumoconiosis. Decision and Order at 10; Employer's Exhibits 5 at 18-19; 6 at 18-19, 23-26. They explained that Dr. Alexander's interpretation is inconsistent with the rest of the evidence and a progression to complicated pneumoconiosis from 2021 to

2022 would not have occurred that rapidly.<sup>5</sup> Employer's Exhibits 5 at 18-19; 6 at 19-20. As none of the physicians diagnosed complicated pneumoconiosis at 20 C.F.R. §718.304(c), we affirm the ALJ's finding that the medical opinion evidence does not support a finding of complicated pneumoconiosis. Decision and Order at 10.

### **Weighing the Evidence Together**

In weighing the evidence together regarding complicated pneumoconiosis, the ALJ found that Dr. Alexander's positive reading of the December 15, 2022 x-ray was outweighed by the rest of the x-ray evidence, biopsy evidence, CT scan evidence, and medical opinion evidence. Decision and Order at 11. As we have affirmed the ALJ's individual findings that the evidence does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a)-(c), we further affirm, as supported by substantial evidence, her finding that Claimant did not establish complicated pneumoconiosis based on the evidence as a whole. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 11. We therefore affirm the ALJ's finding that Claimant did not invoke the Section 411(c)(3) presumption. 20 C.F.R. §718.304; Decision and Order at 11.

### **Total Disability**

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work.<sup>6</sup> *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function or arterial blood gas studies,<sup>7</sup> evidence of pneumoconiosis and cor pulmonale with

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<sup>5</sup> Drs. Basheda and Zaldivar were asked to consider Dr. DePonte's February 4, 2021 interpretation and Dr. Alexander's December 15, 2022 x-ray interpretations when discussing potential progression. Employer's Exhibits 5 at 18; 6 at 19.

<sup>6</sup> The ALJ found Claimant's usual coal mine employment was as an electrician and repairman. Decision and Order at 5-6; Director's Exhibit 4. She noted Claimant's uncontradicted testimony that he lifted wheel units that weighed more than six hundred pounds on buggies using pry bars and lifted more than one hundred pounds by himself daily demonstrated that he performed heavy labor. Decision and Order at 5-6; Hearing Transcript at 16, 28. Substantial evidence supports the ALJ's finding that Claimant's usual coal mine work required heavy exertion; thus, we affirm it. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 6.

<sup>7</sup> A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part

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 the pulmonary function studies, arterial blood gas studies, and medical opinions do not support a finding of total disability.<sup>8</sup> Decision and Order at 11-22.

### **Pulmonary Function Studies**

The ALJ considered four pulmonary function studies dated February 4, 2021, September 10, 2021, September 21, 2022, and December 15, 2022.<sup>9</sup> Decision and Order at 12-14. The February 4, 2021 study produced qualifying values before and after the administration of bronchodilators, while the September 10, 2021 and September 21, 2022 studies produced non-qualifying values before and after the administration of bronchodilators. Director's Exhibit 18 at 10; Director's Exhibit 23 at 25; Employer's Exhibit 2 at 12. The December 15, 2022 study produced qualifying values pre-bronchodilator; post-bronchodilator values were not obtained. Claimant's Exhibit 6 at 2. The ALJ determined all the studies were performed in "substantial compliance with the regulations"<sup>10</sup> but found that the qualifying February 4, 2021 and December 15, 2022 tests were insufficiently reliable to assess whether Claimant is totally disabled and thus

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718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

<sup>8</sup> The ALJ accurately found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 11 n.21. Thus, we affirm her finding the evidence does not support total disability under this subsection. 20 C.F.R. §718.204(b)(2)(iii); *see* Decision and Order at 11 n.21.

<sup>9</sup> The ALJ noted that all the physicians listed Claimant's height as sixty-nine inches; thus, she used the closest table height of 69.3 inches to assess whether the studies qualify for total disability. *See Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); Decision and Order at 12.

<sup>10</sup> In finding all the studies were performed in substantial compliance with the regulations, the ALJ specifically pointed to the quality standards at 20 C.F.R. Part 718 App. B. Decision and Order at 13. However, as discussed below, the ALJ found the studies unreliable given the lack of reproducibility and effort, which are addressed in 20 C.F.R. Part 718 App. B (2)(ii).

concluded that the pulmonary function study evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 14.

When weighing the pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 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). If a study does not precisely conform to the quality standards, but is in substantial compliance, it “constitute[s] evidence of the fact for which it is proffered.” 20 C.F.R. §718.101(b). The ALJ, as the fact-finder, must determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987). “In the absence of evidence to the contrary, compliance with the [regulatory quality standards] shall be presumed.” 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

#### *February 4, 2021 Study*

Dr. Ajjarapu conducted the February 4, 2021 pulmonary function study as part of Claimant’s DOL-sponsored evaluation and indicated Claimant’s degree of cooperation and ability to understand instructions and follow directions while performing the study were “[g]ood.” Director’s Exhibit 18 at 10. The technician’s comments indicate that Claimant gave “good effort” and that the test “met repeatability on FVC pre and post bronchodilator.” *Id.* at 11. Dr. Forehand reviewed the study and concluded that the study is acceptable. Director’s Exhibit 17. Dr. Zaldivar noted that the study produced exhalation curves with two peaks, indicating that Claimant exhaled, hesitated, then exhaled again. Employer’s Exhibit 6 at 33-34. Dr. Zaldivar explained that had Claimant given maximum effort without hesitation, his exhalation would have produced one peak. *Id.*

The ALJ credited Dr. Zaldivar’s opinion that the February 4, 2021 study is “insufficiently reliable” because he explained that Claimant’s exhalation curve shows hesitation. Decision and Order at 14 n.24; *see* Director’s Exhibit 18 at 12; Employer’s Exhibit 6 at 33-34. She indicated Dr. Forehand’s validation of the study does not outweigh Dr. Zaldivar’s opinion because Dr. Forehand “merely checked a box” without any additional analysis. Decision and Order at 14 n.24; Director’s Exhibit 17.

The ALJ failed to discuss all the conflicting evidence on the issue, however, as she did not consider Dr. Ajjarapu’s notation of good cooperation and ability to understand/follow directions or the technician’s comments that Claimant had good cooperation and effort and that the study met repeatability on the FVC values. Director’s Exhibit 18 at 10-11. The ALJ also did not address Dr. Basheda’s assessment of the February 4, 2021 study. Of note, while Dr. Basheda noted “inconsistent effort” in the flow-volume loop and questioned the validity of the lung volume measurements, he also

indicated there was “acceptable reproducibility” with the FEV1 and FVC pre-bronchodilator and indicated the study demonstrated “moderate to severe” obstruction. Director’s Exhibit 23 at 11, 13. Thus, the ALJ’s finding does not satisfy the Administrative Procedure Act (APA).<sup>11</sup> 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).

Consequently, we vacate the ALJ’s determination that the February 4, 2021 study is unreliable and therefore cannot support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). *Addison*, 831 F.3d at 252-53; *Hicks*, 138 F.3d at 533 (ALJ erred by failing to adequately explain why he credited certain evidence and discredited other evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

#### *December 15, 2022 Study*

The technician administering the December 15, 2022 study commented that Claimant performed the study with good cooperation and effort. Claimant’s Exhibit 6 at 2. Dr. Forehand reviewed the study and noted it was “acceptable.” *Id.* Dr. Zaldivar testified that the study produced four flow-volume loops and that the best one “shows smooth exhalation and decay” but the others showed irregular tracings. Employer’s Exhibit 6 at 41-42. He explained the tracings indicate the effort is not reproducible and, “at the very least, [the test is] not optimal.” *Id.* at 42. He further testified that the nine pre-bronchodilator trials administered during the study are beyond the limit recommended by the American Thoracic Society, explaining that “a person should stop [at] less than five” because too many trials may cause fatigue. *Id.* at 42-43.

When asked about multiple repeated trials, Dr. Basheda testified it indicates Claimant “may have difficulty comprehending the instructions or may just have difficulty doing the test.” Employer’s Exhibit 5 at 25. Dr. Basheda further stated the results in the December 15, 2022 study demonstrate a decline in spirometry in a “very” short period between September and December 2022, which “may be effort-related” but could indicate the presence of asthma, “a disease that can change within hours.” Employer’s Exhibit 5 at 33.

The ALJ indicated that the pulmonary function studies reflect a “wide range” of results within a short period, suggesting “either variability of impairment or variability of effort, or both.” Decision and Order at 14. She stated Drs. Basheda’s and Zaldivar’s

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<sup>11</sup> The Administrative Procedure Act requires 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).

criticisms of the study are supported by Claimant’s September 2022 study, which produced “vastly” better values.”<sup>12</sup> *Id.* Further, the ALJ found Drs. Basheda’s and Zaldivar’s opinions that the need to perform nine trials during the December 2022 study implied a lack of effort and reproducibility. *Id.* She determined that Drs. Basheda’s and Zaldivar’s opinions outweigh Dr. Forehand’s validation of the December 2022 study because Dr. Forehand “merely wrote ‘acceptable spirograms,’” and she therefore found the study insufficiently reliable to assess Claimant’s disability. *Id.*

As with the February 2021 study, the ALJ failed to consider all relevant evidence in assessing the validity of the December 2022 study, as she did not consider the technician’s observation of good cooperation and effort. *Addison*, 831 F.3d at 252-53; *Hicks*, 138 F.3d at 533; *McCune*, 6 BLR at 1-998; Claimant’s Exhibit 6. Thus, the ALJ failed to consider all relevant evidence regarding the validity of the studies as required by the APA. *See Wojtowicz*, 12 BLR at 1-165.

Further, the ALJ failed to adequately explain why the December 2022 study is insufficiently reliable to assess the presence of total disability based on the evidence she did consider. *See* Decision and Order at 13-14. Initially, the ALJ appears to ignore Dr. Zaldivar’s statement that one of the tracings in the December 15, 2022 study showed “smooth exhalation and decay” and that, at the very least, the test was not “optimal.” Employer’s Exhibit 6 at 41-42. The regulations governing pulmonary function studies do not require “optimal” effort on the part of the miner for the study to be in substantial compliance. *See Laird v. Freeman United Coal Co.*, 6 BLR 1-883, 1-887 (1984) (“fair” cooperation and comprehension are sufficient). Thus, the ALJ failed to adequately explain, when considering the entirety of Dr. Zaldivar’s opinion, how it invalidated the December 15, 2022 study given it is Employer’s burden to establish the testing is not in substantial compliance with the regulations. *See Vivian*, 7 BLR at 1-361.

In addition, while the ALJ points to Dr. Basheda’s opinion and the decline between the two most recent studies to support her finding that there was variability in effort, Dr. Basheda did not state that either of the qualifying studies were invalid or that they could not be relied upon to assess total disability; he simply stated that “at times” there has been inconsistency in effort. *See* Director’s Exhibit 23 at 14; Employer’s Exhibit 5 at 24, 28. While Dr. Basheda noted the December 15, 2022 decline in function “may” be effort-

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<sup>12</sup> The ALJ noted evidence that the non-qualifying September 10, 2021 and September 21, 2022 studies are also invalid; however, she did not make specific findings regarding these studies, as “those results reflect at least Claimant’s minimum lung function” and thus do not support a finding of total disability. Decision and Order at 13-14.

related, he also explained that asthma, which he diagnosed in this case, can cause “big swings” in function in “very, very short periods,” even within hours.<sup>13</sup> Director’s Exhibit 23 at 14; Employer’s Exhibit 5 at 24, 30, 33; *see also Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991) (because pneumoconiosis is a chronic condition, on any given day, it is possible to do better than one’s typical condition would permit). Moreover, as the ALJ noted, Dr. Basheda also acknowledged that multiple trials may be a “red flag” that either the person is having difficulty with instructions or “may just have difficulty doing the test.” Employer’s Exhibit 5 at 25. The ALJ did not consider this statement in light of the regulations’ recognition that miners with obstructive disease or a rapid decline in lung function may be less likely to reproduce their test results; thus, those tests not meeting reproducibility may still be submitted to support a claim for benefits. 20 C.F.R. Part 718, App. B (2)(ii)(G).

Thus, we hold the ALJ did not adequately explain how Dr. Basheda’s opinion supported a finding that the December 15, 2022 study is invalid. Consequently, we vacate the ALJ’s finding that the December 15, 2022 pulmonary function study is unreliable for assessing total disability. Decision and Order at 14. Therefore, we vacate the ALJ’s finding that the pulmonary function test evidence does not support a finding of total disability and remand for further consideration. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 14.

### **Arterial Blood Gas Studies**

The ALJ considered three blood gas studies dated February 4, 2021, September 10, 2021, and September 21, 2022. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 15. As she accurately found, none of the studies produced qualifying results; thus, we affirm her finding that the blood gas study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 15; Director’s Exhibits 18, 23; Employer’s Exhibit 2.

### **Medical Opinion Evidence**

The ALJ considered the opinions of Drs. Ajjarapu, Basheda, and Zaldivar in assessing total disability. Decision and Order at 15-21. Dr. Ajjarapu opined Claimant is totally disabled from a pulmonary or respiratory impairment, while Drs. Basheda and

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<sup>13</sup> This statement appears to conflict with the ALJ’s finding that a significant decline in such a short period of time “bolsters” the physicians’ opinions that the study is invalid because of lack of effort. Decision and Order at 14.

Zaldivar opined he is not. Director's Exhibits 18, 23; Employer's Exhibits 2, 5, 6. The ALJ found Drs. Basheda's and Zaldivar's opinions better supported by the objective studies, crediting their "criticisms" of the qualifying February 2021 and December 2022 pulmonary function tests. Decision and Order at 20-21. The ALJ discredited Dr. Ajjarapu's opinion because she did not review the more recent pulmonary function studies; Dr. Ajjarapu relied on the results of the qualifying February 4, 2021 pulmonary function study, and the ALJ observed that "[n]otably . . . the later tests were not qualifying for total disability." Decision and Order at 20.

Because we have vacated the ALJ's finding that the pulmonary function studies do not support a finding of total disability, and her findings regarding the medical opinion evidence relies on these findings, we also vacate her finding that the medical opinion evidence does not support a finding of total disability. *See* 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 20-21. Therefore, we vacate the ALJ's finding that Claimant failed to establish total disability in consideration of the evidence as a whole.<sup>14</sup> Decision and Order at 22. Consequently, we vacate the denial of benefits. *Id.*

### **Remand Instructions**

On remand, the ALJ must first reconsider whether the February 4, 2021 and December 15, 2022 pulmonary function studies are in substantial compliance with the regulations and thus may be used to assess total disability, resolving any conflicts in the evidence. 20 C.F.R. §§718.101(b), 718.103(c); *see also* 20 C.F.R. Part 718, App. B. She then must weigh the pulmonary function study evidence together to determine if it supports total disability under 20 C.F.R. §718.204(b)(2)(i). She must also reassess the medical opinions in light of these findings pursuant to 20 C.F.R. §718.204(b)(2)(iv), resolving the conflicting medical opinions by addressing the physicians' comparative credentials, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Hicks*, 138 F.3d at 533; *Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997). If the ALJ determines that the pulmonary function studies or medical opinions support total disability, she must then weigh all the evidence together to determine whether Claimant has established total disability. *See* 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-

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<sup>14</sup> The ALJ found that while the treatment records note evaluation and treatment for respiratory complaints, including shortness of breath at rest and with minimal exertion, the treatment records "taken alone" do not support a finding that Claimant has a respiratory total disability. Decision and Order at 22.

198. In making her determinations, she must set forth her findings in detail and explain her rationale in accordance with the APA's requirements. *Wojtowicz*, 12 BLR at 1-165.

If the ALJ finds that Claimant establishes total disability and at least fifteen years of qualifying coal mine employment, Claimant will have invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis and the ALJ must then consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1). The ALJ should therefore make a specific finding regarding the length and nature of Claimant's coal mine employment. *See* 20 C.F.R. §718.305(b)(1)(i). If the ALJ finds Claimant establishes total disability and credits him with less than fifteen years of qualifying coal mine employment, then she must determine if Claimant established the remaining elements of entitlement under Part 718 to obtain an award of benefits. If Claimant fails to establish total disability, then the ALJ may reinstate the denial of benefits as Claimant will have failed to establish an essential element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

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

SO ORDERED.

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Acting Administrative Appeals Judge