

U.S. Department of Labor

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



BRB No. 25-0065 BLA

HOWARD D. LOOMAN

Claimant-Respondent

v.

THE MONONGALIA COUNTY COAL
COMPANY

and

MURRAY ENERGY CORPORATION
TRUST

Employer/Carrier-
Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 12/09/2025

DECISION and ORDER

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

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long),
Ebensburg, Pennsylvania, for Claimant.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2024-BLA-05296) rendered on a subsequent claim filed on March 27, 2017,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with more than fifteen years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.³ 20 C.F.R. §725.309. He further found Employer did not rebut the presumption and awarded benefits.

¹ This is Claimant's sixth claim for benefits. Director's Exhibits 1-5. He withdrew his fifth claim and it is thus "considered not to have been filed." 20 C.F.R. §725.306(b); Director's Exhibit 1. On May 12, 2014, the district director denied Claimant's fourth claim, filed on September 12, 2013, because he failed to establish total disability. Director's Exhibit 2 at 5. Claimant took no further action until filing his current claim. Director's Exhibit 7.

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) (2018); *see* 20 C.F.R. §718.305.

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 the district director denied Claimant's prior claim for failure to establish total disability, he had to submit new evidence establishing this element of entitlement to obtain review of the merits of his current claim. *Id.*

On appeal, Employer argues the ALJ erred in finding Claimant established total disability.⁴ Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

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'Keeffe v. Smith, Hinchman and 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 or comparable gainful work.⁶ *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,⁷ 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.*

⁴ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established more than fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

⁵ 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 Exhibits 3 at 80; 4 at 112; Hearing Tr. at 14.

⁶ The ALJ found Claimant's usual coal mine employment was working as a maintenance foreman, which required "medium exertional work." Decision and Order at 19 n.16. As this finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

⁷ 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).

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 pulmonary function study evidence and the evidence as a whole.⁸ 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 17, 21. Employer challenges the ALJ's weighing of the pulmonary function study and medical opinion evidence. Employer's Brief at 9-11.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated May 12, 2017 and August 1, 2024. Decision and Order at 17. The May 12, 2017 study produced non-qualifying values pre-bronchodilator. Director's Exhibit 18 at 24. The August 1, 2024 study produced non-qualifying values before and after the administration of a bronchodilator. Claimant's Exhibit 1 at 5 (unpaginated). The ALJ assigned greater weight to the August 1, 2024 study than the May 12, 2017 study based on its recency, and thus found the results of the pulmonary function studies support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 17.

Employer argues the ALJ erred in failing to consider Dr. Fino's opinion that the August 1, 2024 pulmonary function study is invalid. Employer's Brief at 9-11. We agree.

Dr. Fino opined the tracings from the August 1, 2024 study indicate Claimant did not give a forceful exhalation and "never completely emptied his lungs," and thus the study is invalid. Employer's Exhibit 1 at 12. The technician that administered the study noted it was acceptable and reproducible and that Claimant demonstrated good effort and cooperation. Claimant's Exhibit 1 at 6 (unpaginated). Dr. Posin opined the study demonstrated "significant defects" and that it meets the disability criteria. *Id.* at 3.

The ALJ noted Claimant's cooperation was good on both the May 12, 2017 and August 1, 2024 studies and stated that "all of the tests were 'conforming,'" but he did not otherwise acknowledge or discuss the evidence regarding the validity of the August 1, 2024 study. Decision and Order at 17. Because the ALJ failed to consider all relevant evidence, we must vacate his finding the pulmonary function study evidence supports a finding of total disability based on the August 1, 2024 study. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *See "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th

⁸ The ALJ found the arterial blood gas study and medical opinion evidence does 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)(ii)-(iv); Decision and Order at 18-21.

Cir. 2016); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984); Decision and Order at 17. Consequently, we must also vacate his finding the evidence overall establishes Claimant is totally disabled and that he established a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 725.309(c); Decision and Order at 21.

Medical Opinions

The ALJ considered the opinions of Drs. Holt, Posin, and Fino. Decision and Order at 19-21. Drs. Holt and Posin opined Claimant is totally disabled based on his pulmonary function study results and the exertional requirements of his usual coal mine employment. Director's Exhibit 18 at 2; Claimant's Exhibit 1 at 1-3 (unpaginated). Dr. Fino opined Claimant is not totally disabled because his valid pulmonary function and blood gas studies are not qualifying. Employer's Exhibit 1 at 7.

The ALJ discredited Dr. Holt's opinion because it is inconsistent with his finding the May 12, 2017 pulmonary function study is non-qualifying. Decision and Order at 20-21. He further found Dr. Posin's opinion is not reasoned because he did not describe Claimant's exertional requirements, and he found Dr. Posin's statement Claimant has "a total pulmonary impairment" to be "unresponsive to the question whether Claimant" is totally disabled. *Id.* at 21. Finally, he discredited Dr. Fino's opinion because it is inconsistent with his finding the August 1, 2024 pulmonary function study is qualifying. *Id.* The ALJ thus concluded the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21.

Employer argues the ALJ erred in discrediting Dr. Fino's opinion. Employer's Brief at 10. As the ALJ's weighing of the medical opinion evidence was based, in part, on his evaluation of the pulmonary function studies, we must also vacate his weighing of the medical opinions at 20 C.F.R. §718.204(b)(2)(iv).

Remand Instructions

On remand, the ALJ must reconsider whether the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Specifically, the ALJ initially must consider whether the August 1, 2024 pulmonary function study is valid and reliable. As discussed, he must address all relevant evidence and resolve any conflicts in the evidence. In rendering his findings on remand, the ALJ must explain the bases for his findings in accordance with the Administrative Procedure Act,⁹ 5 U.S.C.

⁹ The Administrative Procedure Act, 5 U.S.C. §§500-591, provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis

§557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

The ALJ must then reconsider the medical opinion evidence, taking into account his findings regarding the pulmonary function study evidence. 20 C.F.R. §718.204(b)(2)(iv). In doing so, he must consider the exertional requirements of Claimant's usual coal mine work and determine whether the opinions of Drs. Holt, Posin, and Fino are reasoned and documented. *See McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988) (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). He must explain the weight he accords each opinion, giving consideration to 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 Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

If Claimant establishes total disability based on the pulmonary function study evidence or medical opinion evidence, considered in isolation, the ALJ must then determine whether he has established total disability based on consideration of the evidence as a whole. *See* 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 have invoked the Section 411(c)(4) presumption. As Employer has not challenged the ALJ's determination that it failed to rebut the presumption, the ALJ may reinstate his award of benefits. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 23-24. If Claimant fails to establish total disability, an essential element of entitlement, the ALJ must deny benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

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).

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