U.S. Department of Labor

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

BRB No. 24-0221 BLA

BOBBY G. AILSTOCK, JR. Claimant-Petitioner v. GREENBRIAR MINERALS, LLC and BRICKSTREET MUTUAL INSURANCE Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 02/26/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Order Addressing Claimant's Motion for Reconsideration of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell and Daniel K. Evans (Advanced Administrative Litigation Clinic, Washington and Lee University School of Law), Lexington, Virginia, for Claimant.

James W. Heslep (Jenkins Fenstermaker, PLLC), Huntington, West Virginia, for Employer.

Olgamaris Fernandez (Emily H. Su, Deputy Solicitor for National Operations; Jennifer Feldman Jones, Acting Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Denying Benefits and Order Addressing Claimant's Motion for Reconsideration (2021-BLA-05855) rendered on a claim filed on September 22, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least twenty-two years of underground coal mine employment but found he did not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant could not invoke 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), or establish entitlement to benefits under 20 C.F.R. Part 718. Therefore, she denied benefits.

Claimant subsequently filed a Motion for Reconsideration, arguing that the ALJ inaccurately characterized Dr. Zaldivar's medical opinion on total disability. Feb. 1, 2024 Claimant's Motion for Reconsideration. Employer responded, arguing that the appropriate remedy for Claimant was to file an appeal with the Benefits Review Board as opposed to a motion for reconsideration with the ALJ. The ALJ granted Claimant's motion for reconsideration, but still concluded he did not establish total disability and denied benefits. Feb. 26, 2024 Order Addressing Claimant's Motion for Reconsideration (Order on Reconsideration) at 4.

[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); *see* 20 C.F.R. §718.305.

On appeal, Claimant argues the ALJ erred in finding he did not establish total disability and thereby did not invoke the Section 411(c)(4) presumption.[2] Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, arguing that the ALJ erred in disregarding pulmonary function studies in Claimant's treatment records and the medical opinions relying on them because she could not determine their reliability based on their conformity to the applicable quality standards. Claimant has filed a reply brief, reiterating his contention that he is entitled to benefits.

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.[3] 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).

Invocation of the Section 411(c)(4) Presumption - Total Disability

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, prevents him from performing his usual coal mine work and comparable gainful work.[4] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies and arterial blood gas studies,[5] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical

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

[3] 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 4.

[4] The ALJ found Claimant's usual coal mine employment as an out-by foreman required a "heavy exertional level" of work. Decision and Order at 5. As no party challenges this finding, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 5.

[5] A "qualifying" pulmonary function study or arterial blood gas study yields results that are equal to or less than the applicable table values listed 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).

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.[6] 20 C.F.R. §718.204(b)(2); Decision and Order at 6-11.

Pulmonary Function Studies

The ALJ considered the results of an October 26, 2020 pulmonary function study. Decision and Order at 7; Director's Exhibit 15. She noted the study produced non-qualifying results before and after the administration of bronchodilators. Decision and Order at 7. Therefore, she concluded the pulmonary function study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 7.

Claimant argues the ALJ erred in failing to consider all of the pulmonary function studies in the record. Claimant's Brief at 4-8. We agree in part.

A review of the ALJ's decision demonstrates that in finding the pulmonary function study evidence does not support a finding of total disability, she did not consider all the relevant evidence as required. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (ALJ's failure to consider all relevant evidence requires remand). While the ALJ considered the October 26, 2020 pulmonary function study, she failed to consider fourteen pulmonary function studies that Claimant submitted as treatment records.[7] Claimant's Brief at 4-8;

[6] The ALJ found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 6 n.3.

[7] Claimant also asserts the ALJ did not consider the February 23, 2022 pulmonary function study. Claimant's Brief at 5. We disagree. Dr. Zaldivar administered the pulmonary function study when he examined Claimant on February 23, 2022. Employer's Exhibit 2. At the hearing, Employer offered only Dr. Zaldivar's medical report into evidence as Employer's Exhibit 2, but it did not offer the doctor's pulmonary function study into evidence. Hearing Tr. at 33. While the ALJ admitted Employer's Exhibit 2, she noted "both parties agree that to the extent" Dr. Zaldivar's medical report references "evidence or medical data that was not otherwise admitted into evidence or relied upon affirmatively by the parties in this matter, those references will not be considered." *Id.* at 37-38. In her Decision and Order, the ALJ noted Employer's Exhibit 2 contains Dr. Zaldivar's medical report. Decision and Order at 4; Employer's August 26, 2022 Evidence Summary Form; Claimant's August 26, 2022 Evidence Summary Form; Employer's

Director's Exhibits 12 at 51, 53, 55; 15; Claimant's Exhibits 3 at 1, 8, 34, 43, 62, 84; 4 at 1, 8; 5 at 9; 6 at 8, 22. The regulations provide that "[n]otwithstanding the [evidentiary] limitations" of 20 C.F.R. §725.414(a)(2), (3), "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence." 20 C.F.R. §725.414(a)(4). However, the ALJ must determine the particular treatment evidence is reliable in order to consider it.[8]

Exhibit 2. Because the parties did not designate the February 23, 2022 pulmonary function study as affirmative or rebuttal evidence in the record, the ALJ properly declined to consider the study at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 7; Employer's August 26, 2022 Evidence Summary Form; Claimant's August 26, 2022 Evidence Summary Form. We note further that neither of the parties referenced Dr. Zaldivar's study in their immediate post-hearing briefs below. In addition, as Claimant notes, the ALJ did not consider the May 24, 2018 pulmonary function study ordered by Drs. Kinder, Henry, and Leef of the West Virginia Occupational Pneumoconiosis Board, which produced non-qualifying values before and after the administration of bronchodilators. Director's Exhibit 13. Thus the ALJ must clarify whether the May 24, 2018 study is in evidence. *See McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (ALJ's failure to consider all relevant evidence requires remand). If the ALJ determines the study is in evidence, she must consider it with the other pulmonary function study evidence and in evaluating the medical opinions. 20 C.F.R. §718.204(b)(2)(i), (iv).

[8] When considering pulmonary function study evidence developed in anticipation of litigation, an ALJ must determine whether the studies are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); *see Director, OWCP v. Siwiec*, 894 F.2d 635, 638 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1326 (3d Cir. 1987). 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). However, the quality standards do not apply to pulmonary function studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101, 718.103; *see J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). An ALJ must still determine, however, if treatment record pulmonary function studies are

The March 16, 2016 and February 5, 2018 studies produced qualifying results without the administration of a bronchodilator. Claimant's Exhibit 6 at 8, 22. The January 11, 2010, February 28, 2011, January 4, 2013, September 10, 2015, and April 14, 2017 studies produced qualifying values before and after the administration of bronchodilators. Claimant's Exhibit 3 at 1, 8, 34, 62, 84. The March 18, 2016, March 13, 2018, and April 29, 2019 studies produced qualifying values before the administration of bronchodilators and non-qualifying values after the administration of bronchodilators. Director's Exhibit 12 at 51, 53, 55. The September 6, 2012 and October 23, 2014 studies produced non-qualifying values without the administration of a bronchodilator. Claimant's Exhibits 4 at 8; 5 at 9. The October 1, 2004 study produced non-qualifying values before and after the administration of bronchodilators. Claimant's Exhibit 4 at 1. The results of the October 24, 2013 study are illegible. Claimant's Exhibit 3 at 43.

Because consideration of the tests submitted, if determined to be treatment records and found reliable, could affect the ALJ's findings as to the pulmonary function study evidence, we vacate the ALJ's finding that the pulmonary function study evidence does not support total disability and remand the case for further consideration as to whether the studies in question are reliable, an adequate explanation of findings, and consideration, as appropriate, of all the relevant evidence. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 6-7; *see Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016) (ALJ must consider all relevant evidence and must indicate explicitly that such evidence has been weighed and its weight); *Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 880 (6th Cir. 2012) ("[T]he Black Lung Benefits Act commands judges to consider 'all relevant evidence' in determining the validity of a given claim.").

Arterial Blood Gas Studies

The ALJ next considered the results of an October 26, 2020 arterial blood gas study. Decision and Order at 8; Director's Exhibit 15. She noted the study produced qualifying results at rest and non-qualifying results during exercise. Decision and Order at 8. Further, she determined the exercise tests are more probative than the at rest tests because they "assess oxygen levels under exertion more similar to" Claimant's usual coal mine work. *Id*. She thus concluded the arterial 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 8.

As Claimant concedes, the ALJ mischaracterized the October 26, 2020 arterial blood gas study as producing qualifying results at rest. Claimant's Brief at 9. The ALJ

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sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

stated the at rest study produced a PCO_2 of 38.3 and a PO_2 of 61 and the exercise study produced a PCO_2 of 47.9 and a PO_2 of 42. Decision and Order at 8. However, as Claimant notes, the at rest study produced a PCO_2 of 38.3 and a PO_2 of 74 and the exercise study produced a PCO_2 of 47.9 and a PO_2 of 63. The table at 20 C.F.R. Part 718, Appendix C (1) states that for a PCO_2 value from 39, a PO_2 value "equal to or less than" 61 is qualifying, and that for a PCO_2 value from 40-49, a PO_2 value "equal to or less than" 60 is qualifying. Thus, contrary to the ALJ's finding, the study produced non-qualifying results at rest and during exercise. Director's Exhibit 15.

Nevertheless, we agree, in part, with Claimant's argument that the ALJ erred in failing to consider all of the arterial blood gas studies in the record, Claimant's Brief at 8-10, as the study results not considered, if found to constitute treatment records and be reliable, are relevant information that could affect the ALJ's disability determination.[9] We therefore vacate the ALJ's finding that the arterial blood gas study evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii) and remand the case for consideration of the August 24, 2017 and October 26, 2020 studies.

Medical Opinions

In her Decision and Order, the ALJ considered the medical opinions of Drs. Werntz, Sood, and Zaldivar. Decision and Order at 9-11. Dr. Sood opined Claimant is totally disabled from a respiratory or pulmonary impairment, while Drs. Werntz and Zaldivar opined he is not. Director's Exhibit 15; Claimant's Exhibit 1; Employer's Exhibit 2. The ALJ found Drs. Werntz's and Sood's opinions not well-documented and inadequately explained. Decision and Order at 10-11. Further, she found Dr. Zaldivar's opinion well-documented and reasoned. She concluded the medical opinion evidence does not support a finding of total disability.

On reconsideration, the ALJ addressed Claimant's assertion that Dr. Zaldivar's opinion supports a finding of total disability. Order on Reconsideration at 4. She determined Dr. Zaldivar's statement that Claimant could not perform his last coal mine work without bronchodilators does not constitute a "conclusive" finding of total disability.

[9] Dr. Zaldivar also administered an arterial blood gas study when he examined Claimant on February 23, 2022. Employer's Exhibit 2. However, the parties again did not designate this study as affirmative or rebuttal evidence. Decision and Order at 8; *see* Employer's August 26, 2022 Evidence Summary Form; Claimant's August 26, 2022 Evidence Summary Form; Employer's Exhibit 2. Therefore, contrary to Claimant's argument, the ALJ also properly declined to consider the February 23, 2022 arterial blood gas study at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 8.

Id. Rather, she concluded Dr. Zaldivar's statement demonstrates only that his opinion on total disability is equivocal and not reasoned because he failed to explain how he determined Claimant is totally disabled without bronchodilators despite the non-qualifying pulmonary function study the doctor conducted. *Id*. She thus found the medical opinion evidence does not support a finding of total disability. *Id*.

Because we have vacated the ALJ's findings that the pulmonary function studies and arterial blood gas studies do not establish total disability at 20 C.F.R. §718.204(b)(2)(i), (ii), we must also vacate her finding that the medical opinions do not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Further, we must vacate her determination that the evidence as a whole does not establish total disability at 20 C.F.R. §718.204(b)(2).

Although we vacate the ALJ's finding that the medical opinions do not establish total disability at 20 C.F.R. §718.204(b)(2)(iv) and the denial of benefits, we address, in the interest of judicial economy, Claimant's remaining arguments[10] that the ALJ erred in weighing Drs. Sood's and Zaldivar's opinions on the issue of total disability. Claimant's Brief at 17-21.

The ALJ found Dr. Sood failed to persuasively explain why he opined Claimant is totally disabled given the October 26, 2020 pulmonary function study that produced non-qualifying results.[11] Decision and Order at 10. While the ALJ is correct that the October

[10] Claimant's arguments regarding the ALJ's discrediting of Dr. Sood's opinion based on his reliance on tests Claimant submitted as treatment records are addressed by necessary implication *supra*. A physician's reliance on tests that are found sufficiently reliable does not diminish the probative value of that physician's opinion. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (determination of whether a medical opinion is reasoned and documented requires the fact finder to examine the validity of the physician's reasoning in light of studies conducted and the objective indications upon which the opinion is based); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997). Thus the ALJ must take her determinations on remand regarding the tests submitted as treatment records into account when she evaluates Dr. Sood's opinion, which relies on those tests.

[11] The regulations specifically provide that despite non-qualifying pulmonary function studies or blood gas studies, total disability may be established if a physician, exercising reasoned medical judgment based on medically acceptable diagnostic techniques, concludes a miner's respiratory or pulmonary condition prevents him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). Thus, a physician may offer a reasoned medical opinion diagnosing total disability even though the objective

26, 2020 test does not constitute a qualifying study, we are unable to discern whether she considered Dr. Sood's comments that the study's FEV_1 values before and after the administration of bronchodilators are qualifying and "consistent with an irreversible moderately severe airflow obstruction" or his opinion that – under a different reference system (NHANES/Hankinson and Crapo) – Claimant's FVC, FEV_1 values, and FEV_1/FVC ratio were abnormal. Claimant's Exhibit 1 at 11-12.[12] Additionally, Dr. Sood recognized "several" resting and exercise arterial blood gas studies revealed "abnormally elevated alveolar-arterial gradient values" and thus opined the presence of this gas exchange impairment demonstrates Claimant's inability to perform the duties of his last coal mine work. *Id.* at 7-8.

Further, as discussed, the parties did not designate the February 23, 2022 pulmonary function study as affirmative or rebuttal evidence in the record. Employer's August 26, 2022 Evidence Summary Form; Claimant's August 26, 2022 Evidence Summary Form; Employer's Exhibit 2 at 13-17. The regulations are silent as to what an ALJ should do when evidence not admitted into the record is relied upon in an otherwise admissible medical opinion. 20 C.F.R. §725.414(a)(2)(i), (3)(i). Thus, the disposition of these types of evidentiary issues is committed to an ALJ's discretion. However, exclusion of relevant evidence is disfavored. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004). If an ALJ finds a medical opinion is tainted by reliance on evidence outside of the record, she is not required to exclude the report or testimony in its entirety. *Harris*, 23 BLR at 1-108; *Dempsey*, 23 BLR at 1-

studies are non-qualifying. *See Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"). However, the ALJ has discretion in determining the adequacy of the physician's explanation as to why the claimant is disabled. 20 C.F.R. §718.204(b)(2)(iv).

[12] Dr. Sood explained that nearly all of the pulmonary function studies demonstrated airflow obstruction of moderately severe to severe impairment. Based on his observation that "[a]ll spirometry tests, including the most recent test on February 23, 2022," met the criteria for total disability, he diagnosed a disabling respiratory impairment. Claimant's Exhibit 1 at 7, 21. Claimant argues that in stating all of the tests met the criteria for total disability, Dr. Sood was referencing certain qualifying values, such as FEV_1 values; however, it is within the discretion of the ALJ to interpret the testimony, including making any reasonable inferences as necessary. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893 (7th Cir. 1990); *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135, 140 (1990).

67. Rather, she may redact the portion of the report or testimony that relies on that evidence, ask the physician to submit a new report, factor in the physician's reliance on the inadmissible evidence when deciding the weight to give to the physician's opinion, or exclude the document or testimony in its entirety (particularly if the opinion is inextricably tied to the unadmitted evidence or it cannot be ascertained whether it is so tied)). *Harris*, 23 BLR at 1-108; *Dempsey*, 23 BLR at 1-67. The ALJ failed to conduct this analysis. *Hicks*, 138 F.3d at 532-33; *Akers*, 131 F.3d at 389. Consequently, the ALJ must also reconsider the credibility of Dr. Sood's opinion on remand.

Claimant also argues the ALJ erred in failing to "properly evaluate" Dr. Zaldivar's opinion because she mischaracterized the doctor's pulmonary function study as producing non-qualifying results for total disability. Claimant's Brief at 10-12. He asserts the doctor's "pre-bronchodilator pulmonary function test" produced qualifying results for total disability. *Id*. at 11.

After examining Claimant and administering various tests to him on February 23, 2022, Dr. Zaldivar opined:

> From a pulmonary standpoint, with intensive use of bronchodilators as demonstrated even on the single inhalation of short-acting bronchodilators during the breathing test, [Claimant] is capable of performing his usual coal mining work. Without adequate treatment of bronchodilators, as he is not receiving now, he will not be able to perform his usual coal mining work.

Employer's Exhibit 2 at 7. The ALJ found Dr. Zaldivar's opinion equivocal and not reasoned because he failed to explain how Claimant is "totally disabled without bronchodilators" despite the non-qualifying pulmonary function study he administered. Order on Reconsideration at 4. While Dr. Zaldivar's February 23, 2022 pulmonary function study produced qualifying values before bronchodilators and non-qualifying values after bronchodilators, the parties did not designate the study as affirmative or rebuttal evidence in the record. Employer's August 26, 2022 Evidence Summary Form; Claimant's August 26, 2022 Evidence Summary Form; Employer's Exhibit 2 at 13-17.

As discussed, even if an ALJ finds a medical opinion is tainted by reliance on evidence outside of the record, she is not required to exclude the report or testimony in its entirety. *See Harris*, 23 BLR at 1-108; *Dempsey*, 23 BLR at 1-67. Rather, she may redact the objectionable content, ask the physician to submit a new report, or factor in the physician's reliance on the inadmissible evidence when deciding the weight to give to the physician's opinion. *Harris*, 23 BLR at 1-108; *Dempsey*, 23 BLR at 1-67. As the ALJ failed to conduct this analysis, the ALJ must also reconsider the credibility of Dr. Zaldivar's opinion on remand. *Hicks*, 138 F.3d at 532-33; *Akers*, 131 F.3d at 389.

Remand Instructions

On remand, the ALJ must first reconsider whether the pulmonary function study evidence establishes a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(i), taking into consideration the qualifying results of the treatment record studies. In doing so, she must undertake a quantitative and qualitative analysis of the conflicting pulmonary function study results and adequately explain her basis for resolving the conflict in the evidence as the Administrative Procedure Act (APA) requires.[13] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 149 n.23 (1987) (ALJ must "weigh the quality, and not just the quantity, of the evidence"); *Sea "B" Mining Co. v. Addison,* 831 F.3d 244, 252-54 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992). She must next reconsider whether the arterial blood gas study evidence supports the establishment of a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(ii), taking into consideration the qualifying results of the August 24, 2017 treatment record study.

The ALJ must then reconsider the medical opinion evidence, taking into account her findings regarding the pulmonary function study and arterial blood gas study evidence, and must render findings pursuant to 20 C.F.R. §718.204(b)(2)(iv). She must resolve the conflict in the medical opinion evidence 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; *Akers*, 131 F.3d at 441. 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 Claimant would establish total disability based on the pulmonary function study evidence, arterial blood gas 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 on remand, he will have invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018). The ALJ must then determine

[13] The Administrative Procedure Act requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record . . . ." 5 U.S.C. §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).

whether Employer can rebut the presumption. *See* 20 C.F.R. §718.305(d); *see also Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-150 (2015). 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, 27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, her Order Addressing Claimant's Motion for Reconsideration is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge