

U.S. Department of Labor

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



BRB No. 24-0232 BLA

JOHNNY RAY SAYLOR)

Claimant-Petitioner)

v.)

TRINITY COAL CORPORATION OF)
VIRGINIA)

and)

AMERICAN INTERNATIONAL SOUTH)
INSURANCE COMPANY/AIG)

Employer/Carrier-)
Respondents)

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

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 01/30/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jason A. Golden,
Administrative Law Judge, United States Department of Labor.

Johnny Ray Saylor, Wallins Creek, Kentucky.

Joseph N. Stepp (Two Rivers Law Group P.C.), Christiansburg, Virginia, for
Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation, Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Denying Benefits (2021-BLA-05162) rendered on a miner's subsequent claim¹ filed on June 11, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with sixteen years of qualifying coal mine employment. However, he found Claimant did not establish the existence of a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.2024(b)(2). Thus, because Claimant failed to establish an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.

¹ This is Claimant's fourth claim for benefits. Director's Exhibits 5, 53. He withdrew his third claim; therefore, it is considered "not to have been filed." 20 C.F.R. §725.306(b); Director's Exhibit 3. The district director denied Claimant's most recent prior claim on August 7, 2013, because Claimant failed to prove any element of entitlement. Director's Exhibit LM2 at 7.

When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the subsequent claim must also be denied unless the ALJ 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); *see 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 Claimant's prior claim was denied for failure to establish any element of entitlement, Claimant had to submit new evidence to establish at least one element to obtain a review of his claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer and its Carrier (Employer) respond in support of the denial.² The Director, Office of Workers' Compensation Programs, has not filed a substantive response.³

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁴ 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).

² Employer also contends Claimant's appeal to the Benefits Review Board is untimely, asserting he filed it on February 27, 2024, four days after the February 23, 2024 deadline (thirty days after the ALJ's January 24, 2024 Decision and Order was filed with the district director's office). Employer's Brief at 10-12; *see* 20 C.F.R. §§725.478, 725.479, 802.205. While a review of the record indicates the postmark date of Claimant's appeal was February 27, 2024, the record does not establish whether Claimant was properly served with the ALJ's Decision and Order or when he received it. 20 C.F.R. §725.478 (ALJ "shall serve the decision and order on all parties to the claim by certified mail."), 725.479(d) ("Regardless of any defect in service, actual receipt of the decision is sufficient to commence the 30-day period for . . . appealing the decision."); *see Youghioghney & Ohio Coal Co. v. Benefits Review Board*, 745 F.2d 380, 382 (6th Cir. 1984); *Harris v. Nacco Mining Co.*, 12 BLR 1-115, 1-116 (1989); *see also* 20 C.F.R. §802.207(b) (If the notice of appeal is mailed and using the date of delivery "would result in a loss or impairment of appeal rights," the date of mailing will be used as the filing date). Thus, the Board cannot definitively determine whether Claimant timely filed this appeal. However, because we affirm the ALJ's decision denying benefits on the merits, *see infra*, Employer's contention that Claimant untimely filed this appeal is moot.

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has sixteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

⁴ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6; 2021 Hearing Transcript at 18, 33.

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

To invoke the Section 411(c)(4) presumption,⁵ Claimant must establish that 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. 20 C.F.R. §718.204(b)(1). A 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 the pulmonary function studies, arterial blood gas studies, and medical opinions do not support a finding of total disability.⁶ Decision and Order at 4-10. He acknowledged that Claimant's testimony supports a finding that he is unable to perform heavy manual labor⁷ but found this testimony alone is insufficient to establish total disability. 20 C.F.R. §718.204(d)(5); Decision and Order at 10.

⁵ 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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

⁶ The ALJ accurately found the record contains no evidence of cor pulmonale with right-sided congestive heart failure or complicated pneumoconiosis. Decision and Order at 4. Thus, Claimant cannot establish total disability at 20 C.F.R. §§718.204(b)(2)(iii), 718.304.

⁷ The ALJ determined, based on Claimant's Description of Coal Mine Work form (CM-913) and testimony, that Claimant's usual coal mine work was as a miner helper and required heavy exertion and heavy manual labor. Decision and Order at 8; *see* 2021 Hearing Transcript at 25; Director's Exhibit 7; Employer's Exhibit 6 at 12-13. We affirm this finding as unchallenged. *Skrack*, 6 BLR at 1-711.

Pulmonary Function Studies

The ALJ considered the April 25, 2023 pulmonary function study,⁸ which produced qualifying values before and after the administration of bronchodilators.⁹ Decision and Order at 5-6; Director's Exhibit 54. Dr. Alam, who administered the study, noted that Claimant had poor and variable effort.¹⁰ Director's Exhibit 54 at 3. Dr. Ranavaya reviewed the study at the DOL's request and found it was "not acceptable" because it did not include sufficient acceptable tracings; had less than optimal effort, cooperation, and comprehension; and was improperly performed. *Id.* at 8. In his supplemental June 7, 2023 report, Dr. Alam agreed with Dr. Ranavaya that Claimant performed the April 2023 study with "suboptimal effort." Director's Exhibit 55 at 3. He also indicated that Claimant "didn't perform the study properly," the "values were significantly low because of the suboptimal effort," and the study "doesn't qualify [Claimant] for pulmonary disability." *Id.* at 3-4.

⁸ In his November 3, 2022 Order for Pulmonary Function Test and Supplemental Medical Report, the ALJ found the district director failed to meet the Department of Labor's (DOL) obligation to provide Claimant with a complete pulmonary evaluation, as the ALJ found the non-qualifying pulmonary function study obtained on September 18, 2019 was invalid due to poor effort. 20 C.F.R. §725.406; November 2022 Order at 2-3. Thus, the ALJ remanded the case to the district director to obtain a second pulmonary function study and supplemental report from the examining doctor. November 2022 Order at 3. Dr. Alam obtained a second pulmonary function study on April 25, 2023, and provided a supplemental opinion after considering the results. Decision and Order at 5-6, 8; Director's Exhibits 54, 55. The claim was again referred to the ALJ and, as the DOL satisfied its duty to provide Claimant a second opportunity to obtain a valid pulmonary function study, the ALJ considered the merits of the case. Decision and Order at 5; 20 C.F.R. §725.406(c) (if a pulmonary function study conducted during the DOL sponsored evaluation is invalid due to the "lack of effort on the part of the miner, the miner will be afforded one additional opportunity to produce a satisfactory result").

⁹ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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).

¹⁰ The technician administering the study noted "[t]his was the best possible effort the patient could give at this time." Director's Exhibit 54 at 3.

As both physicians agree that the April 25, 2023 pulmonary function study is unreliable due to suboptimal effort, we affirm, as supported by substantial evidence, the ALJ's finding that the pulmonary function study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Winchester v. Director, OWCP*, 9 BLR 1-177, 1-178-79 (1986); Decision and Order at 6.

Arterial Blood Gas Study

The ALJ considered the September 18, 2019 arterial blood gas study and correctly noted that it produced non-qualifying values at rest.¹¹ Decision and Order at 6-7; Director's Exhibit 17 at 9. Thus, we affirm his finding that the arterial blood gas study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); *see Tucker v. Director, OWCP*, 10 BLR 1-35, 1-39-40 (1987); Decision and Order at 7.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Alam, Fugate, McSharry, and Rosenberg. Decision and Order at 7-10.

Dr. Alam conducted the DOL-sponsored complete pulmonary evaluation of Claimant on September 18, 2019 and determined that he "has no pulmonary disability at this time." Director's Exhibit 17 at 6. After reviewing the repeat April 25, 2023 pulmonary function study, Dr. Alam continued to opine that Claimant does not have a totally disabling pulmonary or respiratory impairment. Director's Exhibit 55 at 3-4. The ALJ permissibly found Dr. Alam's opinion is well reasoned and well documented, as he had an accurate understanding of the exertional requirements of Claimant's usual coal mine work¹² and his conclusions are supported by a preponderance of the objective evidence. *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 8-9.

¹¹ Dr. Alam indicated that an exercise blood gas study was medically contraindicated due to Claimant's "bad back." Director's Exhibit 17 at 9.

¹² Dr. Alam reviewed Claimant's Employment History Form, CM-911a, and noted that Claimant's last coal mine employment consisted of general labor, shoveling coal and rock, watching "head drives," dusting rock by hand and machine, and clean-up work. Director's Exhibit 17 at 2. The ALJ indicated Dr. Alam's understanding of the exertional requirements of Claimant's usual coal mine work "is similar to mine." Decision and Order at 8.

Dr. Fugate provided a four-sentence letter, indicating Claimant is his patient and “is limited in functional abilities secondary to shortness of breath and wheezing.” Claimant’s Exhibit 2. The ALJ permissibly gave Dr. Fugate’s opinion “little weight” because his comment about limited functional abilities does not address the exertional requirements of Claimant’s usual coal mine work or indicate whether Claimant could perform such requirements.¹³ Decision and Order at 9; *see Banks*, 690 F.3d at 489; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-997-98 (1984); *see also Peabody Coal Co. v. Odom*, 342 F.3d 486, 492 (6th Cir. 2003) (“[T]he opinions of treating physicians get the deference they deserve based on their power to persuade.”); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513 (6th Cir. 2003).

Drs. McSharry and Rosenberg conducted a review of Claimant’s medical records in preparing their reports. Employer’s Exhibits 4, 5, 7-10. Both physicians concluded that Claimant does not have a totally disabling respiratory or pulmonary impairment. Employer’s Exhibits 4 at 2; 5 at 2; 7 at 1; 8 at 1; 9 at 2; 10 at 3. Thus, the ALJ permissibly found that their opinions do not support a finding of total disability. *Banks*, 690 F.3d at 489; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 10. Weighing the medical opinion evidence as a whole, the ALJ permissibly found Dr. Fugate’s opinion outweighed by the contrary opinions of Drs. Alam, McSharry,¹⁴

¹³ Total disability can be established with a reasoned medical opinion notwithstanding non-qualifying objective testing. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000). In addition, a physician’s opinion does not need to be phrased explicitly in terms of “total disability” but rather an ALJ must determine the exertional requirements of a miner’s usual coal mine work and consider them in conjunction with the medical opinions assessing the extent of his impairment. *See Cornett*, 227 F.3d at 578; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-10 (1988). However, remand is not required in the current case for the ALJ to conduct such an analysis concerning Dr. Fugate’s opinion because he does not specifically diagnose a respiratory or pulmonary impairment or explain the extent of any such impairment. *See Claimant’s Exhibit 2.*

¹⁴ The ALJ noted that Dr. McSharry did not explain what he considered to be the exertional requirements of Claimant’s usual coal mine work. Decision and Order at 9. The ALJ did not, as he did with Dr. Fugate, discredit Dr. McSharry’s opinion on this basis. However, remand is not required because Dr. McSharry ultimately concluded there was “no definite pulmonary impairment” and as the ALJ explained, *see infra*, he did not give any weight to a physician’s diagnosis of impairment based on the pulmonary function studies because they are unreliable. *See Decision and Order at 10 n.33; see also Lane v.*

and Rosenberg.¹⁵ *Banks*, 690 F.3d at 489; Decision and Order at 10. We therefore affirm his determination that the medical opinions do not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 10.

Lay Testimony and Evidence as a Whole

In addition, the ALJ considered Claimant's testimony concerning his use of supplemental oxygen, as prescribed by his family physician, at night and in the morning. 2021 Hearing Transcript at 29. Claimant also stated that he uses inhalers "every two or three hours" to help with his breathing and can only "walk about five or six steps" before he has to stop and catch his breath. *Id.* at 28-31.

The ALJ determined that Claimant's testimony supports that he is not able to perform the heavy manual labor required by his usual coal mine work. Decision and Order at 10. However, as the ALJ accurately found, in a living miner's claim, "a finding of total disability due to pneumoconiosis shall not be made solely on the miner's statements or testimony." 20 C.F.R. §718.204(d)(5); Decision and Order at 10; *see Madden v. Gopher Mining Co.*, 21 BLR 1-122, 1-124-25 (1999) ("[L]ay testimony offered by claimant at the hearing . . . is generally insufficient to establish total respiratory disability unless it is corroborated by at least a quantum of medical evidence.").

Union Carbide Corp., 105 F.3d 166, 172-73 (4th Cir. 1997) (ALJ "may rely on a physician's report that does not discuss the exertional requirements of the miner's work if the physician concludes that the miner suffers from no impairment at all"); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-142 (1985). Moreover, even if the ALJ had discredited Dr. McSharry's opinion, the opinions of Drs. Alam and Rosenberg would still outweigh Dr. Fugate's opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

¹⁵ The ALJ acknowledged that even a mild respiratory impairment can be totally disabling depending on the exertional requirements of his usual coal mine work. Decision and Order at 10 n.33; *see Cornett*, 227 F.3d at 578. However, as he accurately stated, Drs. Alam, McSharry, and Rosenberg agree that the arterial blood gas study does not show an impairment and the pulmonary function studies are either unreliable or do not support a finding of total disability. Decision and Order at 10 n.33; Director's Exhibits 17 at 5-6, 55 at 3-4; Employer's Exhibits 4 at 2, 5 at 2, 7 at 1, 8 at 1, 9 at 2, 10 at 3. Further, the ALJ permissibly decided to "afford no weight to any physician's diagnosis of impairment based on the [pulmonary function studies] in this case, which [he] found unreliable." Decision and Order at 10 n.33; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012).

Having affirmed the ALJ's findings that the evidence does not support finding total disability under any of the subsections at 20 C.F.R. §718.204(b)(2)(i)-(iv) when considered separately, we affirm, as supported by substantial evidence, the ALJ's conclusion that the evidence considered together, like and unlike, does not support finding total disability and therefore Claimant did not establish he has a totally disabling respiratory or pulmonary impairment. *See Shedlock*, 9 BLR at 1-198.

Because Claimant did not establish total disability, a requisite element of entitlement,¹⁶ we affirm the denial of benefits. 20 C.F.R. §718.204(b)(2); *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

¹⁶ Without the Section 411(c)(3) and (c)(4) presumptions, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals

Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge