U.S. Department of Labor

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

BRB No. 22-0222 BLA

WALTER BRUCE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KEOKEE MINING, LLC	)	
	)	
and	)	
	)	
AMERICAN INTERNATIONAL SOUTH INSURANCE COMPANY / AIG	)	DATE ISSUED: 7/24/2023
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Walter Bruce, Cawood, Kentucky.

Sarah Y. M. Himmel (Two Rivers Law Group P.C.), Christiansburg, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Denying Benefits (2020-BLA-05782) rendered on a claim filed on June 25, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with twenty-three years of underground coal mine employment. He found Claimant failed to establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] Because Claimant failed to establish an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.[3]

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

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

[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the Administrative Law Judge's (ALJ) decision on Claimant's behalf, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[3] The ALJ correctly found the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act is not applicable because there is no evidence of complicated pneumoconiosis in the record. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Decision and Order at 5 n.4

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

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 & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis 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 one of these elements 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).

To invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying[6] pulmonary function studies or 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 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. 20 C.F.R. §718.204(b)(2); Decision and Order at 5-17.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated December 19, 2018, and December 31, 2018. Decision and Order at 6-8; Director's Exhibit 19; Claimant's Exhibit 4. Because the ALJ found both studies reported varying heights for Claimant falling between 65.0 inches and 66.0 inches, he permissibly calculated an average height of 65.5

[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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14-16; Decision and Order at 3 n.2.

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

inches. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 5-6. He then used the closest greater table height set forth at Appendix B of 20 C.F.R. Part 718 of 65.7 inches for determining the qualifying or non-qualifying nature of the studies. Decision and Order at 6. He found the December 19, 2018 study produced qualifying pre-bronchodilator results and did not include any post-bronchodilator results, while the December 31, 2018 study produced non-qualifying results both before and after the administration of a bronchodilator.[7] *Id*. at 6-8.

The ALJ credited the pre-bronchodilator pulmonary function study results over the post-bronchodilator results because the "use of a bronchodilator in a pulmonary function study 'does not provide an adequate assessment of [a] miner's disability.'" Decision and Order at 8, *quoting* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). He found the December 31, 2018 non-qualifying results outweigh the December 19, 2018 qualifying results on the grounds that the former test is more recent. Decision and Order at 8. In addition, he found the December 31, 2018 non-qualifying study better documented because it includes "a more complete spirometry report with both pre- and post-bronchodilator testing." *Id*. He thus found the pulmonary function studies do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 8. We are unable to affirm the ALJ's credibility findings.

The ALJ did not explain why the December 31, 2018 study is better documented or "provided a more complete spirometry report" than the December 19, 2018 study in light of the fact that both studies included the necessary information to determine whether they are qualifying or non-qualifying for establishing total disability under the regulations. 20 C.F.R §718.204(b)(2)(i); Decision and Order at 6-8. Nor did he explain why the inclusion of post-bronchodilator results on the December 31, 2018 study renders it better documented given the ALJ found post-bronchodilator results are less credible on the issue of total disability. Decision and Order at 8. Thus his credibility finding does not satisfy the explanatory requirements of the Administrative Procedure Act (APA).[8] *See Sea "B"*

[7] The ALJ found both studies lacked the necessary MVV tracings and it is impossible to determine if the reported MVV values are valid under the variation requirements of 20 C.F.R. §718.103(b); he therefore did not consider the respective MVV results. Decision and Order at 6-8; Director's Exhibit 19; Claimant's Exhibit 4. He correctly found, however, that the December 19, 2018 study is qualifying based on the reported FEV1 and FEV/FVC results and the December 31, 2018 study is non-qualifying both before and after the administration of a bronchodilator based on the FEV1 results. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 6-8; Director's Exhibit 19; Claimant's Exhibit 4.

[8] The Administrative Procedure Act (APA) provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all

Mining Co. v. Addison, 831 F.3d 244, 252-53 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

The ALJ also erred by crediting, based on recency, the non-qualifying study over the qualifying study. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held it is irrational to credit evidence solely based on recency when a miner's condition improves.[9] *See Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014) (ALJs must perform a qualitative and quantitative analysis of conflicting evidence and not mechanically credit tests when they indicate a miner's condition has improved); *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993); *Smith v. Kelly's Creek Res.*, BLR , BRB No. 21-0329 BLA, slip op. at 10 (June 27, 2023). Further, as the ALJ noted, the two studies were conducted only twelve days apart and thus are effectively contemporaneous. *See Greer v. Director,* OWCP, 940 F.2d 88 (4th Cir.1991) (pulmonary function studies conducted two months apart "should be considered contemporaneous" given that pneumoconiosis is "slowly-progressing"); Decision and Order at 7. We therefore vacate his finding that the pulmonary function studies do not establish total disability. 20 C.F.R. §718.204(b)(2)(i).

Arterial Blood Gas Studies

The ALJ considered two arterial blood gas studies dated December 31, 2018, and November 20, 2019. Decision and Order at 8-9; Director's Exhibit 19; Employer's Exhibit 2. He found the December 31, 2018 study produced qualifying results but the November 20, 2019 study produced non-qualifying results. *Id.* He permissibly found the blood gas study evidence does not establish total disability because this evidence is in equipoise.

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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).

[9] In explaining the rationale behind the "later evidence rule," the United States Court of Appeals for the Sixth Circuit reasoned that a "later test or exam" is a "more reliable indicator of [a] miner's condition than an earlier one" where a "miner's condition has worsened" given the progressive nature of pneumoconiosis. *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993). As the test results do not conflict in such circumstances, "[a]ll other considerations aside, the later evidence is more likely to show the miner's current condition." *Id.* But if "the later test or exams" show the miner's condition has improved, the reasoning "simply cannot apply": one must be incorrect — and "it is just as likely that the later evidence is faulty as the earlier." *Id.*

Director, OWCP v. Greenwich Collieries [*Ondecko*], 512 U.S. 267, 280-81 (1994); 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 8-9.

Cor Pulmonale

The ALJ accurately found there is no evidence that Claimant suffers from cor pulmonale with right-sided congestive heart failure, and therefore he cannot establish total disability at 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 9.

Medical Opinions

The ALJ considered Dr. Alam's opinion that Claimant has a totally disabling respiratory or pulmonary impairment and Dr. McSharry's opinion that he does not.[10] Director's Exhibits 19, 28; Employer's Exhibits 3, 4.

Dr. Alam

Dr. Alam indicated Claimant worked as an equipment operator where he operated a roof bolter and shuttle car. Director's Exhibit 19 at 2. In addition, he noted Claimant shoveled belts and head drives. *Id*. He stated Claimant complained of dyspnea that prevented him from doing anything exertional and also experienced a daily cough. *Id*. at 3. Dr. Alam opined Claimant's December 31, 2018 pulmonary function study evidenced a moderate obstructive respiratory impairment and an arterial blood gas test taken the same day evidenced hypoxemia. *Id*.

In response to a question of whether Claimant has a chronic respiratory disease or impairment and the extent to which that disease or impairment prevents him from performing his usual coal mine employment, Dr. Alam stated:

> [Patient] has clinical [coal workers' pneumoconiosis] and legal [coal workers' pneumoconiosis]. [He] worked for [twenty-three years] in mines which is a long history for development of both clinical and legal [coal workers' pneumoconiosis]. [He] smoked for [fifteen to twenty years] and he quit mining in 2011 and smoking in 2018. But at this time it is not possible [to] differentiate the effect[s] of these [two] lung insults on [the] lung. So we can give [a] reasonable medical opinion [and] say [he] has both clinical and legal [coal workers' pneumoconiosis]. [He] is disabled from pulmonary [standpoint] by [pulmonary function/arterial blood gas] criteria and chest x-

[10] The ALJ discredited Dr. Rosenberg's opinion that Claimant is not totally disabled. Decision and Order at 16. As no party challenges this finding, we affirm it. *Skrack*, 6 BLR at 1-711.

> ray reading is very impressive 3/1. Coal dust [exposure is a] substantial cause of pulmonary disability.

Id. at 5.

After reviewing Dr. McSharry's medical report and the November 20, 2019 non-qualifying blood gas study, Dr. Alam reiterated his opinion that Claimant is totally disabled. Director's Exhibit 28 at 1. He opined Claimant is totally disabled based on his arterial blood gas testing, work history, clinical symptoms, and chest x-ray. *Id*. In addition. he noted that variability on arterial blood gas testing is very common in miners such as Claimant who smoke, as they have good days and bad days. *Id*. He stated it would be "[i]deal . . . to do extensive [blood gas testing] in cases like this when we have [two] different [arterial blood gas study] results." *Id*. Further, he opined that if Claimant's pO2 drops or his pCO2 on blood gas testing increases, this will "prove respirator for good (sic)." *Id*. He reiterated that Claimant has a "pulmonary disability that will disable him to work in mines on account of [chest x-ray], current symptoms [and] variable [blood gas results]." *Id*.

The ALJ found Dr. Alam's opinion that Claimant's blood gas testing supports a finding of total disability is contrary to the ALJ's finding that the blood gas testing of record is in equipoise. Decision and Order at 16. He also found Dr. Alam provided "no other discussion as to Claimant's capabilities of returning to his prior coal mine work or similar demanding work." *Id*. Finally, he discredited Dr. Alam's opinion because the doctor mischaracterized the profusion on the December 31, 2018 x-ray as 3/1. *Id*. We are unable to affirm these findings.

The ALJ first erred in discrediting Dr. Alam's opinion as inconsistent with the ALJ's finding that the arterial blood gas study evidence is in equipoise. Decision and Order at 16. A physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv). As discussed above, Dr. Alam reviewed the non-qualifying blood gas testing, reiterated that Claimant is still totally disabled, and explained that variability in a blood gas exchange impairment is common in miners who smoke such as Claimant; thus he explained why the non-qualifying testing in this case does not preclude total disability. Decision and Order at 16. The ALJ erred in failing to address this aspect of his opinion. *See* 30 U.S.C. §923(b) (fact finder must address all relevant evidence); *Addison*, 831 F.3d at 252-53; *Greer*, 940 F.2d at 90-91 (recognizing that, because pneumoconiosis is a chronic condition, a miner's functional ability on an objective study may vary, and thus could measure higher on any given day than its typical level);

McCune v. Cent. Appalachian Coal Co., 6 BLR 1-996, 1-998 (1984) (failure to discuss relevant evidence requires remand).

The ALJ also erred in finding Dr. Alam provided "no other discussion as to Claimant's capabilities of returning to his prior coal mine work or similar demanding work." Decision and Order at 16. Dr. Alam specifically set forth the exertional requirements of Claimant's usual coal mine employment, discussed Claimant's clinical symptoms and the extent to which these symptoms affect Claimant's ability to perform his usual coal mine employment, and cited the presence of hypoxemia on blood gas testing along with Claimant's clinical symptoms as a basis to diagnose total disability. *See* Director's Exhibits 19, 28. Thus substantial evidence does not support the ALJ's finding that Dr. Alam provided "no other discussion as to Claimant's capabilities of returning to his prior coal mine work or similar demanding work." Decision and Order at 16; *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999).

Moreover, the ALJ failed to render the necessary factual findings regarding the exertional requirements of Claimant's usual coal mine employment which would allow him to determine whether the medical opinions are reasoned and documented. *See Addison*, 831 F.3d at 252-53; *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). In determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of the miner's usual coal mine work with a physician's description of the miner's pulmonary impairment and physical limitations. *See Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4. The ALJ failed to compare the exertional requirements with the physicians' assessments to determine whether their opinions support a finding of total respiratory disability. *Id.*; *see also Cornett*, 227 F.3d at 578 (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988) (medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably conclude that a miner is unable to do his last coal mine job); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (description of physical limitations in performing routine tasks may be sufficient to allow the ALJ to infer total disability).

Finally, the ALJ erred by failing to adequately explain why Dr. Alam's statement that the December 31, 2018 x-ray is consistent with simple pneumoconiosis, 3/1, undermines the credibility of his diagnosis of total disability based on arterial blood gas testing and Claimant's clinical symptoms. *Addison*, 831 F.3d at 252-53; *Wojtowicz*, 12 BLR at 1-165; Director's Exhibit 19 at 4. Dr. Alam reviewed Dr. Alexander's reading of this x-ray and assumed it was positive for clinical pneumoconiosis. Director's Exhibit 19 at 4. Dr. Alexander interpreted it as positive for simple pneumoconiosis, 2/3. *Id.* at 8. The

International Labour Organization (ILO) form Dr. Alexander completed does not include a profusion option of 3/1, but the profusion option of 2/3 that Dr. Alexander selected indicates he seriously considered a profusion of 3.[11] *See* 20 C.F.R. §718.102 (standards for x-rays), *incorporating by reference Guidelines for the Use of the ILO International Classification of Radiographs Of Pneumoconioses*, Revised edition 2011 (ILO Guidelines). Thus the ALJ should set forth his bases for finding Dr. Alam's assumption with respect to the x-rays conflicts with Dr. Alexander's x-ray reading, and then he should explain why that conflict undermines Dr. Alam's total disability opinion.[12] *Addison*, 831 F.3d at 252-53; *Wojtowicz*, 12 BLR at 1-165.

Thus we vacate the ALJ's decision to discredit Dr. Alam's opinion. Decision and Order at 16.

Dr. McSharry

The ALJ also weighed Dr. McSharry's opinion. Dr. McSharry opined Claimant has a moderate obstructive respiratory impairment based on pulmonary function testing. Director's Exhibit 26 at 6. He stated this impairment is not totally disabling because the pulmonary function testing is not qualifying. *Id*. In addition, he disputed that Claimant has an impairment evidenced by arterial blood gas testing. *Id*. Although he indicated the December 31, 2018 blood gas study evidenced hypoxemia, he explained the November 20, 2019 blood gas study was not qualifying. *Id*. According to Dr. McSharry, this "indicates

[11] The International Labour Organization (ILO) x-ray form allows a radiologist to identify if there are any parenchymal abnormalities consistent with pneumoconiosis. 20 C.F.R. §718.102 (standards for x-rays), *incorporating by reference Guidelines for the Use of the ILO International Classification of Radiographs Of Pneumoconioses*, Revised edition 2011 (ILO Guidelines). If the radiologist indicates there are such abnormalities, he or she should identify the profusion, affected zones of the lung, shape (rounded or irregular), and size of any opacities. ILO Guidelines at 3-6. The profusion of opacities refers to the concentration of small opacities in affected zones of the lung and includes four categories ranging from 0 to 3 representing increasing profusion. *Id*. A radiologist may identify that an alternative category was seriously considered through use of an "an oblique stroke, i.e. 0/ , 1/ , 2/ , 3/" as the form so allows. *Id*. Thus a radiologist who indicates a profusion of 1/2 is stating that the profusion is 1, but he or she seriously considered a profusion of 2. *Id*.

[12] The ALJ should also address whether Dr. Alam's comment constitutes a scrivener's error. *See United States v. Hython*, 443 F.3d 480, 488 (6th Cir. 2006) ("failure to amend the affidavit was nothing more than 'a scrivener's error'" and thus of no legal consequence).

that the cause for the hypoxemia in December 2018 was transient (such as pneumonia)." *Id*. He determined that because coal workers' pneumoconiosis "is not an intermittent or transient disease," the "normal arterial blood gas invalidates the possibility that hypoxemia seen in December 2018 was a result of coal workers' pneumoconiosis." *Id*.

The ALJ found Dr. McSharry's opinion reasoned and documented. Decision and Order at 16. He erred in making this finding. As discussed above, a physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Hicks*, 138 F.3d at 533; *Cornett*, 227 F.3d at 578 (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv). The ALJ erred by failing to address whether Dr. McSharry adequately explained why Claimant is not totally disabled based on his moderate obstructive impairment independent of whether the pulmonary function studies are qualifying for total disability. *See Addison*, 831 F.3d at 252-53; *Hicks*, 138 F.3d at 533. In addition, the ALJ erred in failing to address whether Dr. McSharry adequately explained why Claimant's hypoxemia is transient based on the fact that he had one qualifying blood gas study and one non-qualifying blood gas study.[13] *See Addison*, 831 F.3d at 252-53; *Hicks*, 138 F.3d at 533; *Greer*, 940 F.2d at 90-91; *Cornett*, 227 F.3d at 578. Thus we vacate the ALJ's finding that Dr. McSharry's opinion is reasoned and documented. Decision and Order at 16.

We therefore vacate the ALJ's finding that the medical opinion evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(iv), and remand for further consideration of all the evidence in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165; Decision and Order at 16. Further, we vacate his finding that the evidence overall does not establish total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 16-17. Thus, we vacate his finding that Claimant did not invoke the Section 411(c)(4)

[13] As discussed above, Dr. Alam diagnosed hypoxemia based on the December 31, 2018 blood gas study and, after reviewing Dr. McSharry's November 20, 2019 non-qualifying blood gas study, reiterated Claimant is totally disabled. Director's Exhibits 19, 28. He opined it is very common for arterial blood gas testing to be variable in smoking miners who have good and bad days. Director's Exhibit 1 at 28. In contrast, Dr. McSharry opined the hypoxemia evidenced by the December 31, 2018 blood gas study was due to transient condition because the November 20, 2019 blood gas study was non-qualifying. Director's Exhibit 26 at 6. Thus both doctors disagree as to whether Claimant's hypoxemia is a permanent condition or was transient and no longer present. The ALJ erred in failing to address this conflict in the medical opinions. *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016).

presumption, 30 U.S.C. §921(c)(4), and the denial of benefits. Consequently, we remand the case for further consideration.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established total disability based on a preponderance of the pulmonary function studies at 20 C.F.R. §718.204(b)(2)(i). He must consider the relevant pulmonary function studies and undertake a quantitative and qualitative analysis of the conflicting results in rendering his findings of fact. *See Addison*, 831 F.3d at 252-54; *Thorn*, 3 F.3d at 719; *Adkins*, 958 F.2d at 52-53; 20 C.F.R. §718.204(b)(2)(i).

He must also reconsider the medical opinion evidence, taking into consideration his findings regarding the objective studies and comparing the exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and physical limitations. *See Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4; *Cornett*, 227 F.3d at 578; 20 C.F.R. §718.204(b)(2)(iv). In rendering his credibility findings, he must consider the comparative credentials of the physicians, 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; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

In reaching his credibility determinations, the ALJ must set forth his findings in detail and explain his rationale in accordance with the APA. *Wojtowicz*, 12 BLR at 1-165. If the ALJ determines total disability is demonstrated by the pulmonary function studies or medical opinions, or both, he must weigh all the relevant evidence together to determine whether Claimant is totally disabled. 20 C.F.R. §718.204(b)(2); *Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *see 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); *see* 20 C.F.R. §718.305. The ALJ must then determine whether Employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d); *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 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, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge