U.S. Department of Labor

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

BRB No. 24-0365 BLA

RANDY HAMILTON Claimant-Respondent v. REDHAWK MINING LLC and NEW HAMPSHIRE INSURANCE/AIG Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/21/2025 DECISION and ORDER

Appeal of the Decision and Order Granting Benefits in a Subsequent Claim of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery), Prestonsburg, Kentucky, for Claimant.

Ryan Thompson (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Granting Benefits in a Subsequent Claim (2021-BLA-05928) rendered on a claim filed on November 3, 2020,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 21.81 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, 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. 20 C.F.R. §§718.204(b)(2), 725.309(c). He further found Employer did not rebut the presumption and thus awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled.[3] Claimant responds, urging affirmance of the award. The Acting Director, Office of Workers' Compensation Programs, has not filed a response.

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[1] On February 23, 2017, the district director denied Claimant's prior claim, filed on May 31, 2016, for failure to establish a totally disabling respiratory or pulmonary impairment. 2016 Director's Exhibit 21. 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 she 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). Claimant was therefore required to establish a totally disabling respiratory or pulmonary impairment in order to obtain review of his subsequent claim on the merits. *White*, 23 BLR at 1-3.

[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); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 21.81 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

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.[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).

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

A miner is totally disabled if a pulmonary or respiratory impairment, standing alone, prevents the miner from performing his or her usual coal mine work and comparable gainful work.[5] 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[6] 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 consider all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp*., 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195, 1-198 (1986), *aff'd on recon*., 9 BLR 1-236 (1987) (en banc). The ALJ found the pulmonary function studies and the arterial blood gas study do not support finding total disability, and there is no evidence Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 7.

The ALJ also considered Claimant's treatment records from by Dr. Sikder dating from February 2020 to May 2022. Claimant's Exhibit 4; Decision and Order at 13-14. Dr. Sikder noted Claimant had chronic dyspnea on exertion, chronic cough with occasional sputum production, and intermittent wheezing. Claimant's Exhibit 4 at 3. The treatment records contain pulmonary function study results from November 2019, March 2021, and February 2022 which show a decline in FEV1 from seventy-five percent of normal to fifty-eight percent of normal. *Id.* at 1, 15, 19. Dr. Sikder diagnosed chronic obstructive pulmonary disease (COPD) as demonstrated by Claimant's mild restrictive airway disease

[4] We 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 10.

[5] The ALJ found Claimant's usual coal mine employment working as a supply man required very heavy exertion. Decision and Order at 5-6. Employer does not challenge this finding. Thus, we affirm it. *See Skrack*, 6 BLR at 1-711.

[6] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

with reduced lung volumes and diffusion. *Id*. at 9. She prescribed medications to treat Claimant's COPD and coal workers' pneumoconiosis. *Id*. at 4, 9.

The ALJ found the treatment records allowed him to "infer that Claimant was unable to do his usual coal mine job which required very heavy manual labor" considering "the statements and notations set forth in the treatment records regarding limits on Claimant's activities due to his respiratory or pulmonary condition" and the exertional requirements of his usual coal mine employment. Decision and Order at 14. The ALJ further noted Claimant's "decreased FEV1" and the presence of "mild restrictive airway disease." *Id*. Therefore, he found the treatment records support a finding of total disability. *Id*.

Employer argues the ALJ erred by failing to discuss the evidence regarding the reliability of the March 18, 2021, and February 17, 2022 pulmonary function studies contained in Dr. Sikder's treatment records.[7] Employer's Brief at 13-15. We agree.

When considering pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co*., 23 BLR 1-229, 1-237 (2007) (en banc). Nevertheless, the standards do not apply to studies, like these, that are administered during treatment rather than for the purposes of litigation. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000); Decision and Order at 14. Such tests still may constitute evidence of a miner's respiratory condition if the ALJ determines the studies can reliably establish total disability. 65 Fed. Reg. at 79,928 ("Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator must still be persuaded the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue.").

Drs. Rosenberg and Tuteur opined the March 18, 2021 and February 17, 2022 pulmonary function studies were not valid because there was only one spirometric attempt for each study and, therefore, there was no way to assess their variability and reproducibility. Employer's Exhibits 3 at 13-15; 4 at 13-15. Dr. Rosenberg opined it was not proper to rely on the March 18, 2021 test to determine impairment and also stated both the March 2021 and February 2022 studies could not be considered assessments of Claimant's maximum pulmonary function. Employer's Exhibit 4 at 13-15. Dr. Tutuer

[7] We note the treatment records also reference the results of a November 25, 2019 pulmonary function study. Claimant's Exhibit 4 at 1. Unlike the March 18, 2021 and February 17, 2022 studies, Claimant did not separately proffer the results of this study. Nevertheless, although the ALJ noted the FEV1 results from this study, he did not discuss its reliability or validity in any way. *See generally* Decision and Order.

stated the tests could not be considered an assessment of Claimant's maximum pulmonary function. Employer's Exhibit 3 at 13-15.

The ALJ summarily stated he had determined the pulmonary function studies administered by Dr. Sikder were valid and medically acceptable. Decision and Order at 9-11. However, he provided no explanation for how he reached that conclusion, nor did he address the opinions questioning the reliability of the pulmonary function study evidence. Decision and Order at 7. The reliability of this evidence is relevant to whether Claimant may establish total disability at 20 C.F.R. §718.204(b)(2)(i) and also to whether the physicians' opinions relying on those tests provided reasoned and documented opinions regarding the elements of entitlement: total disability, pneumoconiosis, and disability causation. We therefore vacate the ALJ's determination that the treatment records establish total disability. *See McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand).

Medical Opinions

The ALJ found the medical opinion evidence "neither refutes nor supports a finding of total disability." Decision and Order at 14. In doing so, he found Drs. Rosenberg's and Tuteur's opinions are not well-reasoned or well-documented, and thus he gave their opinions little weight. *Id*. at 9-11. Employer contends the ALJ erred in discrediting their opinions. Employer's Brief at 15-19. We agree.

The ALJ stated that because Drs. Rosenberg and Tuteur opined the March 18, 2021 and February 17, 2022 pulmonary function studies were invalid, contrary to his summarily finding them valid and medically acceptable, they did not consider all the relevant medical evidence. Decision and Order at 10-11. However, both physicians testified that, although they believed the studies were invalid, if the studies were valid, they do not establish total disability. *Id*. Thus, the ALJ erred in finding they failed to consider these studies.

Employer further argues the ALJ erred in discrediting the opinions of Drs. Rosenberg and Tuteur because they applied the Knudson 1976 standard values for measuring the pulmonary function results. Employer's Brief at 18-19. We agree.

The ALJ discredited the opinions of Drs. Rosenberg and Tuteur, stating that the Knudson 1976 values are an "improper standard." Decision and Order at 10-11. As Employer correctly notes, the qualifying FEV1 and FVC values in the Appendix B tables at 20 C.F.R. Part 718 are based on reference values found in Ronald J. Knudson, et al., The Maximal Expiratory Flow Volume Curve Normal Standards, Variability, and Effects of Age, 113 Am. Rev. of Respir. Disease 587 (1976). *See* 45 Fed. Reg. 13711 (1980); Employer's Brief at 19. Moreover, the ALJ stated Dr. Rosenberg "correctly noted" the Knudson 1976 standard is not recognized or utilized by the Department of Labor (DOL).

Decision and Order at 9. But this mischaracterizes Dr. Rosenberg's testimony. Employer's Exhibit 4 at 16. Dr. Rosenberg was asked if he believed the percentages of predicted normal value results Dr. Sikder noted in her medical records from the March 18, 2021 and February 17, 2022 pulmonary function studies were based on the Knudson 1976 standard. *Id*. He stated they were not and opined Dr. Sikder may have used other standards such as "Haines and others." *Id.* It was those standards he said were not recognized or utilized by the DOL, not the Knudson standard. Therefore, we vacate the ALJ's finding that Drs. Rosenberg and Tuteur applied an improper standard.

Finally, Employer asserts the ALJ erred in his consideration of Dr. Sikder's opinion. Employer's Brief at 20-24. This argument has merit.

As noted above, the ALJ failed to address the evidence regarding the reliability of the pulmonary function study evidence. As Dr. Sikder relied on the March 18, 2021 and February 17, 2022 pulmonary function studies, the reliability of those studies has an impact on whether her opinion is reasoned and documented. Thus, we must vacate the ALJ's finding that Dr. Sikder's opinion is entitled to probative weight. Further, we vacate the ALJ's finding that Claimant established total disability when weighing the evidence as a whole at 20 C.F.R. §718.204(b). Consequently, we must also vacate his findings that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §725.309(c).

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability. 20 C.F.R. §718.204(b)(2). He must initially consider the evidence as to the reliability of the March 18, 2021 and February 17, 2022 pulmonary function studies. Then he must determine if the studies can reliably establish total disability. 65 Fed. Reg. at 79,928.

Next, the ALJ must reconsider whether the medical opinion evidence establishes or refutes a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv). In weighing the opinions, he must take into consideration the physicians' respective credentials, the explanations for their conclusions, the documentation underlying their medical judgment, and the sophistication of, and bases for, their opinions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Wojtowicz v. Duquesne Light Co.,* 12 BLR 1-162, 1-165 (1989). He must weigh all the relevant evidence together, like and unlike, to determine whether Claimant has established the existence of a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock*, 9 BLR at 198.

If the ALJ finds the evidence establishes total disability, Claimant will have invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4). If the presumption is invoked, the ALJ may reinstate the award of benefits as Employer has not challenged rebuttal of the presumption. Alternatively, if Claimant does not establish total disability, benefits must be denied as he has failed to establish an essential element of entitlement. *See 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). Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Granting Benefits in a Subsequent Claim and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge