U.S. Department of Labor

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

BRB No. 25-0019 BLA

JOSEPH L. LECHNER, JR. Claimant-Petitioner v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	)	**NOT-PUBLISHED** DATE ISSUED: 07/18/2025 DECISION and ORDER

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

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

William M. Bush (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting 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, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Acting District Chief Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2023-BLA-05501) rendered on a

subsequent claim filed on February 10, 2021,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant established 30.42 years of qualifying coal mine employment.[2] She found Claimant established pneumoconiosis arising out of coal mine employment, but did not establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2). Further, she found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305, or establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309,[4] and denied benefits.

[1] The record shows Claimant filed a claim that he subsequently withdrew. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306; Director's Exhibit 1. Claimant filed a second claim on May 12, 2017, that Acting District Chief Administrative Law Judge Natalie A. Appetta denied on April 25, 2019, based on Claimant's failure to establish total disability. Director's Exhibit 2; Decision and Order at 2 n.3.

[2] The ALJ noted Claimant's last coal mine employment was with Emerald Coal Resources, LP, which was self-insured through Alpha Natural Resources, and due to its bankruptcy, liability in this claim lies with the Black Lung Disability Trust Fund. Decision and Order at 5 (citing Director's Exhibit 25).

[3] 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.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element of entitlement to obtain review of the merits of his current claim. *Id*.

On appeal, Claimant argues the ALJ erred in finding he failed to establish total disability.[5] In response, the Acting Director, Office of Workers' Compensation Programs (the Director), also argues the ALJ erred in weighing the evidence on total disability.

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.[6] 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, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if their respiratory or pulmonary impairment, standing alone, prevents them from performing their 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 pulmonary function or arterial blood gas studies,[7] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 30.42 years of qualifying coal mine employment and pneumoconiosis arising out of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 13-14.

[6] The Board will apply the law of the United States Court of Appeals for the Third Circuit, as Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Tr. at 12.

[7] A "qualifying" pulmonary function study or 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).

The ALJ determined the pulmonary function studies, arterial blood gas studies, and medical opinions[8] do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i), (ii), (iv); Decision and Order at 8-13.[9]

The ALJ considered the results of three pulmonary function studies dated March 22, 2021, February 14, 2024, and March 14, 2024. Decision and Order at 8-10. The March 22, 2021 and February 14, 2024 studies produced non-qualifying values before and after the administration of a bronchodilator. Director's Exhibit 15; Claimant's Exhibit 5. The March 14, 2024 study produced non-qualifying values pre-bronchodilator and qualifying values post-bronchodilator. Claimant's Exhibit 1. Without regard to the dates of the studies, the ALJ noted all the pre-bronchodilator results and a majority of the post-bronchodilator results were non-qualifying. Decision and Order at 10. Thus, she found the results of the pulmonary function studies do not support finding total disability at 20 C.F.R. §718.204(b)(2)(i). *Id.*

Claimant and the Director argue the ALJ erred in finding that the pulmonary function study evidence does not support total disability because she relied exclusively on a headcount of the non-qualifying test results and did not discuss the recency of the qualifying March 14, 2024 post-bronchodilator study. Claimant's Brief at 4-6. We agree.

It is an abdication of rational decision-making to rely on the numerical superiority of the evidence. *Staton v. Norfolk & W. Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Allen v. Union Carbide Corp.,* 8 BLR 1-393, 1-395 (1985) (preponderance of the evidence is evidence which is of greater weight or more credible and convincing than evidence offered in opposition to it, not necessarily evidence that is numerically superior). The ALJ has a duty to resolve any conflicts in the evidence and explain her basis for doing so. *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803 (4th Cir. 1998); *Gunderson v. U.S. Dep't of Lab.*, 601 F.3d 1013, 1024 (10th Cir. 2010).

[8] The ALJ also 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 8, n.10. As this finding is unchallenged on appeal, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983)

[9] We affirm, as unchallenged on appeal, the ALJ's findings that the arterial blood gas study evidence does not support a finding of total disability. *See Skrack*, 6 BLR at 1-711; Decision and Order at 11.

In this case, the ALJ failed to critically analyze the results of the pulmonary function studies, resolve the conflict in the test results, and explain her conclusions as the Administrative Procedure Act (APA) requires,[10] 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).

Pneumoconiosis is generally considered to be a progressive and irreversible disease. Thus, the ALJ, in weighing the medical evidence of record, may give more weight to the most recent evidence, especially when a significant amount of time separates the newer from the older evidence. *See, e.g.*, *Crace v. Kentland-Elkhorn Coal Corp.*, 109 F.3d 1163, 1167 (6th Cir. 1997); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Casella v. Kaiser Steel Corp.*, 9 BLR 1131 (1986). The ALJ failed to consider and explain whether the qualifying post-bronchodilator result from the most recent March 14, 2024 study is more probative than earlier non-qualifying pulmonary function study results. Moreover, her reliance on the numerical superiority of the non-qualifying test results is not a sufficient basis to find Claimant failed to satisfy his burden of establishing total disability. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); Decision and Order at 10. We therefore vacate her finding that the pulmonary function study evidence does not support total disability at 20 C.F.R. §718.204(b)(2)(i). *See Wojtowicz*, 12 BLR at 1-165; Decision and Order at 10.

We further vacate the ALJ's conclusion that the weight of the medical opinion evidence is unsupportive of a finding of total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 12-13. The ALJ considered Dr. Werntz's opinion that Claimant is not totally disabled. Decision and Order at 11-12; Director's Exhibit 15. In assessing whether Claimant is totally disabled, Dr. Werntz did not review the most recent March 14, 2024 pulmonary function test results, which if credited on remand could undermine the overall probative value of his opinion. *See e.g., Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (ALJ may assign less weight to physician's opinion which reflects an incomplete picture of a miner's health). Thus, we vacate the ALJ's finding that the weight of the medical opinion evidence is unsupportive of a total disability finding. We further vacate the ALJ's conclusion that the evidence, when weighed together, does not establish total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 12-13.

[10] The Administrative Procedure Act provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Because we vacate the ALJ's determination that Claimant did not establish, by a preponderance of the evidence, that he has a totally disabling respiratory impairment, we further vacate her findings that Claimant failed to establish a change in conditions and failed to invoke the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 725.309.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability. In weighing the pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i), the ALJ must address the reliability of the conflicting pulmonary function studies. As discussed, she must address all relevant evidence and resolve any conflicts in the evidence. In rendering her findings on remand, the ALJ must explain the bases for her findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

The ALJ must also reconsider the medical opinion evidence given her findings regarding the pulmonary function studies and reweigh the evidence as a whole to determine whether Claimant has established total disability. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b)(2). If Claimant establishes total disability, he will invoke the Section 411(c)(4) presumption and the ALJ must address whether Employer has rebutted it. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305. If Claimant fails to establish total disability, an essential element of entitlement, the ALJ must deny benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

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

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge