



BRB Nos. 25-0198 BLA
and 25-0198 BLA-A

ROBERT J. TROZZI

Claimant-Petitioner
Cross-Respondent

v.

CONSOL PENNSYLVANIA COAL
COMPANY, LLC and CONSOL ENERGY,
INCORPORATED c/o SEDGWICK CMS

and

WELLS FARGO DISABILITY
MANAGEMENT f/k/a ACORDIA

Employer/Carrier-
Respondents
Cross-Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 07/10/2026

DECISION and ORDER

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

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township,
Pennsylvania, for Claimant.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania,
for Employer and its Carrier.

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

Claimant appeals, and Employer and its Carrier (Employer) cross-appeal, Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2024-BLA-05286) rendered on a claim filed on February 1, 2023, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ credited Claimant with sixteen years of underground coal mine employment but found Claimant does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,¹ 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, he found Claimant established clinical pneumoconiosis arising out of coal mine employment and legal pneumoconiosis,² but Claimant's failure to establish total respiratory disability precluded his entitlement to benefits. 20 C.F.R. §§718.202(a), 718.203(b). Thus, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish total disability and thus was not entitled to invoke the Section 411(c)(4) presumption.³

¹ Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

² "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established sixteen years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5.

Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), declined to file a response.

On cross-appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis. Claimant responds in support of the ALJ's determination that he established legal pneumoconiosis. The Director declined to file a response to the cross-appeal.

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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Claimant's Appeal

To be entitled to benefits under the Act, 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. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but 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 (1986) (en banc).

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 or comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁵ evidence of pneumoconiosis and

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 8; Hearing Tr. at 16.

⁵ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718,

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 Claimant failed to establish total disability by any method. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 21-29.

Claimant challenges the ALJ's weighing of the blood gas studies, medical opinions, and evidence as a whole regarding total disability.⁶ Claimant's Brief at 14-18.

Arterial Blood Gas Studies

The ALJ considered two arterial blood gas studies dated March 28, 2023, and June 17, 2024. Decision and Order at 24. The March 28, 2023 study produced non-qualifying values at rest and qualifying values with exercise, while the June 17, 2024 study produced non-qualifying values both at rest and with exercise. Director's Exhibit 30 at 29-31; Employer's Exhibit 5 at 30-31. In his May 1, 2023 report Dr. Gaziano opined the March 28, 2023 arterial blood gas study is technically acceptable. Director's Exhibit 26.

In assessing the two arterial blood gas studies of record, the ALJ stated:

Claimant's first exercise arterial blood gas test results studies [sic] qualified. His subsequent exercise test, and subsequent resting test, failed to qualify. As the 2024 exercise test result is more recent than the 2023 exercise test result, it is more probative. . . . Accordingly, the undersigned finds that Claimant has failed to demonstrate the existence of a total respiratory or pulmonary disability by blood gas studies pursuant to 20 C.F.R. §718.204(b)(2)(ii).

Decision and Order at 24 (internal references omitted).

respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

⁶ As Claimant does not challenge the ALJ's findings that the pulmonary function studies are not qualifying and that there is no evidence of cor pulmonale with right-sided congestive heart failure, we affirm that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iii). *Skrack*, 6 BLR at 1-711; Decision and Order at 22-24.

Claimant argues the ALJ erred in finding the June 17, 2024 arterial blood gas study more probative than the March 28, 2023 study solely because it is more recent. Claimant's Brief at 14-15. We agree.

The ALJ's explanation for crediting the June 17, 2024 study over the March 28, 2023 study is inadequate. Although an ALJ may consider the chronology of conflicting medical evidence, he must explain why the later evidence is entitled to greater weight. The United States Courts of Appeals for the Fourth Circuit, the Sixth Circuit, and the Board have all held it is irrational to credit evidence that shows a miner's condition has improved solely because it is more recent. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993) (given the progressive nature of pneumoconiosis, a fact-finder must evaluate evidence without reference to its chronological order when the evidence shows a miner's condition has improved); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718-19 (4th Cir. 1993) (bare appeal to 'recency' is an abdication of rational decision making); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (it is irrational to credit evidence *solely* because of recency when the miner's condition has improved); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50-52 n.14 (2023) (ALJ erred by "not provid[ing] a reason other than recency to credit the non-qualifying testing and in so doing failed to resolve the actual conflict in the medical opinions regarding which test more accurately reflected the miner's pulmonary capacity").⁷

Here, the ALJ identified no reason for finding the June 17, 2024 study more reliable, representative, or probative than the March 28, 2023 study other than it was conducted later in time. Decision and Order at 24. Because the ALJ did not adequately explain his resolution of the conflicting arterial blood gas evidence, his finding does not satisfy the Administrative Procedure Act (APA).⁸ *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165

⁷ In response to Claimant's citing *Adkins* for the proposition that it is irrational to credit evidence solely on the bases of recency unless it shows a miner's condition has worsened, Employer correctly notes that Fourth Circuit precedent is not binding in this case, which arises in the Third Circuit. Employer's Response Brief at 13. We cite *Woodward*, *Thorn*, and *Adkins* only as persuasive authority.

⁸ The Administrative Procedure Act provides that 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).

(1989). We therefore vacate his finding that the blood gas studies do not establish total disability at 20 C.F.R. §718.204(b)(2)(ii).⁹ See Decision and Order at 24.

Medical Opinion Evidence

In weighing the medical opinion evidence, the ALJ initially determined Claimant's last coal mine job as an outby foreman required "medium exertional labor." Decision and Order at 25 n.17. We affirm this finding as unchallenged. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

He then considered five medical opinions. Drs. Celko, Go, and Sood opined Claimant is totally disabled based on the March 28, 2023 qualifying exercise arterial blood gas study and other objective testing. Director's Exhibits 27, 30; Claimant's Exhibits 1, 3. Conversely, Dr. Basheda opined Claimant is not disabled based on the June 17, 2024 non-qualifying arterial blood gas study and pulmonary function testing. Employer's Exhibit 5. Dr. Tuteur initially opined Claimant is disabled based on his qualifying oxygenation impairment and because he cannot perform his usual coal mine employment; however, after reviewing Dr. Basheda's report and objective studies, he opined Claimant no longer has a qualifying pulmonary impairment and concluded Claimant is neither impaired nor disabled due to pneumoconiosis.¹⁰ Employer's Exhibits 4, 4B.

The ALJ acknowledged that Drs. Celko, Go, and Sood each provided multiple reasons for concluding Claimant is totally disabled, but found they relied primarily on the March 28, 2023 qualifying exercise blood gas study. Decision and Order at 28. Because their opinions predated Dr. Basheda's June 17, 2024 examination and non-qualifying

⁹ Claimant additionally argues that the qualifying March 28, 2023 exercise blood gas study, which he performed on a stationary bike, better measures his ability to perform the exertional requirements of his last coal mine job given he performed the more-recent June 17, 2024 exercise study as a six-minute walk test. Claimant's Brief at 15-16. However, we decline to reach this issue as the Board is not empowered to weigh evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. See *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 162-63 (3d Cir. 1986).

¹⁰ Dr. Tuteur stated, "based on the March 18, 2023 pulmonary function studies, [Claimant] is totally disabled due to the impairment of oxygen gas exchange during exercise." Employer's Exhibit 4 at 6. This appears to be a scrivener's error, as an oxygen gas exchange impairment is illustrated during arterial blood gas testing, not pulmonary function studies.

arterial blood gas studies, the ALJ concluded it was unknown whether the later evidence would have altered their assessments; therefore, he assigned their opinions no weight. *Id.* By contrast, the ALJ found Dr. Basheda's opinion better reasoned and entitled to great weight because it was based on his review of the complete medical record and the results of his examination and objective testing. *Id.* The ALJ assigned no weight to Dr. Tuteur's opinion, finding it unclear from his successive reports whether Dr. Tuteur ultimately believed Claimant remained unable to perform his usual coal mine work. *Id.* Thus, he found Claimant failed to establish total disability based on the medical opinions. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 28-29.

Claimant asserts the ALJ erred in discrediting the opinions of Drs. Celko, Go, and Sood, and in crediting Dr. Basheda's opinion. Claimant's Brief at 17-18. We agree.

Because the ALJ's improper assignment of greater weight to the June 17, 2024 blood gas study affected his weighing of Drs. Celko's, Go's, Sood's, and Basheda's medical opinions at 20 C.F.R. §718.204(b)(2)(iv), we vacate his credibility determinations as to their opinions. Decision and Order at 28-29; Claimant's Brief at 17-18; *see Thorn*, 3 F.3d at 718. The ALJ may not credit Dr. Basheda's opinion as better reasoned solely because it is based on the more recent, non-qualifying blood gas study. *See Kincaid*, 26 BLR at 1-50-52 n.14.

Further, as Claimant asserts, the ALJ's finding that the opinions of Drs. Celko, Go, and Sood are not well-documented because they did not review later-developed evidence is not, standing alone, a rational basis for discrediting their opinions. Claimant's Brief at 18. An ALJ is not required to discredit a physician who did not review all medical evidence of record when the opinion is otherwise reasoned and documented. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (that a physician reviewed less data in forming his opinion does not render his opinion insufficient to establish total disability). Rather, the ALJ must explain why the later evidence undermines the physicians' conclusions. *See Kincaid*, 26 BLR at 1-50-52 n.14. In this case, the ALJ failed to explain why the disability assessments of Drs. Celko, Go, and Sood are not well-reasoned and documented given that their opinions are based on their own examinations of Claimant, objective test results, and exposure histories. Decision and Order at 28.

Based on these errors, we vacate the ALJ's finding that Claimant did not establish total disability based on the medical opinions at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the evidence as a whole. Decision and Order at 29. Consequently, we vacate the ALJ's denial of benefits and remand the case for further consideration.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability based on a preponderance of blood gas studies at 20 C.F.R. §718.204(b)(2)(ii). In resolving the conflict in the blood gas study evidence, the ALJ may not credit the more recent, non-qualifying exercise study over the earlier exercise study on the basis of recency alone. *See Thorn*, 3 F.3d at 718; *Adkins*, 958 F.2d at 51-52. Rather, he must independently weigh the reliability of each piece of evidence and indicate why he assigns greater weight to one study over the other in accordance with the requirements of the APA. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; *see also Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); *Gray v. Director, OWCP*, 943 F.2d 513, 520-21 (4th Cir. 1991). In doing so, the ALJ must specifically address Claimant’s assertion that the March 28, 2023 qualifying exercise study better reflects his capacity to perform the exertional requirements of his last coal mine job than does the June 17, 2024 non-qualifying exercise study. Claimant’s Brief at 15-16.

In weighing the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), the ALJ must reconsider the physicians’ conclusions on total disability and determine whether the degree of Claimant’s respiratory impairment or any physical limitations they identify would preclude Claimant from performing his usual coal mine work. *Gonzales v. Director, OWCP*, 869 F.2d 776, 779 (3d Cir. 1989). In rendering his credibility findings, the ALJ 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 Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 162-63 (3d Cir. 1986). The ALJ may not credit or discredit the physicians’ opinions solely because they do or do not rely on the more recent non-qualifying blood gas study. *See Kincaid*, 26 BLR at 1-50-52 n.14; *Church*, 20 BLR at 1-13; *Stark*, 9 BLR at 1-37.

The ALJ must also reweigh the evidence as a whole and determine whether Claimant established total disability pursuant to 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, he will invoke the Section 411(c)(4) rebuttable presumption, and the ALJ must consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1)(i), (ii). If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits.¹¹ *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR

¹¹ Because we vacate the ALJ’s finding that Claimant failed to establish total disability and remand the case for further proceedings, we deny, as moot, Employer’s cross-appeal of the ALJ’s finding that Claimant affirmatively established legal

at 1-27; *Perry*, 9 BLR at 1-2. In rendering his findings on remand, the ALJ must explain his decision in compliance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits 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

pneumoconiosis under 20 C.F.R. §718.202(a)(4). Resolution of those arguments is not necessary to the disposition of this appeal.