

U.S. Department of Labor

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



BRB No. 25-0223 BLA

DONALD R. BARE

Claimant-Petitioner

v.

DICKENSON RUSSELL CONTURA, LLC

Employer-Respondent

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 07/22/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jodeen M. Hobbs,
Administrative Law Judge, United States Department of Labor.

Donald R. Bare, Clintwood, Virginia.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without representation,¹ Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits (2023-BLA-05886) rendered on a claim² filed on December 9, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation that Claimant has thirty years of underground coal mine employment and found that he therefore satisfied the "qualifying" coal mine employment requirement for invocation of the rebuttable presumption at Section 411(c)(4) of the Act.³ 20 C.F.R. §§718.304, 718.305.

On appeal, Claimant generally challenges the denial of benefits. Employer and the Director, Office of Workers' Compensation Programs, declined to file response briefs.

In an appeal a Claimant files 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, 361-62 (1965).

¹ On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested that the Benefits Review Board review the administrative law judge's (ALJ's) decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

² Claimant filed two prior claims, which he withdrew. Director's Exhibits 1, 2. As Claimant withdrew his prior claims, they are considered not to have been filed. 20 C.F.R. §725.306(b).

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); *see* 20 C.F.R. §718.305.

⁴ 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); Director's Exhibit 5; Hearing Transcript at 16.

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray evidence does not support a finding of complicated pneumoconiosis, and the medical opinion evidence and Claimant's treatment records do not diagnose the disease.⁵ Decision and Order at 6-8. Weighing all the evidence together, she found Claimant did not establish the existence of complicated pneumoconiosis. *Id.*

20 C.F.R. §718.304(a) – X-rays

The ALJ considered seven interpretations of four x-rays dated March 22, 2022, January 10, 2023, January 12, 2024, and February 6, 2024. Decision and Order at 6-8. Dr. Forehand, a B reader, and Dr. Adcock, dually-qualified as a Board-certified radiologist and B reader, read the March 22, 2022 x-ray as negative for complicated pneumoconiosis.⁶ Director's Exhibit 11 at 7; Employer's Exhibit 7. Dr. Alexander, a dually-qualified radiologist, read the January 10, 2023 x-ray as positive for Category A complicated pneumoconiosis, while Dr. Adcock, also dually-qualified, read the x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 2; Employer's Exhibit 6. Dr. Ramakrishnan, a dually-qualified radiologist, read the January 12, 2024 x-ray as positive for Category A complicated pneumoconiosis, while Dr. Adcock read the x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 5. Finally,

⁵ The ALJ accurately observed there is no biopsy or autopsy evidence in the record. 20 C.F.R. §718.304(b); Decision and Order at 6. We further affirm, as supported by substantial evidence, the ALJ's finding that the medical opinions and treatment record evidence do not diagnose complicated pneumoconiosis. Decision and Order at 6 n.4.

⁶ Dr. Lundberg read the March 22, 2022 x-ray for quality purposes only. Director's Exhibit 14.

Dr. Adcock read the February 6, 2024 x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 8.

The ALJ permissibly found the March 22, 2022 x-ray negative for complicated pneumoconiosis based on the interpretations of Drs. Forehand and Adcock, as their negative readings are unrebutted. Decision and Order at 7. She also permissibly found the interpretations of the January 10, 2023 and January 12, 2024 x-rays to be in equipoise because an equal number of dually-qualified physicians read the x-ray as positive and negative for complicated pneumoconiosis. *Id.* at 7-8. She further permissibly found the February 6, 2024 x-ray negative for complicated pneumoconiosis based on Dr. Adcock's unrebutted interpretation. *Id.* at 8.

The ALJ properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 6-8. Having found two x-rays negative for complicated pneumoconiosis and two x-rays in equipoise for complicated pneumoconiosis, the ALJ permissibly found the x-ray evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994); *Addison*, 831 F.3d at 256-57; Decision and Order at 8. As it is supported by substantial evidence, we affirm the ALJ's finding that the x-ray evidence, and the evidence as a whole, does not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 8.

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

To invoke the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4), or establish entitlement under 20 C.F.R. Part 718, Claimant must prove he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b), 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 work⁷ and comparable gainful work.

⁷ The ALJ found Claimant's usual coal mine employment was working as a mobile equipment operator involving light to moderate labor. Decision and Order at 4-5. Specifically, the ALJ noted Claimant's testimony that while he had to lift between twenty-five to fifty pounds, he did not have to carry anything "really really heavy." Decision and Order on Remand at 4; Hearing Transcript at 18, 24. As substantial evidence supports the ALJ's findings, we affirm them. *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Shortridge v. Beatrice Coal Co.*, 4 BLR 1-535, 1-538-39 (1982)

See 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies, qualifying arterial blood gas studies,⁸ 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 the pulmonary function studies, arterial blood gas studies, medical opinions, and treatment record evidence do not support a finding of total disability.⁹ Decision and Order at 9-15.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated March 22, 2022, and February 6, 2024. Decision and Order at 10. The ALJ noted the studies reported differing heights for Claimant ranging from sixty-nine to seventy inches¹⁰ and permissibly averaged the heights to determine Claimant's height is 69.5 inches. *Protopappas v. Director, OWCP*, 6 BLR 1-2221, 1-223 (1983); Decision and Order at 10. Using this height,¹¹ she

(miner's usual coal mine employment is the most recent job performed regularly and over a substantial period of time); Decision and Order on Remand at 4-5.

⁸ A "qualifying" pulmonary function study or blood gas study yields results that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields results that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

⁹ The ALJ accurately found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 9. Thus, we affirm her finding the evidence does not support total disability under this subsection. 20 C.F.R. §718.204(b)(2)(iii); see Decision and Order at 9.

¹⁰ Claimant's height was recorded as seventy inches with the March 22, 2022 pulmonary function study and sixty-nine inches with the February 6, 2024 pulmonary function study. Director's Exhibit 11 at 8; Employer's Exhibit 8 at 11.

¹¹ Because Claimant's height falls between the table heights of 69.3 and 69.7 inches listed at 20 C.F.R. Part 718, Appendix B, the ALJ appropriately evaluated the studies using the table values for the closest greater height of 69.7 inches. See *Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 114, 116 n.6 (4th Cir. 1995); *Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-35, 1-38-39 (2023); *K.J.M. [Meade] v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); Decision and Order at 10 n.5.

determined the March 22, 2022 study did not produce qualifying values before or after the administration of bronchodilators, and the February 6, 2024 study did not produce qualifying values without a bronchodilator.¹² Director's Exhibit 11 at 8; Employer's Exhibit 8 at 11. Because neither pulmonary function study was qualifying, she determined the pulmonary function study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 10. As substantial evidence supports the ALJ's finding, we affirm it. 20 C.F.R. §718.204(b)(2)(i); *see Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 310 (4th Cir. 2012).

Arterial Blood Gas Studies

The ALJ accurately found the two arterial blood gas studies, dated March 22, 2022, and February 6, 2024, are non-qualifying for total disability. Decision and Order at 10-11; Director's Exhibit 11 at 12; Employer's Exhibit 8 at 16. We therefore affirm her finding that the arterial blood gas study evidence does not establish total disability under 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 10-11.

Medical Opinions

The ALJ considered the medical opinions of Drs. Forehand and Fino. Decision and Order at 11-14. Dr. Forehand indicated Claimant has a respiratory impairment but retains sufficient residual ventilatory capacity to return to his last coal mining job. Director's Exhibit 11. Dr. Fino likewise diagnosed only a mild respiratory impairment and opined Claimant retains the respiratory capacity to return to his usual coal mining work. Employer's Exhibits 8, 10.

The ALJ thus appropriately found neither physician diagnosed a totally disabling respiratory or pulmonary impairment. Decision and Order at 11-14. Further, neither physician identified pulmonary limitations or exertional restrictions from which the ALJ could infer that Claimant lacks the respiratory capacity to perform the exertional requirements of his usual coal mine employment. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physician's description of the miner's physical limitations may support a finding of total disability); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion."); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may find total disability by comparing physician's impairment rating and any

¹² Dr. Fino's February 6, 2024 pulmonary function study did not contain postbronchodilator results. Employer's Exhibit 8 at 11.

physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work). Therefore, we affirm, as supported by substantial evidence, the ALJ's determination that the medical opinions do not support a finding of total disability. Decision and Order at 11-14; 20 C.F.R. §718.204(b)(2)(iv).

Similarly, Claimant's treatment records do not describe pulmonary limitations or exertional restrictions from which the ALJ could infer total disability, and the ALJ accurately observed they do not contain a diagnosis of total pulmonary disability. Decision and Order at 15; Claimant's Exhibits 3, 4; Employer's Exhibits 1-4. We therefore affirm the ALJ's finding that the treatment records do not establish total disability. *See Gee v. W.G. Moore & Sons*, 9 BLR 1-4, 1-6 (1986) (en banc) (medical evidence that fails to state the miner is totally disabled or otherwise address the severity of the impairment in such a way as to permit the ALJ to infer total disability is not probative evidence of total disability). Consequently, we also affirm the ALJ's findings that Claimant failed to establish total disability based on the evidence as a whole and did not invoke the Section 411(c)(4) presumption. Decision and Order at 15; 20 C.F.R. §718.204(b).

As Claimant has failed to establish total disability, an essential element of entitlement under 20 C.F.R. Part 718, we affirm the denial 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).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge