U.S. Department of Labor

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

BRB No. 21-0227 BLA

DANIEL J. LEWIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MEPCO, LIMITED LIABILITY COMPANY	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 6/22/2022
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

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

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

ROLFE and GRESH, Administrative Appeals Judges:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2018-BLA-05865) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on May 20, 2016.[1]

The ALJ credited Claimant with sixteen years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined 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). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's finding that Claimant established at least fifteen years of underground coal mine employment and total disability, and thereby invoked the Section 411(c)(4) presumption. It further contends he erred in finding it did not rebut the presumption. Additionally, Employer argues the ALJ erred in considering the medical opinion of Dr. Hornsby on all elements of entitlement. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response agreeing with Employer that the ALJ

[1] Claimant filed two prior claims for benefits. Director's Exhibit 1, 2. He withdrew his first claim. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). Claimant filed his most recent prior claim on December 18, 2013. Director's Exhibit 2. The district director denied it on August 7, 2014, because Claimant failed to establish total disability. 20 C.F.R. §718.204(b)(2); Director's Exhibit 1.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

erred in considering Dr. Hornsby's opinion. He argues, however, that such error is harmless.

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.[3] 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, 362 (1965).

Section 411(c)(4) Presumption – Total Disability

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 pulmonary function studies, 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas studies, medical opinions, and evidence as a whole.[4] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 19-23.

Arterial Blood Gas Studies

[3] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 7.

[4] The ALJ found the pulmonary function studies do not establish total disability and there is no evidence that Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 18-20.

The ALJ considered the results of two arterial blood gas studies. An August 30, 2016 blood gas study produced non-qualifying[5] values at rest, but qualifying values during exercise. Director's Exhibit 17. A June 21, 2017 study produced non-qualifying values at rest, but did not include any exercise blood gas testing. Director's Exhibit 26. The ALJ assigned greater weight to the single exercise blood gas study because it is "more probative of [Claimant's] impairment" and "oxygen levels during physical exertion" that "may have been required by" his usual coal mine employment. Decision and Order at 19; *see Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984).

Employer generally argues the ALJ erred in finding the blood gas testing is sufficient to establish total disability, but it does not identify any specific error. Employer's Brief at 16. Because Employer has not identified any specific error in the ALJ's weighing of this evidence, we affirm his finding the blood gas testing establishes total disability. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b); 20 C.F.R. §718.204(b)(2)(ii).

Medical Opinions

The ALJ weighed the medical opinions of Drs. Scattaregia, Spagnolo, and Basheda.[6] Director's Exhibits 18, 19, 27; Employer's Exhibit 2. He found Dr. Basheda opined Claimant is totally disabled by a respiratory or pulmonary impairment, while Drs. Scattaregia and Spagnolo opined he is not. Decision and Order at 20-22.

The ALJ found Dr. Scattaregia's opinion not credible because his view that Claimant's impairment would not "usually" prevent him from performing his coal mine

[5] A "qualifying" blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix C, for establishing total disability. 20 C.F.R. §718.204(b)(2)(ii). A "non-qualifying" study exceeds those values.

[6] The ALJ also considered Dr. Hornsby's medical opinion on the issue of total disability. Decision and Order at 20-22; Director's Exhibit 17. Both Employer and the Director agree this was improper because, at the district director's request, Dr. Scattaregia prepared a medical report that replaced Dr. Hornsby's report, due to Dr. Hornsby's unavailability to provide supplemental opinion. Employer's Brief at 9; Director's Response Brief at 2-3; Director's Exhibits 19, 29. We agree with the Director that the ALJ's error is harmless because he ultimately assigned no weight to Dr. Hornsby's medical opinion on the issue of total disability. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 20-22.

employment was equivocal. Decision and Order at 22. The ALJ also discounted Dr. Scattaregia's opinion because "it does not reflect the qualifying diagnostic testing results." *Id.*

Employer argues the ALJ erred in discrediting his opinion because it asserts the doctor did review all the blood gas testing of record. Employer's Brief at 12. But other than simply stating in a conclusory manner that Dr. Scattaregia determined Claimant would not be prevented from performing his last job, Employer does not challenge the ALJ's determination that he rendered an ambiguous opinion. Because Employer has not identified any error in the ALJ's finding that Dr. Scattaregia was equivocal, we affirm that rationale for discrediting his opinion.[7] *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ discredited Dr. Spagnolo's opinion that Claimant is not totally disabled because he found the doctor failed to adequately address the qualifying exercise blood gas testing of record, which he found most accurately reflected the exertional requirements of Claimant's last job as a roof bolter. Decision and Order at 22. In challenging this finding, Employer accurately notes the doctor acknowledged the exercise blood gas testing of record is qualifying for total disability, but he opined this testing is "likely the result of cardiac disease." Employer's Brief at 14-15. Employer argues on appeal that the ALJ erred by assigning more weight to the qualifying exercise blood gas test, asserting the ALJ "erroneously discounted any medical opinion that attempted to explain why that one test result may not be indicative of total impairment." *Id.* at 15. But determining such credibility issues is precisely the role of the ALJ as a fact-finder, and the ALJ was well-within his discretion in finding the exercise test better reflected the exertional requirements of Claimant's coal mining job. *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984) (an exercise blood gas study may be provided more weight than resting blood gas studies); *Gray v. Donaldson Mine Co.*, BRB No. 19-0469 BLA (Sept. 30, 2020) (unpub.) ("[The ALJ] permissibly found exercise blood gas studies are more probative than resting studies in determining whether Claimant is totally disabled, as they are a better predictor of his

[7] Because the ALJ provided valid reasons for discrediting Dr. Scattaregia's opinion, we need not address Employer's additional arguments regarding the weight the ALJ assigned it. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 12.

ability to work in the mines." (citing *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984); *Sturnick v. Consolidation Coal Co.*, 2 BLR 1-972, 1-977 (1980)).[8]

The ALJ found Dr. Basheda's opinion that Claimant is totally disabled is well-reasoned and documented. Decision and Order at 22. Employer argues the ALJ mischaracterized Dr. Basheda's opinion as supporting total disability. Employer's Brief at 12-14. We disagree.

In his initial report, Dr. Basheda opined Claimant is not totally disabled based on the June 21, 2017 resting blood gas study that he conducted. Director's Exhibit 23. During his deposition, however, he acknowledged Claimant's August 30, 2016 blood gas study evidenced exercise-induced hypoxemia. Employer's Exhibit 3 at 16. He conceded that this testing is qualifying for total disability. *Id.* at 17. He reiterated that, from an oxygenation standpoint, Claimant would be totally disabled based on the results of the August 30, 2016 exercise blood gas study in light of "Medicare guidelines" and a drop in p02. *Id.* at 17-18. The ALJ found, given the exertional requirements of Claimant's job, the exercise blood gas study is more reflective of Claimant's usual coal mine work than Dr. Basheda's later testing at rest. Decision and Order at 19-20.

[8] Our dissenting colleague attempts to recast Employer's argument as asserting that the ALJ did not consider all of the evidence on this issue in violation of the Administrative Procedure Act. She further asserts the ALJ mistakenly believed Dr. Spagnolo did not consider the qualifying exercise study and that the ALJ erroneously viewed Dr. Spagnolo as finding Claimant disabled. None of that is true. Employer argued only that the ALJ substituted his judgment for Dr. Spagnolo's medical opinion regarding the weight to afford the qualifying exercise study, Employer's Brief at 15. And the ALJ was abundantly clear that he found Dr. Spagnolo did not believe that Claimant was disabled: "Dr. Spagnolo opined that he could perform his last coal mining job." ALJ D & O at 22. He just rejected that opinion as contrary to the exercise study that he found controlling: "As it does not reflect the qualifying diagnostic testing results it is given little weight." *Id.* But even if that was not enough, Dr. Spagnolo further attributed any impairment shown on the exercise study to cardiac disease, as Employer concedes. Employer Brief at 15. And the relevant inquiry at disability is whether Claimant has a totally disabling respiratory impairment -- the cause of that impairment is addressed at disability causation, or in consideration of rebuttal of the Section 411(c)(4) presumption. *See, e.g., Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989).

Dr. Basheda's acknowledgement Claimant would be considered disabled based on such studies is consistent with the ALJ's finding the exercise study results more persuasive. Thus, contrary to Employer's argument, the ALJ reasonably concluded Dr. Basheda's testimony supported finding Claimant is totally disabled. Decision and Order at 22; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the credibility of the evidence of record, including witness testimony); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc) (ALJ has discretion to assess witness credibility and the Board will not disturb his or her findings unless they are inherently unreasonable). As Employer raises no additional argument, we affirm his finding Dr. Basheda's opinion is well-reasoned and documented. *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).[9]

We therefore affirm the ALJ's finding that the medical opinions establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 22-23. We further affirm the ALJ's conclusion that the evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 22-23.

Section 411(c)(4) Presumption – Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or surface coal mines in conditions "substantially similar" to underground mines. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing the length of his coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-

[9] Our dissenting colleague likewise ostensibly asserts that the ALJ did not consider relevant evidence in coming to this conclusion, when her real objection is that he did not consider that evidence in a particular way. Whether or not Dr. Basheda subjectively viewed Claimant as disabled, he conceded the exercise study showed disability under the Medicare guidelines. Employer's Exhibit 3 at 16-18. The ALJ unambiguously and rationally found that study most probative given the exertional requirements of Claimant's job. Decision and Order at 19-20 ("As more weight may be given to the results of an exercise study, the undersigned finds that Claimant has demonstrated a total respiratory or pulmonary disability pursuant to 20 C.F.R. § 718.204 (b)(2)(ii)."). Neither Employer nor our colleague have identified evidence that he did not consider in coming to that conclusion; they instead argue he just should have given the non-exercise studies more weight. And that amounts to a simple request to reweigh the evidence, which is beyond our scope of review. *See Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

710-11 (1985). The Board will uphold the ALJ's determination if it is based on a reasonable method of calculation and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-26 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The ALJ noted Claimant alleged seventeen years of coal mine employment and the district director found sixteen years of coal mine employment. Decision and Order at 4. He summarily found, based upon "a totality of the evidence," Claimant established sixteen years of coal mine employment. *Id.* We agree with Employer's argument that the ALJ failed to adequately explain the basis for his length of coal mine employment finding or indicate if he considered all relevant evidence. Employer's Brief at 8-13.

The Administrative Procedure Act (APA) requires the ALJ to consider all relevant evidence in the record, and to set forth his "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); *see Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Wensel v. Director, OWCP*, 888 F.2d 14, 17 (3d Cir. 1989); *Osborne v. Eagle Coal Co.*, 25 BLR 1-195, 1-204 (2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because we cannot discern the basis for the ALJ's finding Claimant established sixteen years of coal mine employment,[10] we must vacate that determination and remand the case for reconsideration of this issue. Because we vacate the ALJ's finding that Claimant established at least fifteen years of coal mine employment,[11] we must also vacate his finding that Claimant invoked the Section 411(c)(4) presumption and the award of benefits, and remand the case for further consideration.

[10] To the extent the ALJ intended to adopt the district director's finding of sixteen years, this was improper. With only one exception, not applicable here, "any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge." 20 C.F.R. §725.455(a). When a party requests a formal hearing after a district director's proposed decision, an ALJ must proceed *de novo* and independently weigh the evidence to reach his or her own findings on each issue of fact and law. *See Dingess v. Director, OWCP*, 12 BLR 1-141, 1-143 (1989); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-863 (1985).

[11] Claimant testified all his coal mine employment was in underground coal mines. Hearing Transcript at 12. The ALJ found all of Claimant's employment constituted qualifying coal mine employment. Decision and Order at 7. Because this finding is not challenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Remand Instructions

The ALJ must reconsider the length of Claimant's coal mine employment, make appropriate findings,[12] and fully explain his findings in accordance with the APA. *See Muncy*, 25 BLR at 1-27; *Wojtowicz*, 12 BLR 1-162, 1-165.

If Claimant invokes the Section 411(c)(4) presumption, the ALJ must then determine whether Employer is able to rebut it.[13] 20 C.F.R. §718.305(d)(1). Alternatively, if Claimant does not invoke the presumption, the ALJ must consider whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718.[14] *See* 20 C.F.R. §§718.201, 718.202, 718.203, 718.204(b), (c).

[12] The ALJ must determine whether the evidence establishes the beginning and ending dates of Claimant's coal mine employment, and may determine the dates and length of his coal mine employment by any credible evidence, including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony. 20 C.F.R. §725.101(a)(32); *Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Osborne v. Eagle Coal Co.*, 25 BLR 1-195, 1-204-05 (2016). Where the beginning and ending dates of a miner's employment cannot be determined, an ALJ may divide the miner's yearly reported income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii); *see Exhibit 610 of the Black Lung Benefits Act Procedure Manual*. A copy of the BLS table must be made a part of the record if an ALJ uses this method to establish the length of a miner's coal mine employment. 20 C.F.R. §725.101(a)(32)(iii); *Osborne*, 25 BLR at 1-204 n.12.

[13] Because we have vacated the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, we decline to address, as premature, Employer's argument that the ALJ erred in finding the Section 411(c)(4) presumption unrebutted, as the length of coal mine employment finding may affect the ALJ's credibility findings and the parties' burdens of proof.

[14] Again, the ALJ should not consider Dr. Hornsby's medical opinion on the issues of rebuttal or whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718. *See supra* note 6.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring and dissenting:

Although I agree with my colleagues' decision to vacate the ALJ's finding with respect to the length of Claimant's coal mine employment history, I respectfully dissent from their decision to affirm the ALJ's finding that Claimant established total disability. Because the ALJ failed to consider the evidence in its entirety and did not adequately set forth the basis for his conclusions, I would vacate his findings that the medical opinions establish total disability and that the evidence when weighed together as a whole established total disability.

More particularly, Dr. Spagnolo reviewed Claimant's medical records, test results, and the other physicians' medical reports. Employer's Exhibit 2. He noted Claimant's 2016 pulmonary function study meets the criteria for a minimal or mild obstructive defect. *Id.* Dr. Spagnolo also indicated the August 30, 2016 exercise study showed a slight decrease in oxygenation with exercise. *Id.* Dr. Spagnolo further opined there was no evidence of any disabling respiratory impairment and Claimant could perform his usual coal mine job, which he listed as a roof bolter and acknowledged involved heavy labor. *Id.*

The ALJ discredited Dr. Spagnolo's opinion that Claimant is not totally disabled because he found the doctor's opinion failed to reflect the qualifying exercise blood gas testing of record. Decision and Order at 22. Employer argues the ALJ erred because Dr. Spagnolo acknowledged the exercise blood gas testing of record is qualifying for total disability, but opined this testing is "likely the result of cardiac disease" and concluded

there was no evidence of a disabling respiratory impairment. Employer's Brief at 14-15. To the extent Employer contends the ALJ erred in rejecting, without explanation, Dr. Spagnolo's explanation of why the qualifying study is not indicative of total impairment, this argument has merit. *See* Employer's Brief at 29.

The APA requires the ALJ to consider all relevant evidence in the record, and to set forth his "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); *see Sea "B" Mining Co. v. Addison, 831 F.3d 244, 256-57 (4th Cir. 2016); Wensel v. Director, OWCP, 888 F.2d 14, 17 (3d Cir. 1989); Osborne v. Eagle Coal Co., 25 BLR 1-195, 1-204 (2016); Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Employer is correct that Dr. Spagnolo specifically considered and addressed the exercise testing in coming to his conclusion. Employer's Exhibit 2. Yet, the ALJ expressly found Dr. Spagnolo's opinion does not reflect the qualifying study. Decision and Order at 22. Given that Dr. Spagnolo both listed and discussed that study, the ALJ failed to explain his finding that Dr. Spagnolo did not account for the qualifying study of record. Moreover, contrary to the majority's conclusion, this error was not harmless. Dr. Spagnolo described Claimant's impairments as "a minimal or mild obstructive defect" and noted "a slight decrease in oxygenation with exercise." Employer's Exhibit 2. He explicitly found Claimant was not totally disabled by a respiratory impairment. *Id.* Thus, contrary to the majority's assertion, it is not apparent that Dr. Spagnolo's opinion concedes the existence of total disability and addresses only causation. I would remand for the ALJ to consider Dr. Spagnolo's opinion in its entirety and to provide an adequate explanation for his determination that Dr. Spagnolo's conclusion does not reflect the qualifying study. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea "B" Mining Co. v. Addison, 831 F.3d 244, 256-57 (4th Cir. 2016); Wensel v. Director, OWCP, 888 F.2d 14, 17 (3d Cir. 1989); Osborne v. Eagle Coal Co., 25 BLR 1-195, 1-204 (2016); Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Dr. Basheda examined Claimant on June 21, 2017. Director's Exhibit 26. He initially opined Claimant is not totally disabled based on the resting blood gas study that he conducted. Director's Exhibit 23. During his deposition, he acknowledged Claimant's August 30, 2016 blood gas study evidenced exercise-induced hypoxemia. Employer's Exhibit 3 at 16. He conceded this testing is qualifying for total disability and that Claimant would be totally disabled based on the results of the exercise blood gas study in light of "Medicare guidelines" and a drop in p02. *Id*. at 17-18.

The ALJ found Dr. Basheda opined at his deposition that Claimant is disabled from a pulmonary perspective. Decision and Order at 22. He found Dr. Basheda's opinion that

Claimant is totally disabled well-reasoned and documented, and entitled to great weight. *Id.* Employer argues the ALJ mischaracterized Dr. Basheda's opinion as supporting total disability. Employer's Brief at 12-14. To the extent that the ALJ failed to consider Dr. Basheda's opinion in its entirety, Employer's argument has merit.

As Employer points out, Dr. Basheda clearly noted the conclusion Claimant would be considered totally disabled based on the qualifying blood gas study did not take into account his subsequent testing (which was not qualifying). *Id.*; 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea "B" Mining Co. v. Addison, 831 F.3d 244, 256-57 (4th Cir. 2016); Wensel v. Director, OWCP, 888 F.2d 14, 17 (3d Cir. 1989); Osborne v. Eagle Coal Co., 25 BLR 1-195, 1-204 (2016); Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). The ALJ failed to consider this statement when weighing Dr. Basheda's opinion. For that reason, the ALJ's evaluation of Dr. Basheda's opinion evidence does not comply with the APA, which requires the ALJ to consider the evidence in its entirety and set forth his findings and rationale. *See Wojtowicz*, 12 BLR at 1-165. Consequently, I would remand for the ALJ to consider Dr. Basheda's testimony in full and provide an adequate explanation for his determination that Dr. Basheda's opinion supports a finding of total disability. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea "B" Mining Co. v. Addison, 831 F.3d 244, 256-57 (4th Cir. 2016); Wensel v. Director, OWCP, 888 F.2d 14, 17 (3d Cir. 1989); Osborne v. Eagle Coal Co., 25 BLR 1-195, 1-204 (2016); Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Thus, I would vacate the award and remand the case for further consideration of the length of Claimant's coal mine employment and whether Claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). I would instruct the ALJ to consider the medical opinion evidence in its entirety and explain his findings in accordance with the APA.

Accordingly, I concur in part and dissent in part from the opinion of the majority.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge