U.S. Department of Labor

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

BRB No. 24-0171 BLA

DELBERT A. STUCHELL Claimant-Respondent v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Petitioner	)	**NOT-PUBLISHED** DATE ISSUED: 06/20/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding 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, Acting Counsel for Administrative Appeals (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor), 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:

The Acting Director, Office of Workers' Compensation Programs (the Director), appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order

Awarding Benefits (2023-BLA-05348) rendered on a claim filed on January 13, 2022,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-six years of qualifying coal mine employment per the parties' stipulation and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined that Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4). She concluded that the Director did not rebut the presumption and thus awarded benefits.

On appeal, the Director argues the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment.[3] Claimant responds, urging affirmance of the award of benefits.

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, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish that he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A

[1] Claimant filed two prior claims but later withdrew them. Director's Exhibits 1, 2. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[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 determination that Claimant established thirty-six years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 5; Director's Brief at 5.

[4] The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 17-18, 28; Director's Exhibit 5.

miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 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,[5] 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 Claimant established total disability based on the medical opinion evidence and the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14.

The ALJ considered the opinions of Drs. Werntz and Aulick.[7] Decision and Order at 12-14. Dr. Werntz examined Claimant on behalf of the Department of Labor and opined that Claimant has a moderate "pseudo-restrictive" pattern but retains the pulmonary capacity to perform the duties of his last coal mine employment. Director's Exhibit 21 at 5. The district director subsequently asked Dr. Werntz to clarify whether his diagnosis of a pseudo-restrictive pattern is a diagnosis of a "chronic lung disease or respiratory or pulmonary impairment and its sequelae that is significantly related to, or substantially aggravated by, dust exposure arising out of coal mine employment." Director's Exhibit 23 at 1. Dr. Werntz responded that Claimant's disease is a "chronic lung disease and permanent impairment, and that it was significantly contributed to by his coal mine dust exposure." *Id.* Dr. Aulick concluded that Claimant has severe restrictive and partial obstructive defect and is "completely disabled" due to pneumoconiosis based on his

[5] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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).

[6] The ALJ determined that the pulmonary function and arterial blood gas studies do not establish a totally disabling impairment and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 7, 9, 10. We affirm these findings as they are supported by substantial evidence. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004).

[7] Prior to weighing the medical opinions, the ALJ determined that Claimant's usual coal mine employment as a beltman required heavy labor. Decision and Order at 5. We affirm this determination as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

history, physical findings, chest x-ray, and abnormal pulmonary function test results, as well as a "hand crank" test. Claimant's Exhibit 1 at 3-4.

The ALJ found both physicians well-qualified to render an opinion.[8] Decision and Order at 13. She accorded little weight to Dr. Werntz's opinion because he indicated in his supplemental opinion that the Claimant is "*permanently impaired* from his chronic lung disease, which is indeed a change from his initial opinion." *Id.* at 14 (emphasis in original). She further found that Dr. Werntz failed to indicate in his supplemental report whether this permanent impairment is totally disabling and thereby found it poorly reasoned. *Id.* The ALJ accorded full weight to Dr. Aulick's opinion because he indicated the factors he considered and provided some explanation as to how they support his opinion, which she found "documented and adequately, although minimally, reasoned."[9] *Id.*

Dr. Aulick's Medical Opinion

The Director first asserts the ALJ ignored its argument that Dr. Aulick's opinion was based on undocumented and unexplained testing as the hand crank test is not sufficiently documented and may not constitute a "medically acceptable clinical or laboratory technique." Director's Brief at 8-10; *see* Director's Post-Hearing Brief at 6. We disagree.

The regulations provide that total disability may be established by "a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques." 20 C.F.R. §718.204(b)(2)(iv); *see also* 20 C.F.R. §718.107(a)-(b) (When a party seeks to admit an opinion based on a test or procedure not addressed by the regulations, the ALJ must determine whether that party demonstrated that it is "medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits.").

[8] The ALJ noted that while Dr. Werntz's opinion would be given slightly more weight because he is board-certified in occupational medicine, the strength of their opinions was the most determinative factor. Decision and Order at 13.

[9] The ALJ noted that although the pulmonary function studies are non-qualifying, Dr. Aulick pointed out specific pulmonary function values that indicated Claimant has a severe restrictive and partial obstructive defect, the technician's note that Claimant coughed extensively throughout the testing, and the hand crank test. Decision and Order at 14. She also noted Dr. Aulick considered Claimant's physical findings, which included shortness of breath on flat surfaces, wheezing, "constant" productive cough, and the use of oxygen at night. *Id.* at 13-14; Claimant's Exhibit 1 at 1.

As the Director concedes, the evidence demonstrates the "hand crank" test was simply the type of exercise Dr. Aulick used in his exercise arterial blood gas study.[10] Director's Brief at 4, 9; Claimant's Exhibit 1 at 24, 26 (not consecutively paginated). Thus, it is a test already contemplated by the regulations. 20 C.F.R. §§718.107, 718.204(b)(2)(ii), (iv). Further, there is no requirement that a specific type of exercise be performed for the exercise portion of an arterial blood gas study, and the Director does not contend Dr. Aulick was not permitted to use a hand crank for Claimant's exercise. 20 C.F.R. §718.105(c)(7). Thus, we reject the Director's argument that the ALJ was required to determine if the hand crank test was medically acceptable to support Dr. Aulick's opinion.

The Director also asserts that the significance of the hand crank test is unclear as Dr. Aulick failed to explain why the data from the exercise blood gas study suggests a totally disabling impairment. Director's Brief at 8-9. While Dr. Aulick does not specifically address the information noted on the handwritten blood gas study report, he explained in his summary that the hand crank test had to be suspended at four minutes as Claimant became "extremely dyspneic." Claimant's Exhibit 1 at 3. As the Director argues, however, the ALJ does not address if this explanation is sufficient to support Dr. Aulick's conclusion that this test supports a finding of total disability and, relatedly, does not address potentially conflicting information regarding why the exercise was stopped. Director's Brief at 8-9; Director's Closing Brief at 6. While Dr. Aulick indicated it was due to dyspnea, the technician commented that the test was suspended due to "arm fatigue." *Id.* at 9; *see* Claimant's Exhibit 1 at 3, 26.

The ALJ must consider the documentation underlying a medical opinion and the bases for the opinion. *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986). To the extent Dr. Aulick relied on the hand crank test from the exercise blood gas study to find total disability, the ALJ erred in not considering the conflicting evidence underlying his opinion and thus how his partial reliance on the hand crank test affected his opinion. *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand). We therefore vacate the ALJ's crediting of Dr. Aulick's opinion.

[10] The report indicates in comments: "ABG drawn during exercise at the 4 min 30 sec mark due to arm fatigue. Time of ABG 15:08." Claimant's Exhibit 1 at 26 (not consecutively paginated); *see also* Claimant's Exhibit 1 at 24 (arterial blood gas result printout which provides in the comments "[at] 1508 ABG drawn RR, while exercising on room air"). We infer that "ABG" is an abbreviation for arterial blood gas.

Dr. Werntz's Medical Opinion

The Director also argues the ALJ failed to adequately explain why Dr. Werntz's opinion regarding total disability changed from his initial to his supplemental report, which is the sole basis for her according his opinion little weight.[11] Director's Brief at 5-8, 10. We agree.

Dr. Werntz opined that Claimant has a moderate pseudo-restrictive impairment but opined his exercise blood gas testing demonstrates he has adequate capacity to perform his last coal mine employment. Director's Exhibit 21 at 5. When the district director later asked whether he determined that impairment was consistent with a diagnosis of legal pneumoconiosis, he indicated that Claimant's pseudo-restrictive disease is a "chronic lung disease and permanent impairment" that was significantly contributed to by coal mine dust exposure. Director's Exhibit 23 at 1.

The ALJ did not explain how Dr. Werntz's subsequent opinion was "indeed a change from his initial opinion." Decision and Order at 14. The doctor did not initially opine that Claimant's impairment was not permanent or subsequently opine that Claimant did not have the capacity to return to his usual coal mine employment.[12] Director's Exhibits 21 at 5; 23 at 1. Simply noting that Dr. Werntz subsequently opined that Claimant has "chronic lung disease and [a] permanent impairment" in answering a question as to the etiology of that impairment does not satisfy the explanatory requirements of the Administrative Procedure Act (APA).[13] *Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162,

[11] While the ALJ also found Dr. Werntz did not indicate in his supplemental opinion if Claimant's "permanent impairment" was totally disabling, this finding is reliant on her finding that his two opinions are inconsistent. Decision and Order at 14.

[12] Claimant argues Dr. Werntz discussed the worsening of Claimant's post-bronchodilator results on pulmonary function testing and air trapping, presumably arguing this demonstrates a change in his opinion. Claimant's Response at 8. While the ALJ notes this explanation from Dr. Werntz's supplemental report, it is unclear if this is the basis for the ALJ finding his opinions are inconsistent. Decision and Order at 14. In addition, Dr. Werntz noted Claimant's pulmonary function studies worsened after administration of bronchodilators and air trapping in both of his opinions. Director's Exhibits 21 at 5; 23 at 1.

[13] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision 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).

1-165 (1989). Thus, we agree that the ALJ's findings are insufficient to comply with the APA and vacate her discrediting of Dr. Werntz's opinion. *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997) (ALJ must adequately explain her credibility determinations); *Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why she did it, the duty of explanation under the Act is satisfied).

Thus, we vacate the ALJ's weighing of the medical opinion evidence in finding it supports total disability, as well as her findings that a preponderance of the evidence establishes total disability and, therefore, that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305.

Remand Instructions

On remand, the ALJ must reconsider the medical opinions on the issue of total disability. 20 C.F.R. §718.204(b)(2)(iv). In weighing the medical opinions, she must consider the physicians' explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of and bases for their opinions; she must address any conflicts presented and explain her rationale for crediting one opinion over another.[14] *See Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163. The ALJ must fully explain all her findings in accordance with the APA. *Wojtowicz*, 12 BLR at 1-165.

If the ALJ finds the evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv), she must then 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*, 10 BLR 1-19; *Shedlock*, 9 BLR at 198. If she again finds the evidence establishes total disability, Claimant will have invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis and, as the Director has not challenged the ALJ's finding that the Director did not rebut the Section 411(c)(4) presumption, the ALJ may reinstate the award of benefits.[15] 20 C.F.R. §718.305(d).

[14] In doing so, the ALJ should first determine whether the physicians adequately understood that Claimant's usual coal mine employment required heavy labor. *See Balsavage* v. *Director, OWCP*, 295 F.3d 390, 396-97 (3d Cir. 2002); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); Decision and Order at 5; Director's Brief at 4.

[15] The Director does not challenge that Claimant has legal pneumoconiosis. Director's Brief at 5 n.3; Director's Post-Hearing Brief at 2-3.

However, if Claimant does not establish total disability, benefits must be denied as he will have 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 Awarding Benefits and remand the case 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