U.S. Department of Labor

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

BRB No. 24-0310 BLA

JOHN B. HAYHURST, SR. Claimant-Respondent v. GMS MINE REPAIR & MAINTENANCE and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 06/17/2025 DECISION and ORDER

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

Christopher Pierson (Burns White LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2023-BLA-06159) rendered on a claim filed on March 8, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found the evidence insufficient to establish complicated pneumoconiosis and thus concluded Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 20 C.F.R. §718.304. He also found Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(3) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding Claimant established total disability, thereby invoking the Section 411(c)(4) presumption. It also argues he erred in finding it failed to rebut the presumption.[2] Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, has filed a response brief.

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 (1965).

[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) (2018); 20 C.F.R. §718.305.

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

[3] 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 10.

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 his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. 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,[4] 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).

The ALJ found Claimant established total disability based on the medical opinions.[5] Decision and Order at 25; *see* 20 C.F.R. §718.204(b)(2)(iv). Employer argues the ALJ erred in making this finding. Employer's Brief at 18-20.

The ALJ considered the medical opinions of Drs. Celko, Hua, Go, and Basheda. Decision and Order at 22-25; Director's Exhibits 26, 46, 47; Claimant's Exhibits 1, 3; Employer's Exhibits 1, 3.

Dr. Celko diagnosed Claimant with a moderate diffusion capacity impairment based on June 1, 2022 testing. Director's Exhibit 26 at 1. He also noted Claimant's resting arterial blood gas study taken the same day is qualifying for total disability and reflects hypoxemia. *Id*. Finally, noting Claimant's usual coal mine employment as a safety inspector required walking five to six miles per shift, he concluded Claimant is totally

[4] A "qualifying" pulmonary function study or arterial 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 in excess of those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[5] The ALJ found the pulmonary function and arterial blood gas studies do not support a finding of total disability 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 12, 18-21.

disabled from his usual coal mine employment by his low diffusion capacity and hypoxemia at rest. *Id*.

Dr. Hua opined Claimant is totally disabled from his safety inspector job as a result of an "oxygenation abnormality" based on the qualifying resting arterial blood gas testing from Dr. Celko's June 1, 2022 examination and Dr. Basheda's November 10, 2022 examination. Claimant's Exhibit 1 at 9. He also opined the "oxygenation abnormality is consistent with [Claimant's] moderate diffusion impairment on multiple" pulmonary function studies. *Id*. Finally, he noted the diagnosis is supported by the fact that Claimant requires supplemental oxygen when walking. *Id*.

Further, Dr. Hua opined that even if the arterial blood gas testing was non-qualifying and Claimant did not have complicated pneumoconiosis as reflected in some tests, Claimant would still be totally disabled by the diffusion capacity impairment. Claimant's Exhibit 1 at 9. He explained as follows:

> [Claimant's] diffusion impairment compared with his substantial job requirements in the last year of coal mining employment would certainly render him totally disabled from performing his coal mining job, or another coal mining job, in my medical opinion to a reasonable degree of medical certainly. These intense job duties required him to walk 4-5 miles per day, carry a 22-lb tool belt, stretch/bend/kneel/crawl/stoop to inspect mine conditions and equipment, walk steep hills and slopes, handle steel shoot liners weighing up to 500-lbs, help build 70-80 cribs daily with each requiring 70 crib block weighing 4-5 [pounds] each, handle 120 rock dust bags daily, build stoppings requiring 160 20-[pound] blocks, and more.

Id.

Dr. Go noted Claimant's June 1, 2022 and November 10, 2022 arterial blood gas studies are qualifying for total disability. Claimant's Exhibit 3 at 5, 11. He also diagnosed Claimant with a "diffusion [capacity] impairment meeting American Medical Association (AMA) criteria for a class [two] pulmonary impairment."[6] *Id*. at 11. Further referencing the AMA guidelines, he noted this level of impairment is associated with an "ability to

[6] Noting Dr. Basheda had characterized Claimant's respiratory impairment as a class 1 impairment, Dr. Go disagreed, explaining that Dr. Basheda focused only on specific aspects of pulmonary function testing, but when "diffusion capacity is considered, the correct rating of [c]lass 2 [impairment] . . . is the result." Claimant's Exhibit 3 at 11.

perform approximately 5.1 to 6.2 METs of energy expenditure at peak exercise, which is less than the estimated 8.6 METs required to jog slowly on flat ground at only" five miles per hour. *Id*. He noted the exertional requirements of Claimant's usual coal mine employment required carrying bags of rock dust, setting props weighing over one-hundred pounds each, building stoppings with solid blocks weighing twenty pounds, carrying buckets of sealant weighing forty to fifty pounds, and walking four to five miles each shift, sometimes on a slope of sixteen to seventeen degrees. *Id*. Given the METs level for this degree of exertion, he opined the diffusion capacity impairment would prevent Claimant from performing his usual coal mine employment. *Id*.

Finally, Dr. Basheda examined Claimant on November 29, 2022, and opined he has resting hypoxemia based on qualifying arterial blood gas testing. Director's Exhibit 46 at 4. He also opined Claimant has mildly reduced diffusion capacity and resting oxygen saturation on pulse oximetry that would qualify Claimant for oxygen therapy. *Id*. at 5-6. Based on these results, he opined Claimant could not perform his usual coal mine employment from an oxygenation standpoint. *Id*. at 12-13. In a December 23, 2022 supplemental report, Dr. Basheda reiterated that Claimant is totally disabled from an "oxygenation standpoint." Director's Exhibit 47 at 8-9.

However, on December 28, 2023, Dr. Basheda stated that Claimant is no longer totally disabled from an "oxygenation standpoint." Employer's Exhibit 1 at 9. He noted that the December 11, 2023 arterial blood gas testing is non-qualifying and pulse oximetry testing taken the same day was normal, indicating Claimant no longer qualifies for oxygen therapy. *Id*. at 5. Although he acknowledged diffusion capacity values are mildly reduced, he highlighted Claimant has no impairment in his gas exchange because the blood gas testing is non-qualifying. *Id*. He explained that diffusion "assesses the integrity of the alveolar-capillary membrane in the lung, . . . where gas exchange occurs." *Id*. Because Claimant has normal arterial blood gas and pulse oximetry testing, he concluded there is no actual impairment in gas exchange. *Id*.

The ALJ found all the doctors rendered reasoned and documented opinions because their opinions each "reflect the evidence contained in the record and are well-reasoned." Decision and Order at 25. Further, he discussed their relevant qualifications. He noted Doctor Celko is Board-certified in internal medicine; Doctor Basheda is Board-certified in internal medicine, sleep medicine, critical care medicine, and pulmonary disease; Dr. Hua is Board-certified in internal medicine, pulmonary medicine, critical care medicine, and occupational and environmental medicine; and Dr. Go is Board-certified in internal

medicine, pulmonary disease, and critical care medicine. *Id*. at 13-15. He found all the doctors are equally qualified. *Id*. at 25.

Because three reasoned and documented medical opinions from qualified doctors support total disability and one does not, the ALJ found the "preponderance of the opinions find that Claimant cannot perform his last coal mining job or work of similar effort" and thus concluded the medical opinion evidence supports a finding of total disability.[7] Decision and Order at 25.

Employer argues the ALJ erred in crediting the opinions of Drs. Hua and Go because they did not review the December 11, 2023 non-qualifying objective studies. Employer's Brief at 19. Contrary to Employer's argument and our dissenting colleague's assertion, an ALJ is not required to discount a physician's opinion on the basis that he did not review the most recent objective testing; rather, a physician can render a reasoned and documented opinion regarding total disability based on his own examination of a miner, review of objective test results, or both. 20 C.F.R. §718.204(b)(2)(iv); *see Church v. Eastern Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Further, a physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv). As discussed above, Drs. Hua and Go explained why Claimant is totally disabled by his diffusion capacity impairment even if the pulmonary function and arterial blood gas testing is not qualifying. Claimant's Exhibits 1, 3. As it is supported by substantial evidence, we affirm the ALJ's finding that the opinions of Drs. Hua and Go are reasoned and documented. *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986); Decision and Order at 25.

Employer argues the ALJ erred in finding Dr. Celko possesses the same qualifications as Drs. Hua, Go, and Basheda. Employer's Brief at 18-19. But it does not challenge the ALJ's finding that Drs. Hua, Go, and Basheda are equally qualified. Decision and Order at 25. Thus we affirm this finding. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983). Because Claimant can still meet his burden of proof through the

[7] Employer argues the ALJ erred in finding Dr. Basheda's opinion not reasoned and documented. Employer's Brief at 19-20. Contrary to Employer's argument, the ALJ specifically found it reasoned and documented but outweighed by the opinions of Drs. Celko, Go, and Hua. Decision and Order at 25.

credible opinions of Drs. Hua and Go, any error by the ALJ in considering Dr. Celko's qualifications is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

As Employer raises no additional argument, we affirm the ALJ's finding that the medical opinions support total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25.

We further affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 25. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[8] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[9]

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish that Claimant does not have any of the 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).

[8] "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). The 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). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *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).

[9] The ALJ found Employer disproved legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 17.

The ALJ found the x-ray, medical opinion, computed tomography (CT) scan, and treatment record evidence does not rebut the presumption of clinical pneumoconiosis. Decision and Order at 9-16.

Employer argues the ALJ erred in failing to weigh Dr. Basheda's medical opinion relevant to rebuttal. Employer's Brief at 16-17. We disagree. Dr. Basheda opined Claimant does not have clinical pneumoconiosis based, in part, on the doctor's own reading of the December 11, 2023 x-ray as negative for the disease. Employer's Exhibits 1 at 5-9; 3 at 16. However, the ALJ recognized Dr. Basheda is only a B reader and his reading is outweighed by the positive reading of that x-ray from Dr. DePonte, a dually-qualified Board-certified radiologist and B reader. Decision and Order at 11. Thus the ALJ found the December 11, 2023 x-ray is positive for clinical pneumoconiosis, contrary to Dr. Basheda's interpretation. *Id*. Further, Dr. Basheda assumed there is no evidence of clinical pneumoconiosis. Employer's Exhibit 1 at 7-9. However, the ALJ found the majority of the x-rays are positive for the disease.[10] Decision and Order at 12. The ALJ permissibly discredited Dr. Basheda's medical opinion on the absence of clinical pneumoconiosis as it is contradicted by his findings as to the x-ray evidence. *Kertesz*, 788 F.2d at 163; Decision and Order at 12.

Employer also challenges the ALJ's consideration of the CT scan evidence. The ALJ weighed three readings of two CT scans dated May 3, 2022, and August 3, 2022, by Drs. DePonte and Simone. Decision and Order at 11-12. He observed both physicians are dually-qualified. *Id*. at 9-12.

Dr. DePonte interpreted the May 3, 2022 CT scan as positive for clinical pneumoconiosis. Director's Exhibit 40. Dr. DePonte also interpreted the August 3, 2022 CT scan as positive for clinical pneumoconiosis, while Dr. Simone interpreted it as negative. Director's Exhibits 40, 45. The ALJ found the May 3, 2022 CT scan is positive for clinical pneumoconiosis based on Dr. DePonte's interpretation. Decision and Order at 11-12. He further found the August 3, 2022 CT scan neither confirms nor disproves clinical pneumoconiosis because Drs. DePonte and Simone are both dually-qualified radiologists and thus the readings of this CT scan are in equipoise. *Id*. Having found one CT scan positive for clinical pneumoconiosis and the readings of another in equipoise, the ALJ found the preponderance of the CT scan evidence does not disprove clinical pneumoconiosis. *Id.*

[10] As Employer does not challenge the ALJ's finding that the x-ray and treatment record evidence is insufficient to rebut the presumption of clinical pneumoconiosis, we affirm this finding. *Skrack*, 6 BLR at 1-711; Decision and Order at 9-11, 13-16.

Employer does not challenge the ALJ's finding that the readings of the August 3, 2022 CT scan are in equipoise. Thus we affirm it. *See Skrack*, 6 BLR at 1-711.

Further, we disagree with Employer that remand is necessary because the ALJ did not discuss Dr. Basheda's negative interpretation of the May 3, 2022 CT scan when finding it is positive for clinical pneumoconiosis. Employer's Brief at 15-16. As discussed above, the ALJ recognized that Dr. Basheda is a B reader and thus not a dually-qualified radiologist. Decision and Order at 10. The ALJ indicated he was assigning controlling weight to readings by dually-qualified radiologists. *Id*. at 9-12. In weighing the x-rays, the ALJ credited Dr. DePonte's reading over Dr. Basheda's reading. Decision and Order at 11. Thus Dr. Basheda's negative CT scan reading cannot outweigh Dr. DePonte's positive reading as she is dually-qualified. Thus we hold remand is not necessary. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014); *Youghiogheny & Ohio Coal Co. v. Webb*, 49 F.3d 244, 249 (6th Cir. 1995) ("If the outcome of a remand is foreordained, we need not order one."); *Sahara Coal Co. v. Director, OWCP* [*McNew*], 946 F.2d 554, 558 (7th Cir. 1991).

We affirm, as supported by substantial evidence, the ALJ's finding that Employer did not disprove the presumed existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 9-16. Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); *see* Decision and Order at 25-29. The ALJ discredited Dr. Basheda's disability causation opinions because the physician did not diagnose clinical pneumoconiosis, contrary to his finding that Employer did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling,* 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 28. Employer does not challenge this finding. Thus we affirm it. *Skrack*, 6 BLR at 1-711.

Consequently, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total respiratory disability is due to clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 29.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision affirming the award of benefits in this case. I would vacate the ALJ's finding that Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[11] *See* 30 U.S.C. §923(b); 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact-finder's failure to discuss relevant evidence requires remand).

In this case, the ALJ based his total disability determination on the medical opinions of Drs. Celko, Go, and Hua, who found Claimant was totally disabled because of a diffusion capacity impairment. Director's Exhibit 26; Claimant's Exhibits 1, 3. Dr. Celko based his opinion on June 1, 2022 testing, while Drs. Go and Hua based their opinions on June 1, 2022 and November 10, 2022 testing. *Id*.

[11] The Administrative Procedure Act (APA) provides every adjudicatory decision must include a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." *See* 30 U.S.C. §923(b) (2018); 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Dr. Basheda initially found Claimant was totally disabled because the June 1, 2022 and November 10, 2022 arterial blood gas, pulse oximetry, and diffusion capacity testing all reflect a need for supplemental oxygen. Director's Exhibits 46, 47. However, when later blood gas and pulse oximetry testing, conducted on December 11, 2023, evidenced improvement in Claimant's condition, he changed his opinion. Based on the later testing, which occurred after Claimant lost weight, he found Claimant is not totally disabled, as Claimant had no impairment in gas exchange and oxygenation, although Claimant's diffusion measurements were mildly reduced. Employer's Exhibits 1, 3.

The ALJ found all four opinions are reasoned and documented and all four doctors have equal qualifications. Decision and Order at 25. Because three of the four credible opinions diagnosed total disability and one excluded total disability, the ALJ found a preponderance of medical opinions support total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25.

The ALJ erred by failing to resolve the conflict in the medical opinion evidence and explain his findings as the Administrative Procedure Act (APA) requires. *See Wojtowicz*, 12 BLR at 1-165. While the ALJ found each of the four opinions are entitled to probative weight, his apparent reliance on a head count of opinions is an insufficient basis to find Claimant met his burden to establish total disability. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992) ("counting heads" is a "hollow" way to resolve conflicts in the evidence); Decision and Order at 25. An ALJ must explain his rationale for resolving the conflict in the evidence. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). The mere fact that more doctors diagnosed total disability does not authorize the ALJ to declare Claimant established total disability. *See generally Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010) ("[ALJ] has a duty to explain, on scientific grounds, why a conclusion cannot be reached"). That is particularly the case here where one doctor, Dr. Basheda, reviewed testing that other doctors did not review and retracted his diagnosis of total disability based on the additional testing.

It is the ALJ's duty to evaluate conflicting evidence, draw appropriate inferences, and assess probative value. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Because the ALJ did not properly resolve the conflict in the medical opinions or adequately explain his findings, I would vacate his determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25.

Employer adequately raised these errors to the Board. Employer argued the ALJ "determined that the opinions of Drs. Celko, Hua, and Go are all well-reasoned and entitled to great weight," but he "failed to discuss the fact that these opinions do not reflect the

normal pulmonary function studies and arterial blood gas studies obtained by Dr. Basheda on December 11, 2023, which led Dr. Basheda to opine that the Claimant could actually perform his last coal mining job." Employer's Brief at 19. Thus Employer identified a fundamental issue that the ALJ failed to resolve – the ultimate credibility of the opinions of the doctors who diagnosed total disability but did not take into account the December 11, 2023 testing that led Dr. Basheda to change his opinion and exclude total disability. This was a failure to consider all relevant evidence as the Act requires. Employer also argued "[t]he ALJ's opinions on the issue of total disability do not meet the requirements under the [APA] and must therefore be vacated." *Id*. at 19-20. By identifying the ALJ's failure to consider all relevant evidence and provide adequate explanation, Employer properly raised the errors in this case that warrant vacating the award of benefits and remanding for further explanation.[12]

[12] Employer also argues that the ALJ erred in considering the physicians equally qualified, since Dr. Celko is not a Board-certified pulmonologist. Employer's Brief at 18. Employer is correct to the extent that the ALJ conclusorily states the physicians "all have roughly equivalent qualifications," but does not, as the APA requires, explain on what basis he considered the physicians "roughly equally qualified." Decision and Order at 25; *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Although the qualifications of the respective medical experts are relevant to resolving the conflict in the evidence, the ALJ must still consider the entirety of the doctors' opinions, including the underlying rationales for reaching their conclusions. *See Addison*, 831 F.3d at 252-53 (ALJ must conduct an appropriate analysis of the evidence to support his or her conclusion and render necessary credibility findings); *Balsavage v. Director, OWCP*, 295 F.3d 390, 397 (3d Cir. 2002) (error for an ALJ to defer to a medical opinion based on superior credentials without considering whether doctor's underlying rationale was persuasive). Moreover, in determining totally disability the ALJ "must weigh all relevant probative evidence together, both like and unlike, with the burden of proof always on [C]laimant to establish total respiratory disability by a preponderance of the evidence." *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); *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). The "term contrary probative evidence is not limited to medical evidence of the same category or type; rather, the term refers to all evidence (medical and otherwise) which is contrary and probative." *Rafferty*, 9 BLR at 1-232.

Accordingly, I would vacate the total disability finding along with the conclusion that Claimant has invoked the Section 411(c)(4) presumption, and remand the case to the ALJ for proper analysis taking into consideration all of the relevant evidence, and providing the requisite adequate explanations. Consequently, it is premature to address Employer's arguments concerning rebuttal of the presumption.

JUDITH S. BOGGS
Administrative Appeals Judge