

U.S. Department of Labor

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



BRB No. 25-0149 BLA

JIMMY VIARS

Claimant-Respondent

v.

ISLAND CREEK COAL COMPANY

Employer-Petitioner

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 06/30/2026

DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Rachel Wolfe and Joseph Wolfe (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Granting Benefits (2022-BLA-05674) rendered on a subsequent claim

filed on April 16, 2021,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation of twenty years of underground coal mine employment. She further found Claimant has a totally disabling respiratory or pulmonary impairment² and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).³ The ALJ also found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ failed to consider evidence from the prior claim the district director denied in 2019. It further challenges the ALJ's findings of total disability and that it failed to rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response. Employer filed a reply, reiterating its contentions.

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

¹ Claimant filed three prior claims for benefits. Director's Exhibits 1-3. On October 10, 2019, the district director denied Claimant's third claim for benefits for failure to establish any element of entitlement. Third Denied Claim Director's Exhibit 27 at 2-3.

² When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish disease, disability, or causation in his prior claim, he had to submit new evidence establishing one of these elements of entitlement to obtain review of the merits of his current claim. *Id.*

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); 20 C.F.R. §718.305.

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 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 and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁵ evidence of pneumoconiosis and 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 total disability based on the medical opinion evidence and the evidence as a whole.⁶ Decision and Order at 4-9.

Medical Opinions

The ALJ considered the medical opinions of Drs. Habre, Puruckherr, Marks, Basheda, and Fino. Decision and Order at 6-9; Director’s Exhibits 18, 21; Claimant’s Exhibits 1, 3; Employer’s Exhibits 1, 3-5. Drs. Habre, Puruckherr, and Marks opined Claimant is totally disabled and lacks the respiratory capacity to perform his usual coal mine employment. Director’s Exhibit 18 at 4-5; Claimant’s Exhibits 1 at 3, 3 at 6. Dr. Habre evaluated Claimant on May 20, 2021, on behalf of the Department of Labor. He reviewed Claimant’s work, medical, and social histories; obtained a qualifying pulmonary

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 27.

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 found the pulmonary function study evidence and arterial blood gas study evidence does 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 5-6.

function study and non-qualifying blood gas study; and opined Claimant is totally disabled. Director's Exhibit 18 at 4-5. Dr. Puruckherr and Dr. Marks evaluated Claimant on January 17, 2023 and February 17, 2023, respectively. Both obtained qualifying arterial blood gas studies at rest, noted Claimant's home oxygen use and respiratory symptoms, including shortness of breath that limits his activities, and opined that Claimant lacks the respiratory capacity to perform his usual coal mine employment. Claimant's Exhibits 1 at 3, 3 at 6.

By contrast, Drs. Basheda and Fino opined Claimant is not totally disabled and retains the respiratory capacity to perform his usual coal mine work. Dr. Basheda evaluated Claimant on November 11, 2021, and reviewed Dr. Habre's May 20, 2021 testing and medical report. Director's Exhibit 21. He diagnosed mild uncontrolled asthma with no oxygenation impairment and opined Claimant could perform his last coal mine work. *Id.* at 18. After reviewing the medical reports of Drs. Marks, Puruckherr, and Fino, Dr. Basheda acknowledged Claimant's 2023 qualifying blood gas studies but maintained Claimant has no respiratory impairment or disability under either the American Medical Association or Department of Labor guidelines. Employer's Exhibit 5 at 21-26.

Dr. Fino evaluated Claimant on May 4, 2022; obtained normal pulmonary function, blood gas, and pulse oximetry results; reviewed the reports of Dr. Habre and Basheda; and opined Claimant has no respiratory or oxygen transfer impairment and can return to his usual coal mine work. Employer's Exhibit 1 at 1-10. After reviewing the 2023 medical reports and objective tests of Drs. Puruckherr and Marks, Dr. Fino acknowledged Claimant's qualifying resting blood gas studies in January and February of 2023, but stated that given the sudden onset of this abnormality when the prior testing was normal, he would not conclude that Claimant is totally disabled without first conducting an exercise blood gas study to determine if Claimant's O₂ level improves. Employer's Exhibit 4 at 12, 21-24, 29-31.

The ALJ found each physician qualified and accorded varying weights to their opinions. Decision and Order at 8-9. She found the opinions of Drs. Marks and Puruckherr entitled to greater weight because despite relying in part on qualifying blood gas studies, they also based their diagnoses on "medical history, symptomology, examination, and testing." *Id.* at 8. She found Dr. Habre's opinion entitled to "great weight" because he considered his objective test results and Claimant's "comorbidities." *Id.* at 9. By contrast, the ALJ accorded Dr. Fino's opinion less weight because he did not diagnose a respiratory condition despite acknowledging Claimant's use of oxygen, inhalers, and a nebulizer. *Id.* at 8-9. She similarly accorded Dr. Basheda's opinion less weight because, although he provided an alternative explanation for Claimant's reduced lung capacity, he did not reconcile Claimant's oxygen use and symptoms with his conclusion that Claimant could return to coal mine employment. *Id.* at 9. She thus found the overall medical opinion evidence supports a finding of total disability. *Id.*

Employer argues the ALJ failed to adequately explain why she credited the opinions of Drs. Habre, Puruckherr, and Marks over the contrary opinions of Drs. Fino and Basheda and failed to resolve the conflicting medical interpretations of the objective evidence. Employer's Brief at 6-15. We agree.

Although the ALJ found the opinions of Drs. Habre, Puruckherr, and Marks well-reasoned because they considered Claimant's medical history, symptoms, examination, testing, and comorbidities, she did not explain why those considerations rendered their opinions more persuasive than the contrary opinions of Drs. Fino and Basheda, who likewise considered the objective evidence and alternative causes of Claimant's symptoms. Nor did the ALJ adequately address Drs. Fino's and Basheda's explanations that Claimant's objective testing does not demonstrate a disabling respiratory impairment. The ALJ discounted Dr. Fino's opinion because he did not diagnose a respiratory condition despite Claimant's use of oxygen, inhalers, and a nebulizer, but she did not explain how these facts undermine Dr. Fino's conclusion that Claimant's objective testing does not, in his view, establish that Claimant is totally disabled. Similarly, the ALJ discounted Dr. Basheda's opinion because he did not reconcile Claimant's oxygen use and symptoms with his conclusion that Claimant could return to coal mine employment, but she did not explain how these facts render Dr. Basheda's interpretation of the objective evidence less persuasive than the opinions supporting total disability. Thus, the ALJ's analysis does not permit meaningful review of her determination to credit the opinions of Drs. Habre, Puruckherr, and Marks over the contrary opinions of Drs. Fino and Basheda. 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) (ALJ has a duty to resolve conflicts in the evidence and explain her basis for doing so); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (ALJ erred by failing to adequately explain why he credited certain evidence and discredited other evidence); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991) (in determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of the miner's usual coal mine work with the physicians' description of the miner's pulmonary impairment and physical limitations); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Because the ALJ did not properly resolve the conflict in the medical opinions or adequately explain her findings, we vacate her 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 6-9.

Thus, we also vacate the ALJ's findings that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232. We further vacate her finding that Claimant invoked the Section 411(c)(4)

presumption. 20 C.F.R. §§718.204(b)(2), 718.305. Consequently, we vacate the ALJ's award of benefits and remand the case for further consideration.⁷

Remand Instructions

On remand, the ALJ must reevaluate whether the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Addison*, 831 F.3d at 256-57; *Eagle*, 943 F.2d at 512 n.4. In rendering her credibility findings, the ALJ must consider the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

If the ALJ finds the medical opinions support a finding of total disability, she must weigh all the evidence together to determine whether Claimant is totally disabled. 20 C.F.R. §718.204(b)(2); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198. If Claimant fails to establish total disability, the ALJ must deny benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

If Claimant satisfies his burden to establish total disability, he will establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and will invoke the Section 411(c)(4) presumption. The ALJ then must consider all evidence, including any evidence from the prior claims, and determine whether Employer has rebutted the presumption. 20 C.F.R. §§725.309(d)(4), 718.305(d)(1). In rendering her credibility determinations and findings on remand, the ALJ must explain her decision in compliance

⁷ We decline to address, as premature, Employer's argument that the ALJ failed to consider evidence from the prior claim. Employer's Brief at 5-6. Because we vacate the ALJ's finding that Claimant established total disability and thus established a change in an applicable condition of entitlement, the threshold requirement for consideration of the merits of this subsequent claim remains unresolved. *See* 20 C.F.R. §725.309(c); *White*, 23 BLR at 1-3.

We also decline to address, as premature, Employer's challenge to the ALJ's rebuttal findings. Employer's Brief at 15. Because we vacate the ALJ's finding that Claimant established total disability and invoked the Section 411(c)(4) presumption, the rebuttal issue is not yet ripe for review.

with the Administrative Procedure Act.⁸ 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

Accordingly, we vacate the ALJ’s Decision and Order Granting Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

⁸ The APA provides that every adjudicatory decision must include “findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented” 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).