

U.S. Department of Labor

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



BRB Nos. 25-0157 BLA
and 25-0157 BLA-A

ALLEN L. McANDREWS

Claimant-Petitioner
Cross-Respondent

v.

HELVETIA COAL COMPANY, LLC

and

CONSOL ENERGY INCORPORATED

Employer/Carrier-
Respondents
Cross-Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 06/16/2026

DECISION and ORDER

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

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

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania,
for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, and Employer and its Carrier (Employer) cross-appeal, Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2023-BLA-05319) rendered on a claim filed on June 29, 2021,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation that Claimant has twenty-four years of underground coal mine employment and found he established legal pneumoconiosis. However, he determined Claimant failed to establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4), or establish a necessary element of entitlement under 20 C.F.R. Part 718. Consequently, the ALJ denied benefits.

On appeal, Claimant challenges the ALJ's finding that he did not establish total disability. Employer responds, urging affirmance of the denial of benefits. On cross-appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis. Claimant responds in support of the ALJ's finding on legal pneumoconiosis.³ The Director, Office of Workers' Compensation Programs, has not filed a substantive response in either appeal.

¹ Claimant filed one prior claim which he withdrew. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).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); 20 C.F.R. §718.305.

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-four years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6; Hearing Transcript at 5.

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 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.⁵ 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,⁶ 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 failed to establish total disability by any method.⁷ Decision and Order at 19-24.

⁴ 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 4.

⁵ The ALJ found Claimant's usual coal mine work was as a mechanic and required heavy exertional work. As this finding is unchallenged on appeal, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 5, 21 n.16.

⁶ A "qualifying" pulmonary function study or blood gas study yields results that are 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 exceeding those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

⁷ We affirm, as unchallenged on appeal, the ALJ's findings that the pulmonary function studies and blood gas studies do not support a finding of total disability, and that there is no evidence of cor pulmonale with right-sided congestive heart failure. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 19-20.

Claimant asserts the ALJ erred in finding that the medical opinion evidence does not establish total disability. Claimant's Brief at 6-8.

The ALJ considered the opinions of Drs. Aulick, Celko, and Basheda. Decision and Order at 21-24. Dr. Aulick conducted objective studies and indicated Claimant would not be able to perform his last coal mine employment from a pulmonary standpoint based on the August 3, 2023 pulmonary function study results and symptoms of severe dyspnea. Claimant's Exhibit 2. Dr. Celko conducted the Department of Labor (DOL)-sponsored complete pulmonary evaluation and noted a mild obstructive impairment and mild resting hypoxemia but concluded Claimant is not totally disabled from a pulmonary standpoint. Director's Exhibit 13 at 4. Dr. Basheda reviewed Claimant's medical records and diagnosed Claimant with a Class I/II impairment of the whole person under the American Medical Association (AMA) guidelines but opined he would be able to perform his last coal mining job from a pulmonary function, oxygenation, or ventilatory standpoint. Employer's Exhibits 6 at 18-19; 6A at 7.

The ALJ accorded no weight to Dr. Aulick's opinion because he found it is conclusory and not well-reasoned. Decision and Order at 23. He credited the opinions of Drs. Celko and Basheda because he determined they are consistent with the non-qualifying diagnostic test results. *Id.* at 22-23. In the alternative, the ALJ determined that even if he gave great weight to Dr. Aulick's opinion it would not meet Claimant's burden because the evidence would be at best in equipoise. *Id.* Thus, the ALJ found Claimant did not satisfy his burden to establish he is totally disabled. *Id.*

Claimant contends the ALJ erred in discrediting Dr. Aulick's opinion and in crediting the opinions of Drs. Celko and Basheda. Claimant's Brief at 7-8. We agree.

Dr. Aulick reviewed a "detailed description of [Claimant's] work duties" and concluded Claimant "would not be able to perform his last coal mining employment strictly from a pulmonary standpoint." Claimant's Exhibit 2 at 1. In reaching this conclusion, he noted Claimant's "history and physical exam findings of severe dyspneic symptoms" as well as the August 3, 2023 pulmonary function test, which produced results that were "very close to federal guidelines for complete disability" with a diffusing capacity of the lung for carbon monoxide (DLCO) value of fifty-four percent.⁸ *Id.*

⁸ On the August 3, 2023 pulmonary function study report, under the "Interpretation" section, it states that the FEV1/FVC value suggests a moderate obstructive defect. Claimant's Exhibit 1 at 2-3, 5 (unpaginated). In addition, under the "Conclusion" section, it indicates that the "[l]ung volumes by plethysmography indicate a restrictive ventilatory impairment" and that the "DLCO values corrected for hemoglobin are consistent with loss

Claimant asserts the ALJ erroneously found Dr. Aulick's opinion conclusory because he did not address the exertional nature of Claimant's last coal mining work or explain what portion of his job duties he would be unable to perform. Claimant's Brief at 7-8; *see* Decision and Order at 23. As Claimant correctly contends, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer a miner is unable to perform his usual coal mine employment. *See Gonzales v. Director, OWCP*, 869 F.2d 776, 780 (3d Cir. 1989) (physician's description of miner's functional limitations is "probative of a finding [the miner] is totally disabled"); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in a doctor's report are sufficient to establish total disability); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion."); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may find total disability by comparing physician's impairment rating and any physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work); *see also 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); Claimant's Brief at 5-6.

As indicated above, Dr. Aulick was aware of Claimant's work duties and considered the August 3, 2023 objective studies which showed a pulmonary or respiratory impairment and dyspneic symptoms. Claimant's Exhibit 2 at 1. Given the ALJ's finding that Claimant's usual coal mine employment required heavy exertion, combined with Dr. Aulick's observations and review of testing showing moderate obstructive and mild restrictive impairments, the ALJ erred in failing to address whether Dr. Aulick's opinion constitutes a finding of total disability, even if he did not expressly discuss the specific duties Claimant could not perform or why. *See Cornett*, 227 F.3d at 578; *Scott*, 60 F.3d at 1141; Decision and Order at 23. Consequently, we must vacate the ALJ's determination that Dr. Aulick's opinion is not well-reasoned and entitled to little weight. Decision and Order at 23.

of alveoli capillary structure with loss of lung volume." *Id.* at 3, 5. Further, on a form labeled "Six-Minute Walk Test," the respiratory therapist commented that Claimant's "[work of breathing] increased to the point he had difficulty voicing [d]yspnea scale number" and that the test was stopped after four minutes and thirty seconds of exercise. *Id.* at 19.

We also agree with Claimant's argument that the ALJ failed to adequately consider the opinions of Drs. Celko and Basheda. Claimant's Brief at 8.

Dr. Celko reviewed Claimant's employment history as part of his examination, including his work as a mechanic in the coal mine where he had to carry cans of oil weighing forty pounds, replace parts weighing up to one hundred pounds, wear a sixty-pound tool belt, carry a fifty-pound tool bag, walk fifteen to twenty miles a day, and climb onto and under equipment performing consistent physical exertion. Director's Exhibit 13 at 8-9. He observed a mild obstructive impairment and a mild reduction in DLCO on the June 13, 2022 pulmonary function study and mild resting hypoxemia on the June 13, 2022 blood gas study. *Id.* at 4. He noted that Claimant reported dyspnea when going up four to five steps one at a time slowly and needed to rest or recover for two to four minutes. *Id.* at 3. He concluded, without any explanation, that Claimant is not totally disabled from performing his last coal mine employment. *Id.* at 4.

Dr. Basheda conducted a review of records, noting Claimant's work as a mechanic, which required him to wear a sixty-pound toolbelt and carry a fifty-pound bag while "walking miles a day," and Claimant's current complaint of shortness of breath with exertion. Employer's Exhibit 6 at 3, 15. He observed a mild restrictive impairment on the August 3, 2023 pulmonary function study but no obstructive impairment "when applying the [Lower Limit of Normal] standard." *Id.* at 17. He opined that the study's values would classify Claimant's condition as a Class II impairment of the whole person according to the AMA guides but would not support a finding of total disability based on the DOL standards. *Id.* at 18. In his supplemental report based on a review of the July 30, 2024 pulmonary function study and arterial blood gas study, Dr. Basheda again determined the values would not be qualifying based on DOL standards but found the pulmonary function study values would qualify Claimant as having sustained a Class I/II impairment of the whole person. Director's Exhibit 6A at 6-7. He noted a mild restrictive impairment but determined, from a pulmonary standpoint, Claimant would be able to perform his last coal mine employment. *Id.* at 7.

The ALJ summarily credited the opinions of Dr. Celko and Dr. Basheda because they are supported by the non-qualifying objective tests. Decision and Order at 22-23. However, total disability can be established with a reasoned medical opinion even "[w]here total disability cannot be shown" by qualifying objective testing, as non-qualifying testing may still establish a miner is incapable of performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). Further, as indicated above, a medical opinion can support a finding of total disability if it provides sufficient information from which the ALJ can infer a miner is unable to perform his usual coal mine work. *Scott*, 60 F.3d at 1141; *Poole*, 897 F.2d at 894; *Budash*, 9 BLR at 1-51-52; *Cornett*, 227 F.3d at 578. Thus, we agree with Claimant's argument that the ALJ erred in not addressing whether Dr. Basheda explained why he

concluded that Claimant's Class I/II impairment, based on AMA guidelines, does not prevent Claimant from performing the heavy exertional requirements of his usual coal mine employment.⁹ 20 C.F.R. §718.204(b)(2)(iv); *see also Cornett*, 227 F.3d at 578; *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988) (ALJ must identify the miner's usual coal mine work and then compare evidence of the exertional requirements of the miner's usual coal mine employment with the medical opinions as to the miner's work capabilities); *Budash*, 9 BLR at 1-51-52; Claimant's Brief at 8. Consequently, we vacate the ALJ's crediting of the opinions of Drs. Celko¹⁰ and Basheda. *See* Decision and Order at 21-23.

Because we have vacated the ALJ's discrediting of Dr. Aulick's opinion and his crediting of the opinions of Drs. Celko and Basheda, we are unable to affirm the ALJ's alternative basis for finding the medical opinion evidence insufficient to establish total disability – that even if the ALJ gave “great weight” to Aulick's opinion, it would be in equipoise with Dr. Basheda's opinion and insufficient to meet Claimant's burden.¹¹ Decision and Order at 23. Given the foregoing errors, we vacate the ALJ's finding that the medical opinion evidence does not establish total disability, 20 C.F.R. §718.204(b)(2)(iv),

⁹ Similarly, the ALJ also failed to address whether Dr. Celko addressed that the mild impairment he diagnosed could be totally disabling based on the exertion required by Claimant's job duties as a mechanic. 20 C.F.R. §718.204(b)(1)(i); *see McMath*, 12 BLR at 1-9; Decision and Order at 21 n.16; Director's Exhibit 13 at 4.

¹⁰ Claimant contends the ALJ failed to consider that Dr. Celko did not review “the more recent and reduced” pulmonary function studies in evaluating whether Claimant is totally disabled. Claimant's Brief at 8. The ALJ did not clearly address Claimant's assertion when he indicated he gave more weight to Dr. Basheda's opinion because he considered objective testing that the other physicians did not and therefore it was more complete. *See* Decision and Order at 23.

¹¹ The ALJ gave additional weight to the opinions of Drs. Celko and Basheda based on their superior credentials and more weight to Dr. Basheda's opinion because he considered the more recent objective testing that the other physicians did not. Decision and Order at 23. The ALJ indicated Drs. Celko and Basheda have superior qualifications as they are both Board-certified in internal medicine, and Dr. Basheda is also Board-certified in pulmonary disease, whereas Dr. Aulick is Board-certified in emergency medicine. *Id.* Although an ALJ may give greater weight to an expert based on the expert's credentials, he must provide an explanation and such weight is not automatic. *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). Therefore, on remand, should the ALJ again give additional weight to physicians based on their credentials, he must explain the basis for his determination. *See id.*

and that Claimant failed to establish total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 24. Consequently, we vacate his finding that Claimant failed to invoke the Section 411(c)(4) presumption and establish an essential element of entitlement. Decision and Order at 24. We therefore vacate his denial of benefits.

Because Claimant may invoke the Section 411(c)(4) presumption on remand, we decline to address, as premature, the parties' arguments regarding the ALJ's assessment of legal pneumoconiosis. Employer's Cross Appeal Brief at 5-12; Claimant's Response Brief at 6-9.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv). He must compare his findings regarding the heavy exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and physical limitations and reevaluate the medical opinions to determine whether the evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). The ALJ should recognize that a physician may offer a reasoned medical opinion diagnosing total disability even if the objective studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *Cornett*, 227 F.3d at 578.

In rendering his credibility findings, the ALJ must address the comparative credentials of the physicians, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of and bases for, their conclusions. See *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). He must explain his findings in accordance with the Administrative Procedure Act.¹² 5 U.S.C. §557(c)(3)(A); see *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). The ALJ must then reweigh the evidence together as a whole and determine whether Claimant has established total disability pursuant to 20 C.F.R. §718.204(b). *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

If Claimant establishes total disability, he will invoke the Section 411(c)(4) presumption and the ALJ must address whether Employer has rebutted it. 30 U.S.C.

¹² The Administrative Procedure Act requires the ALJ to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

§921(c)(4); 20 C.F.R. §718.305. If Claimant fails to establish total disability, an essential element of entitlement, the ALJ must reinstate the denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits, and we remand the case to the ALJ for further consideration consistent with this decision.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge