

U.S. Department of Labor

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



BRB No. 25-0187 BLA

WINSTON E. HALL

Claimant-Respondent

v.

CONSOL OF KENTUCKY,
INCORPORATED

Employer-Petitioner

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 06/11/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs,
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton,
Virginia, for Claimant.

Jennifer Horan (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order rendered on a subsequent claim filed on December 18, 2020,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation that Claimant had seventeen years of qualifying coal mine employment and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b). She therefore found Claimant established a change in an applicable condition of entitlement,² 20 C.F.R. §725.309(c), and invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.³ 30 U.S.C. §921(c)(4). The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability. Claimant responds in support of the award of benefits. The Director, Office of

¹ On May 10, 2010, the district director denied Claimant's first claim, filed on September 23, 2009, for failing to establish any element of entitlement. Living Miner's Claim 1; Director's Exhibit 67. Claimant filed a second claim that he later withdrew. Director's Exhibit 67. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b).

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 she 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)(1); *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 did not establish any element of entitlement in his prior claim, he had to submit evidence establishing at least one element to obtain review of the merits of his current claim. *See White*, 23 BLR at 1-3; Living Miner's Claim 1; Director's Exhibit 67.

³ 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); *see* 20 C.F.R. §718.305.

Workers' Compensation Programs, has not filed a response brief. Employer filed a reply brief, reiterating its contentions.⁴

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.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe 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 or establish entitlement under 20 C.F.R. Part 718, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b), 718.305(b)(1)(i). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine 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,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 established total disability based on the medical opinion evidence and the evidence as a whole.⁷ Decision and Order at 15. Despite the ALJ's

⁴ We affirm, as unchallenged on appeal, the ALJ's determination that Claimant had seventeen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 32-33, 35-36; Director's Exhibit 3.

⁶ A "qualifying" pulmonary function study or arterial 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).

⁷ The ALJ found the weight of the pulmonary function studies did not establish total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 9. As none of the blood gas studies produced qualifying results and there was no evidence of cor pulmonale with

finding that the pulmonary function studies do not establish total disability, Employer argues the ALJ erred in finding the July 21, 2021 pulmonary function study is valid and thereby erred in crediting Dr. Raj's medical opinion, which relies on that study.⁸ Employer's Brief at 6-14; Employer's Reply Brief at 1-4. Specifically, the ALJ discredited Dr. Raj's initial opinion that Claimant's July 21, 2021 pulmonary function study was invalid but then credited his later opinion that, if the study was valid, it would establish that Claimant has a severe impairment that prevents him from performing his usual coal mine work. Decision and Order at 8, 11; Director's Exhibits 11, 21, 25. We reject Employer's argument.

July 21, 2021 Pulmonary Function Study

On July 21, 2021, Dr. Raj conducted Claimant's Department of Labor (DOL) complete pulmonary evaluation. Director's Exhibit 11. The pulmonary function study produced qualifying results before bronchodilators were administered and non-qualifying results after bronchodilators. *Id.* at 12. The respiratory therapist who conducted the test noted that Claimant "put forth good effort, cooperation and understanding." *Id.* at 13. Dr. Raj circled good effort and cooperation on a form setting out the results of the test but then opined that the study "did not meet acceptability criteria." *Id.* at 5. Dr. Fino indicated that the study represented "submaximum effort." Employer's Exhibit 4 at 11, 13. Dr. Rosenberg invalidated the test because "complete efforts were not performed."

right-sided congestive heart failure, the ALJ found Claimant could not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii). Decision and Order at 6, 10.

⁸ The ALJ found the July 21, 2021 pulmonary function study, which produced qualifying pre-bronchodilator results and non-qualifying post-bronchodilator results, was valid. Decision and Order at 9; Director's Exhibit 11. She further found the February 10, 2022 pulmonary function study, which produced non-qualifying pre-bronchodilator results and qualifying post-bronchodilator results, was invalid. Decision and Order at 9; Director's Exhibit 27 at 16. She also found the September 19, 2023 study, which produced non-qualifying results before and after the administration of bronchodilators, was valid. Decision and Order at 9; Employer's Exhibit 6 at 10. As one valid study was qualifying pre-bronchodilator and non-qualifying post-bronchodilator while the other was non-qualifying both before and after bronchodilators, the ALJ found the weight of the pulmonary function studies did not establish total disability. Decision and Order at 9.

Employer's Exhibit 5 at 7. Dr. Gaziano reviewed the test and indicated "vents [we]re acceptable."⁹ Director's Exhibit 15.

The ALJ discredited Dr. Raj's validity opinion as equivocal and not well-reasoned because the doctor did not explain why the testing was invalid or support his opinion by specifically referring to the quality standards. Decision and Order at 8. She further credited the firsthand observations of the respiratory therapist who conducted the test, as supported by Dr. Gaziano's validity opinion, over the opinions of Drs. Fino and Rosenberg. *Id.* She therefore concluded that the July 21, 2021 pulmonary function study was valid. *Id.*

Employer argues the ALJ erred by substituting her judgment for the validity opinions of Drs. Raj, Fino, and Rosenberg to find the July 21, 2021 pulmonary function study is valid. Employer's Brief at 6, 8, 10; Employer's Reply at 1-4. We disagree.

Initially, we reject Employer's argument that the ALJ failed to provide a rationale for discrediting Dr. Raj's opinion. Employer's Brief at 8. Dr. Raj signed the Report of Ventilatory Study form, indicating that Claimant had a good degree of cooperation and ability to understand and follow directions. Director's Exhibit 11 at 12. He then stated "it should be noted that the patient's pulmonary function test did not meet acceptability criteria." *Id.* at 5. In a supplemental opinion he again stated that the "pulmonary function test during my evaluation was not valid." Director's Exhibit 21 at 5. In a third opinion letter, he stated "the pulmonary function test performed on this miner . . . might not be valid," but given Dr. Gaziano's opinion that the test was valid, he also stated that if the test were valid, it reflected that Claimant has a totally disabling respiratory impairment. Director's Exhibit 25 at 3-4. The ALJ accurately noted "Dr. Raj did not explain why the testing was invalid." Decision and Order at 8. Thus, the ALJ permissibly found Dr. Raj's opinion "equivocal and not supported by specific reference to the quality standards," and she declined to give it weight. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 8. Thus, contrary to Employer's arguments, the ALJ gave permissible reasons for discrediting Dr. Raj's opinion and adequately explained those reasons. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Employer's Brief at 8-11.

Nor are we persuaded by Employer's argument that the ALJ applied different standards in evaluating the opinions of Drs. Raj and Gaziano. Employer's Brief at 8. The party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984); 65 Fed. Reg. 79,920,

⁹ Dr. Gaziano incorrectly listed the date of the July 21, 2021 pulmonary function study as "2/21/2021" on the form validating the study. Director's Exhibit 15.

79,927 (Dec. 20, 2000) (“A party may challenge another party’s [pulmonary function] study by submitting expert opinion evidence demonstrating the study is unreliable or invalid.”). Thus, the ALJ properly noted that the party challenging the validity of a study “must specify how the evidence fails to conform to the quality standards and how the defect or omission renders the study unreliable,” and she permissibly discredited the evidence that failed to do so. *Orek v. Director, OWCP*, 10 BLR 1-51, 1-54 (1987); Decision and Order at 7. No requirement exists to establish that a study is valid. 20 C.F.R. §718.103(c) (“In the absence of evidence to the contrary, compliance with the requirements of Appendix B shall be presumed.”). Thus, the ALJ properly discredited Dr. Raj’s opinion for failing to explain the basis for his claim that the test was invalid. *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order at 8.

Nor did the ALJ substitute her judgment for those of Drs. Fino and Rosenberg by finding the study valid. Employer’s Brief at 8, 10. Rather, the ALJ found that the respiratory therapist’s firsthand observations that Claimant’s effort and cooperation were good, as validated by Dr. Gaziano’s review of the study and his finding that the study was valid, were more credible than the opinions of Drs. Fino and Rosenberg that Claimant gave “submaximum effort” or did not give “complete efforts.” Decision and Order at 8. It is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility. *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185. As Employer raises no challenges to the ALJ’s finding that the respiratory therapist’s notations, as supported by Dr. Gaziano’s opinion, are more credible than those of Drs. Fino and Rosenberg, we affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8.

We therefore affirm the ALJ’s finding that the July 21, 2021 pulmonary function study was valid. *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 8.

Medical Opinion Evidence

Next, the ALJ considered the opinions of Drs. Raj, Fino, and Rosenberg on total disability.¹⁰ Decision and Order at 10-15. Dr. Raj diagnosed Claimant with a totally disabling obstructive impairment based on the July 21, 2021 pulmonary function study after the district director informed him that Dr. Gaziano validated it. Director’s Exhibits 11, 21, 25. Dr. Rosenberg opined Claimant does not have a totally disabling impairment,

¹⁰ We affirm, as unchallenged, the ALJ’s finding that Claimant’s usual coal mine work was as a general laborer, which required heavy exertion. *Skrack*, 6 BLR at 1-711; Decision and Order at 5.

diagnosing a mild but non-disabling obstruction. Director's Exhibit 27 at 4; Employer's Exhibit 5 at 15. He also opined, however, that Claimant is disabled as a whole person due to heart disease. Director's Exhibit 27 at 5; Employer's Exhibit 5 at 17. At first, Dr. Fino opined that Claimant is not totally disabled from his last mining job, but then he later concluded that "there is inadequate information to say [Claimant is] disabled." Employer's Exhibits 2 at 12; 4 at 21. The ALJ found Dr. Raj's opinion that Claimant is totally disabled well-documented and well-reasoned, and she accorded less weight to Drs. Rosenberg's and Fino's opinions because they were not well-reasoned. Decision and Order at 11, 13, 15.

Employer contends the ALJ erred in weighing the medical opinion evidence.¹¹ Employer's Brief at 6-14. We disagree.

Dr. Raj noted that Claimant's job required heavy manual labor and that he had a history of wheezing, shortness of breath, and coughing. Director's Exhibit 11 at 3-4. He conducted a physical examination, pulmonary function testing, exercise blood gas testing, and an EKG, and had an x-ray taken. *Id.* He opined Claimant had a moderate impairment on the pulmonary function study but initially opined he could not determine the severity of that impairment as the test was invalid. *Id.* at 5. He reiterated his opinion after reviewing Dr. Rosenberg's February 10, 2022 examination of Claimant. Director's Exhibit 21. Upon being informed that Dr. Gaziano, a consulting physician for DOL, found the July 21, 2021 pulmonary function study valid, Dr. Raj reconsidered the evidence and concluded Claimant has an obstructive impairment that would render him unable to perform his usual coal mine employment. Director's Exhibit 25.

We initially reject Employer's argument that the ALJ improperly relied on Dr. Raj's opinion because he relied on an invalid pulmonary function study, as we have affirmed the ALJ's finding that the study is valid.¹² Employer's Brief at 7-9, 11-14; Employer's Reply Brief at 3-4.

¹¹ We affirm, as unchallenged on appeal, the ALJ's finding that Dr. Fino's opinion is not well-reasoned. *Skrack*, 6 BLR at 1-711; Decision and Order at 15.

¹² As we have affirmed the ALJ's finding that the July 21, 2021 pulmonary function study is valid, we also reject Employer's argument that, without that study, Dr. Raj's opinion that Claimant has a history of wheezing, shortness of breath, and coughing is insufficient to establish total disability. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 12-14.

Nor are we persuaded by Employer's contention that the ALJ should have discredited Dr. Raj's opinion because he did not review the results of the September 19, 2023 pulmonary function study. Employer's Brief at 9. An ALJ is not required to discredit a physician who did not review all of a miner's medical records if the opinion is otherwise well-reasoned and documented. *See Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). The ALJ acted within her discretion in finding Dr. Raj's opinion well-reasoned and well-documented, as it is based on the objective testing he conducted, Claimant's reported symptoms, and the exertional requirements of Claimant's usual coal mine work. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 11. We therefore affirm the ALJ's finding that Dr. Raj's opinion is probative, well-reasoned, well-documented, and sufficient to satisfy Claimant's burden of proof.¹³ *Banks*, 690 F.3d at 489; Decision and Order at 11, 15.

To the extent Employer argues the ALJ should have credited Dr. Rosenberg's opinion because he was "the only expert to incorporate the recent testing," we also reject its argument. Employer's Brief at 11. As noted above, a physician's opinion is not inherently entitled to more weight because he or she reviewed the most recent evidence or more evidence than the other physicians. *See Smith*, 26 BLR at 1-28; *Church*, 20 BLR at 1-13. Dr. Rosenberg examined Claimant on February 10, 2022. Director's Exhibit 27. He noted a history of shortness of breath with daily activities with coughing and wheezing. *Id.* at 3. He also reported reduced breath sounds on physical examination, but normal blood gas studies, diffusion capacity, and total lung capacity. *Id.* at 4. He noted the abnormal pulmonary function study was invalid, and concluded Claimant is totally disabled as a person due to his heart, but "an absolute level of respiratory impairment/disability cannot be gauged." *Id.* at 5. After reviewing additional testing, Dr. Rosenberg opined Claimant has a mild but completely reversible obstructive impairment, and therefore found he is not disabled. Employer's Exhibit 5 at 15

The ALJ permissibly found Dr. Rosenberg's opinion was entitled to less weight as he failed to address the import of his finding that Claimant had reduced breath sounds on physical examination. *See Rowe*, 710 F.2d at 255; *Banks*, 690 F.3d at 489. The ALJ further permissibly found that Dr. Rosenberg's opinion that Claimant's mild obstruction is not disabling because it corrects with medication did not adequately address whether the

¹³ Employer contends the ALJ "failed to resolve the fact" that Claimant obtained the most recent and non-qualifying pulmonary function study but did not forward it to Dr. Raj. Employer's Brief at 9. Dr. Raj provided the Department of Labor sponsored evaluation, and Employer fails to explain why it was Claimant's responsibility to forward the study to Dr. Raj; therefore, we reject this argument.

mild impairment itself would render him unable to perform heavy manual labor. 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (noting the Department of Labor's recognition that pulmonary function testing after administering bronchodilator medication does not provide an adequate assessment of a miner's disability); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties, depending on the exertional requirements of the miner's usual coal mine employment"); Decision and Order at 13. We therefore affirm the ALJ's determination to accord less probative weight to Dr. Rosenberg's opinion because it is not well-reasoned. *See Martin*, 400 F.3d at 305; Decision and Order at 13.

Because it is supported by substantial evidence, we affirm the ALJ's determination that the medical opinion evidence establishes Claimant has a totally disabling impairment at 20 C.F.R. §718.204(b)(2)(iv), and therefore established total disability in consideration of the evidence as a whole. *See Martin*, 400 F.3d at 305; *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762, (4th Cir. 1999) (Administrative Procedure Act duty of explanation is satisfied if reviewing court can discern what the ALJ did and why she did it); Decision and Order at 15. We therefore affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption and established a change in a condition of entitlement. 30 U.S.C. §921(c)(4); 20 C.F.R. §§718.204(b)(2), 725.309(c); Decision and Order at 15.

As Employer has not challenged the ALJ's determination that it failed to rebut the presumption, we further affirm the award of benefits. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305; *see Skrack*, 6 BLR at 1-711; Decision and Order at 22.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge