



BRB No. 25-0108 BLA

WANDA S. MCKNIGHT)
(Widow of DELMER R. MCKNIGHT))

Claimant-Petitioner)

v.)

HIGHLAND ENTERPRISES, LLC)

and)

BERKLEY INDUSTRIAL COMPANY)

Employer/Carrier-Respondents)

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

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 03/23/2026

DECISION and ORDER

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

Wanda S. McKnight, Jonesville, Virginia.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals, without representation,² Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2022-BLA-05723) rendered on a survivor's claim³ filed on February 26, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found no evidence of complicated pneumoconiosis and thus found the Claimant could not invoke the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. She credited the Miner with 29.8 years of qualifying coal mine employment. However, she found Claimant did not establish a totally disabling respiratory or pulmonary impairment and therefore could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act.⁴ 30 U.S.C. §921(c)(4) (2018). Considering entitlement without the benefit of a presumption at 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical, but not legal, pneumoconiosis,⁵ and did not establish that the Miner's death was

¹ Claimant is the widow of the Miner, who died on May 31, 2020. Director's Exhibits 4, 10. Claimant does not allege, nor does the record reflect, that the Miner successfully established entitlement to benefits during his lifetime. Thus, Claimant is not entitled to benefits under Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

² On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested that the Benefits Review Board review the ALJ's decision, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

³ Claimant filed a prior claim on September 4, 2020, but subsequently withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

⁴ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

⁵ 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

due to clinical pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203, 718.205. Thus, the ALJ denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial.⁶ The Director, Office of Workers' Compensation Programs, has not filed a response.

In an appeal filed without representation, the Board considers whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁷ 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, 362 (1965).

In a survivor's claim, a claimant must establish the miner had pneumoconiosis arising out of coal mine employment and his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). A claimant may establish death causation through invocation of the statutory presumptions at Section 411(c)(3) or Section 411(c)(4). When no presumption is invoked,⁸ the claimant bears the burden of establishing that pneumoconiosis caused, or was

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 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).

⁶ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established the Miner had 29.8 years of qualifying coal mine employment and had clinical pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5, 11 (unpaginated).

⁷ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 36 at 15-16, 39 at 2; Hearing Transcript at 15-16.

⁸ As the ALJ correctly found the record contains no evidence of complicated pneumoconiosis, Decision and Order at 13 (unpaginated), we affirm the ALJ's determination that Claimant could not invoke the irrebuttable presumption of death due to

a substantially contributing cause or factor leading to, the miner's death. 20 C.F.R. §718.205(b)(1), (2).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner “had at the time of his death, a totally disabling respiratory or pulmonary impairment.” 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented 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 or arterial blood gas studies,⁹ 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 the pulmonary function studies, arterial blood gas studies, medical opinions, and the Miner's treatment records do not support a finding of total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 7-9 (unpaginated).

Pulmonary Function Studies

The record contains one pulmonary function study dated November 2, 2018, which Employer designated from the Miner's treatment records. Director's Exhibit 13 at 116; *see* Employer's Evidence Summary Form at 3. The ALJ recorded the FEV1 values as 2.01 before the administration of bronchodilators and 2.12 after, the FVC values as 2.06 before the administration of bronchodilators and 2.12 after, and the FEV1/FVC ratio as 98% before the administration of bronchodilators and 86% after. Decision and Order at 7 (unpaginated). Thus, she found that the study did not meet the Department of Labor (DOL) standards for total disability as it produced non-qualifying values both before and after the administration of bronchodilators. *Id.*

pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

⁹ 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).

But contrary to the ALJ's characterization of the evidence, the November 2, 2018 pulmonary function study records the Miner's post-bronchodilator FEV1 value as 1.82. Director's Exhibit 13 at 116-17. The study report listed the Miner's height as sixty-nine inches. *Id.* at 117. Using the closest greater table height of 69.3 inches set forth at Appendix B of 20 C.F.R. Part 718, *see Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 114, 116 n.6 (4th Cir. 1995); *Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-35, 1-38-39 (2023), an FEV1 value of 1.85, an FVC value of 2.39, an FEV1/FVC ratio of 55 percent or less, and an MVV value of 74¹⁰ are qualifying values for a male who is sixty-nine years old. 20 C.F.R. Part 718, App. B. As the November 2, 2018 study therefore produced qualifying post-bronchodilator FEV1 and FVC values (1.82 and 2.12, respectively), the ALJ inaccurately characterized this study as non-qualifying. *See* 20 C.F.R. Part 718, App. B; *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985) (explaining if the ALJ misconstrues relevant evidence, the case must be remanded for reevaluation of the issue to which the evidence is relevant). We therefore vacate the ALJ's finding that the pulmonary function study evidence does not support a finding of total disability and remand the case for further consideration. 20 C.F.R. §718.204(b)(2)(i).

Arterial Blood Gas Studies

The ALJ considered two arterial blood gas studies dated April 13, 2009, and April 30, 2013, that Employer designated as its affirmative evidence from the Miner's treatment records. Decision and Order at 7 (unpaginated); Employer's Exhibits 2, 3; Employer's Evidence Summary Form at 4. The ALJ accurately observed that neither study produced qualifying values and therefore they do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 7 (unpaginated).

But the ALJ did not consider that the Miner's treatment records also contain five qualifying¹¹ arterial blood gas studies taken during the Miner's hospitalization for respiratory failure management from May 14, 2020, through May 15, 2020. Employer's Exhibits 15 at 4, 17 at 5-6. Because the ALJ failed to consider this relevant evidence, we vacate her finding that the arterial blood gas study evidence does not establish total disability. 30 U.S.C. §923(b) (ALJ must consider all relevant evidence); *see Cedar Coal Co. v. Director, OWCP [Mullins]*, F.4th, 2026 WL 628154 at 4 (4th Cir. 2026) (objective studies included in treatment records are admissible); 20 C.F.R.

¹⁰ MVV values were not obtained on the November 2, 2018 pulmonary function study. Director's Exhibit 13 at 116.

¹¹ Each study had PCO2 values above 50 and therefore the PO2 value is qualifying at any level. 20 C.F.R. Part 718, App. C; Employer's Exhibits 15 at 4, 17 at 5-6.

§§718.204(b)(2)(ii), 725.414(a)(4); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

Cor Pulmonale

The ALJ correctly found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 7 (unpaginated); 20 C.F.R. §718.204(b)(2)(iii).

Miner's Treatment Records

The record includes the Miner's treatment records from January 21, 2009, through May 15, 2020, from various physicians at Ballad Health, Arthritis Associates of Kingsport, PLLC,¹² Lonesome Pine Hospital, Holston Medical Group, Lee Regional Hospital, and Norton Community Hospital. Director's Exhibits 12-14; Employer's Exhibits 8-17. Records from Holston Medical Group spanning from September 4, 2018, through February 25, 2020, indicate the Miner's symptoms of coughing, shortness of breath, and dyspnea on exertion. Director's Exhibit 13 at 4-5, 18-19, 24, 34-35, 37, 48, 55, 61-62, 70, 94, 97, 103, 125-29; Employer's Exhibit 14 at 1, 7, 12. Records from Ballad Health from 2015 to 2020 describe the Miner as having chronic dyspnea on exertion and "easy fatigue and [shortness of breath] with minimal exertion." Director's Exhibit 14 at 11, 13, 31, 36, 51, 77, 85, 90, 94, 99, 110, 115.

Dr. Bass performed the November 2, 2018 treatment pulmonary function study that the ALJ considered at 20 C.F.R. §718.204(b)(2)(i). Director's Exhibit 13 at 116-17. He noted that the "spirometry [is] suggestive of restriction but not confirmed on [the] lung volumes" and that the lung volumes are "suggestive of hyperinflation." *Id.* Drs. Winegar and Dean treated the Miner for chronic restrictive lung disease, prescribed inhaler treatment to manage his symptoms, and offered the Miner an evaluation to receive supplemental oxygen, which he declined. Director's Exhibit 13 at 5, 7-8, 19, 22, 26, 35, 37, 52, 64, 76-77; Employer's Exhibit 14 at 1, 7, 9. The treatment records also contain computed tomography scans diagnosing and documenting bronchiectasis, dating back to July 17, 2018, with mucous plugging, as well as indications of treatment of the disease by Drs. Dean and Winegar with albuterol nebulizers, Mucinex, and a flutter device. Director's Exhibit 13 at 4, 7-8, 21-22, 34-35, 37-38, 48, 51-53, 61, 64, 66, 79, 97, 118, 121, 125, 128. Additionally, the treatment records include a March 11, 2020 pulse oximetry report in which Dr. Dean stated the Miner qualified for nocturnal oxygen. Director's Exhibit 13 at 3. Records from Norton Community Hospital from May 2020 indicate that, according to

¹² The records from Arthritis Associates of Kingsport, PLLC, contain the Miner's reported functional limitations. Employer's Exhibit 12 at 3, 11, 17, 31.

Claimant, the Miner wore oxygen at night, and the Miner's daughter related that he wore two liters of oxygen chronically at home for an "unspecified lung disease."¹³ Employer's Exhibits 15 at 1, 17 at 1.

The records from the Miner's admission into critical care at Norton Community Hospital from May 14, 2020, through May 15, 2020, indicate diagnoses of acute hypercapnic, hypoxemic respiratory failure and significant respiratory acidosis secondary to chronic lung disease. Employer's Exhibits 15 at 7, 17 at 10. He was discharged from critical care on May 21, 2020, with diagnoses of "acute on chronic systolic and diastolic congestive heart failure" and "acute hypercapnic respiratory failure on chronic hypoxemic failure secondary to community acquired/aspiration pneumonia." Employer's Exhibit 1 at 1.

After "considering the overall evidence, which includes an autopsy report, pathological report in rebuttal of, treatment records and death certificate," the ALJ found "that [the] Miner did not have a totally disabling respiratory or pulmonary impairment." Decision and Order at 9 (unpaginated). We are unable to affirm this finding.

Treatment records may support a finding of total disability if they provide sufficient information from which the ALJ can reasonably infer a miner was unable to perform his usual coal mine work. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995) (physical limitations described in physician's report sufficient to establish total disability). Even a mild pulmonary impairment may be totally disabling, depending on the exertional requirements of a miner's usual coal mine employment. *See Cornett*, 227 F.3d at 578. Consequently, an ALJ must determine the exertional requirements of a miner's usual coal mine work and then consider them in conjunction with the medical evidence in assessing the extent of his impairment. *See McMath v. Director, OWCP*, 12 BLR 1-6, 1-10 (1988).

Here, the ALJ did not evaluate the Miner's relevant treatment records and explain whether they provided sufficient information from which she could reasonably infer the Miner was unable to do his last coal mine work, but rather summarily concluded the evidence failed to establish total disability. Decision and Order at 9 (unpaginated). The ALJ also did not make a finding regarding the exertional requirements of the Miner's usual coal mine work; thus, she did not render the necessary factual findings. *See McMath*, 12 BLR at 1-10. Because she did not adequately render her findings in accordance with what

¹³ Claimant also testified that the Miner had breathing difficulties and used a breathing machine "whenever he needed it." Hearing Transcript at 13.

the Administrative Procedure Act (APA) requires,¹⁴ we vacate her determination that the Miner's treatment records do not support a finding of total disability. See 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 9 (unpaginated).

Medical Opinions

The ALJ also considered the medical opinions of Drs. Fino and Sargent. Decision and Order at 8-9 (unpaginated); Employer's Exhibits 4, 5, 19, 20. Dr. Fino opined that no respiratory impairment was present and the Miner retained the pulmonary capacity to perform his last coal mine job, even if it required heavy manual labor.¹⁵ Employer's Exhibits 4 at 6, 19 at 11-16. Dr. Sargent opined that the Miner was disabled due to his severe ischemic cardiomyopathy and chronic congestive heart failure but had the respiratory capacity to perform any coal mine job.¹⁶ Employer's Exhibits 5 at 1-2, 20 at 12-18.

¹⁴ The Administrative Procedure Act 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).

¹⁵ Dr. Fino testified that the November 11, 2018 pulmonary function study was invalid and nonconforming because the Miner made only one attempt and stopped exhaling after one second, demonstrating a lack of effort. Employer's Exhibit 19 at 12. He additionally opined that the April 13, 2009 and April 30, 2013 blood gas studies, along with diffusing capacity results, show the Miner had no difficulty with oxygen transfer. *Id.* at 12-13.

¹⁶ Dr. Sargent opined there is no objective evidence of a "significant" respiratory impairment "because there is just very little testing of [the Miner's] respiratory system in the records," and "none of the treating physicians . . . felt it necessary to go down that route when they knew he had severe and ultimately fatal heart disease." Employer's Exhibit 20 at 13. While Dr. Sargent acknowledged that near the end of his life, the Miner was on oxygen and his blood gases were "markedly abnormal and he was hypoventilating," Dr. Sargent testified that the blood gases could not be used to diagnose total disability because the Miner had advanced congestive heart failure "which can cause any number of blood gas abnormalities." *Id.* Dr. Sargent further testified the blood gas studies "done on room air when [the Miner] was [not] in active congestive heart failure" showed mild hypoxemia with hyperventilation, "but certainly nothing that would be disabling" and the November 2, 2018 pulmonary function study was invalid due to a lack of effort. *Id.* at 14.

The ALJ accurately noted that Drs. Fino's and Sargent's opinions are based, in part, on their review of the Miner's treatment records and found their opinions reasoned and documented. *See* Decision and Order at 8 (unpaginated); Employer's Exhibits 4, 5. However, because we have vacated the ALJ's findings regarding the Miner's treatment records, including the results of objective studies in the treatment records, we vacate the ALJ's finding that the medical opinions of Drs. Fino and Sargent are reasoned and documented. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (determination of whether a medical opinion is reasoned and documented requires the fact finder to examine the validity of the physician's reasoning in light of studies conducted and the objective indications upon which the opinion is based).

Thus, we vacate the ALJ's determination that the evidence, when weighed together, does not establish total disability and that Claimant therefore failed to invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; Decision and Order at 8-9. As we remand for reconsideration of total disability, and thus invocation of the Section 411(c)(4) presumption, we decline to address, as premature, the ALJ's remaining findings regarding entitlement.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant can establish the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death and thereby invoke the Section 411(c)(4) presumption of death due to pneumoconiosis. The ALJ must initially reconsider whether Claimant established the Miner was totally disabled based on the pulmonary function study and arterial blood gas study evidence. 20 C.F.R. §718.204(b)(2)(i), (ii). In evaluating the studies, we note that the quality standards at 20 C.F.R. Part 718 do not apply to studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101, 718.103, 718.105; *see Clinchfield Coal Co. v. Director, OWCP [Vanderpool]*, 164 F.4th 342, 349-50 (4th Cir. 2026) (the regulations distinguish between "claim-developed" pulmonary function studies and those conducted as part of a miner's medical treatment); *J.V.S. [Stowers] v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). However, the ALJ must still determine if the Miner's treatment record pulmonary function and arterial blood gas studies are "sufficiently reliable" to support a finding of total disability, despite the inapplicability of the specific quality standards. *Vanderpool*, 164 F.4th at 350; 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

In addition, the ALJ must determine the exertional requirements of the Miner's usual coal mine employment. *See McMath*, 12 BLR at 1-10. The ALJ must then evaluate whether the Miner's treatment records and the medical opinion evidence, including

information relating to the Miner's respiratory impairment and physical limitations, establish the Miner was totally disabled. *See Cornett*, 227 F.3d at 578.

If the ALJ determines the preponderance of the evidence in a particular evidentiary category supports finding total disability established, the ALJ must weigh all the relevant evidence together to determine whether the Miner was totally disabled at the time of his death. 20 C.F.R. §718.204(b)(2); *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, she will have invoked the Section 411(c)(4) presumption of death due to pneumoconiosis. 20 C.F.R. §718.305(b)(1)(iii). The ALJ must then consider whether Employer has rebutted the presumption by establishing the Miner had neither legal nor clinical pneumoconiosis, or "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii).

If the Section 411(c)(4) presumption is again not invoked, the ALJ must determine if Claimant has met her burden to establish the Miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis under 20 C.F.R. Part 718 without the benefit of the presumption. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo*, 17 BLR at 1-87-88. In reaching the ALJ's conclusions on remand, the ALJ must explain the bases for the ALJ's credibility determinations, findings of fact, and conclusions of law as the APA requires. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying 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

GLENN E. ULMER
Administrative Appeals Judge