U.S. Department of Labor

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

BRB No. 25-0109 BLA

JAMES MASSIE Claimant-Petitioner v. ISLAND CREEK COAL COMPANY c/o CONSOL ENERGY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/11/2026 DECISION and ORDER

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

James Massie, Honaker, Virginia.

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

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2022-BLA-05942)

[1] On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested that the Benefits Review Board review the

rendered on a subsequent claim filed on June 18, 2021,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §901-944 (2018) (Act).

The ALJ found the record does not contain any evidence of complicated pneumoconiosis and therefore Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. She accepted the parties' stipulation that Claimant has at least fifteen years of qualifying coal mine employment but found he did not establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2). Thus, the ALJ found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[3] or establish a necessary element of entitlement under 20 C.F.R. Part 718. Consequently, the ALJ denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, declined to file a response.

In an appeal a claimant files without representation, the Board addresses 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

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ALJ's decision, but she does not represent Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] Claimant filed a prior claim on April 22, 1999, which the district director denied on July 26, 1999, for failure to establish any element of entitlement. Director's Exhibit 1. 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 any element of entitlement in his prior claim, he had to submit new evidence establishing any element to obtain a review of the subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

[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) (2018); *see* 20 C.F.R. §718.305.

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 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but failure to establish any element precludes an award of benefits.[5] *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 (1986) (en banc).

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

To invoke the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4) (2018) or establish entitlement under 20 C.F.R. Part 718, Claimant must prove he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §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 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, 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*

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 10.

[5] The ALJ accurately found there is no evidence of complicated pneumoconiosis or large opacities in the record. Decision and Order at 3 n.5. Therefore, Claimant is unable to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304.

[6] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

recon., 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant did not establish total disability based on any category of evidence.[7] Decision and Order at 5-8.

Pulmonary Function Studies

The ALJ considered four pulmonary function studies performed on June 8, 2021, November 9, 2021, November 9, 2022, and June 28, 2023.[8] Director's Exhibit 16 at 13-14; Claimant's Exhibit 2; Employer's Exhibits 1 at 12; 2 at 14-15. The June 8, 2021 study produced qualifying results; bronchodilators were not administered. Claimant's Exhibit 2. The November 9, 2021 study produced non-qualifying results; again, bronchodilators were not administered. Director's Exhibit 16 at 13-14. The November 9, 2022 study produced qualifying results; again, bronchodilators were not administered. Employer's Exhibit 1 at 12. The June 28, 2023 study produced qualifying results both before and after the administration of bronchodilators. Employer's Exhibit 2 at 14-15.

The ALJ also noted a more recent non-qualifying pulmonary function study dated February 16, 2023, in Claimant's treatment records which she noted was likely invalid but which Drs. Fino and Sargent described as "one of the Claimant's better assessments." *Id*. at 6-7. Thus, she found the test was "helpful in analyzing the various physicians' validity reports." *Id*. at 7. The ALJ concluded that the November 9, 2021 pulmonary function study was the most reliable of record because "Drs. Fino, Rosenberg, and Sargent all agreed (to some extent)" that the study was "better" than the other studies. Decision and Order at 6.

When weighing pulmonary function studies, the ALJ must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co*., 23 BLR 1-229, 1-237 (2007) (en banc). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which

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

[8] Because the studies reported different heights ranging from 69 to 70 inches, the ALJ permissibly averaged them to find Claimant is 69.3 inches tall and used this height in determining whether each study is qualifying under Appendix B of 20 C.F.R. Part 718. *See Carpenter v. GMS Mine & Repair Maint. Inc*., 26 BLR 1-33, 1-38-39 (2023); *K.J.M.* [*Meade*] *v. Clinchfield Coal Co*., 24 BLR 1-40, 1-44 (2008); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 5 & n.6.

it is proffered." 20 C.F.R. §718.101(b); *see also Clinchfield Coal Co. v. Director, OWCP* [*Vanderpool*], 164 F.4th 342, 349 (4th Cir. 2026).

The ALJ must then, in her role as fact-finder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987). "In the absence of evidence to the contrary, compliance with the [quality standards in] Appendix B shall be presumed."[9] 20 C.F.R. §718.103(c). 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). Moreover, in the case of treatment records that are not developed for the purpose of establishing, or defeating, entitlement to black lung benefits, the studies are not subject to the quality standards, but the regulations nonetheless require that the ALJ determine whether a study is sufficiently reliable to support a finding of total disability. *See* 20 C.F.R. §718.101(b); 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000); *Vanderpool*, 164 F.4th at 349.

March 24, 2014 Pulmonary Function Study

Claimant underwent a pulmonary function study on March 24, 2014 at Oakwood Respiratory Clinic, which was admitted into evidence as a treatment record. Employer's Exhibit 5. The ALJ did not consider this test. However, the study was non-qualifying so any error in not considering it was harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); 20 C.F.R. Part 718, Appendix B; Employer's Exhibit 5.

June 8, 2021 Pulmonary Function Study

Claimant underwent the June 8, 2021 study at the Vansant Respiratory Center. Director's Exhibit 18. The technician who conducted the study noted good cooperation and effort. *Id.* Dr. Forehand reviewed the study on July 1, 2021, and stated it was acceptable. *Id*. Dr. Rosenberg indicated that the study was invalid as the spirometric curves "demonstrate incomplete efforts, and the sizes of the curves are less than required by Appendix B [of 20 C.F.R. Part 718]," the difference in his MVV values is too great, and "the MVV determination" suggests poor effort. Director's Exhibit 20 at 2. Dr. Fino

[9] The quality standards do not apply to pulmonary function studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101(b), 718.105; *see 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, an ALJ must still determine if the results are sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,927-28 (Dec. 20, 2000).

reviewed this study in conjunction with other evidence and stated "review of the tracings from 2021 and 2022 show a submaximal effort" and Claimant "did not forcefully exhale all of his air." Employer's Exhibits 1 at 10; 3 at 15. Dr. Sargent testified that the flow volume loops show very poor effort, that Claimant breathed in more than he blew out, and that he started his forced expiratory maneuver from less than a full inspiration. Employer's Exhibit 4 at 14-15. The ALJ accorded the test "little weigh due to substantial validity and reliability concerns" based upon the opinions of Drs. Rosenberg, Fino, and Sargent. Decision and Order at 6.

Initially, we note the ALJ did not make a clear determination as to whether this study was valid; she simply noted that the physicians raised "concerns" about the validity of the test. 20 C.F.R. §718.101(b); Decision and Order at 6. Moreover, she seems to have assumed the June 8, 2021 study was created in anticipation of litigation, despite it being conducted at the same facility where the February 16, 2023 study was conducted, which she found to be part of Claimant's treatment records. Director's Exhibit 18; Employer's Exhibit 12. Further, the ALJ failed to consider the administering technician's comment that Claimant demonstrated good cooperation and effort and Dr. Forehand's handwritten notation of "acceptable spirograph." Director's Exhibit 18; Claimant's Exhibit 2 at 1; *see* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *McCune v. Central Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984) (fact-finder's failure to discuss relevant evidence requires remand); *see also Siegel v. Director, OWCP,* 8 BLR 1-156, 1-157 (1985) (ALJ must provide a reason for preferring the consultative physician's interpretation of an objective study over the administering physician). Because the ALJ failed to consider all relevant evidence and did not adequately explain her findings as the Administrative Procedure Act (APA) requires,[10] we vacate her weighing of the June 8, 2021 study. *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).

November 9, 2021 Pulmonary Function Study

Dr. Harris examined Claimant on November 9, 2021, as part of his Department of Labor (DOL) sponsored evaluation. Director's Exhibit 16. The technician who administered the test stated Claimant had good effort and cooperation, but also noted he was unable to breathe deep and became short of breath with short distance ambulation. *Id.* at 13-14. Dr. Harris agreed that the information furnished on the study was correct. *Id*. at

[10] 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).

13. Dr. Fino reviewed this study in conjunction with other evidence and stated "review of the tracings from 2021 and 2022 show a submaximal effort" and Claimant "did not forcefully exhale all of his air." Employer's Exhibits 1 at 10; 3 at 16. Dr. Sargent reviewed the study and opined it was not valid because Claimant did not give a forcible expiratory maneuver. Employer's Exhibit 4 at 15-16. Conversely, Dr. Rosenberg opined the study was valid with complete efforts. Director's Exhibit 20 at 4.

Although the ALJ noted that Drs. Rosenberg, Fino, and Sargent agreed "to some extent," the physicians disagreed as to whether the test was valid. Decision and Order at 6; Director's Exhibit 20 at 4; Employer's Exhibits 1 at 10; 3 at 16; 4 at 15-16. The ALJ also again failed to consider the technician's notation that Claimant demonstrated good cooperation and effort and was "unable to breath[e] deep" or Dr. Harris's statement that the information recorded by the technician was correct and accurate. Decision and Order at 6; Director's Exhibit 16 at 14; *see* 30 U.S.C. §923(b); *McCune*, 6 BLR at 1-998. Additionally, the ALJ did not render any findings as to whether the study is in substantial compliance with the quality standards even if it is not entirely conforming. 20 C.F.R. §718.101(b).

Moreover, as discussed below, if Claimant's November 9, 2021 pulmonary function study was invalid due to inadequate effort, as Drs. Fino and Sargent suggested, then the regulations state that "the miner will be afforded one additional opportunity to produce a satisfactory result." 20 C.F.R. §725.406(c); *see Johnson v. Director, OWCP*, 890 F.2d 416 (Table), 1989 WL 144348 at *1-2 (6th Cir. Nov. 30, 1989) (unpub.) (remand "necessary" where claimant gave "suboptimal" effort on DOL-sponsored pulmonary function study because the district director "must allow the claimant the opportunity to undergo further testing" when testing is not in compliance with quality standards).[11] Because the ALJ failed to consider all relevant evidence, did not adequately explain her credibility findings in accordance with the APA, and did not consider if Claimant was provided a complete pulmonary evaluation, we vacate her determination that the November 9, 2021 study was "a better reflection of [Claimant's] true lung capacity" than the other studies of record. *See*

[11] The Act requires the DOL to provide miners with a "complete pulmonary evaluation." 30 U.S.C. §923(b); *see* 20 C.F.R. §§718.101(a), 725.406. The purpose is to "develop the medical evidence necessary to determine each claimant's entitlement to benefits." 20 C.F.R. §718.101(a). Thus, a complete pulmonary evaluation must include "a pulmonary function study." 20 C.F.R. §725.406(a). If an ALJ determines that any part of the complete pulmonary evaluation "fails to comply with the applicable quality standards," the ALJ must either "remand the claim to the district director with instructions to develop only such additional evidence as is required" to remedy the defect or "allow the parties a reasonable time to obtain and submit such evidence[.]" 20 C.F.R. §725.456(e).

5 U.S.C. §557(c)(3)(A); 30 U.S.C. §923(b); *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 6.

November 9, 2022 Pulmonary Function Study

Dr. Fino examined Claimant on November 9, 2022. Employer's Exhibits 1, 3. The technician who conducted the study noted it was invalid. Employer's Exhibit 1 at 12. Dr. Fino opined that the study was invalid because the tracings show Claimant did not breathe out forcefully and "clearly underestimates his true lung function." Employer's Exhibit 3 at 13. Dr. Sargent agreed that the test was invalid and unreliable due to Claimant's poor effort and a lack of reproducibility. Employer's Exhibit 4 at 17. As the technician who conducted the study and both physicians who reviewed the test opined it was invalid and unreliable, we affirm the ALJ's finding that the November 9, 2022 pulmonary function study was entitled to little weight due to "substantial validity and reliability concerns," as it is supported by substantial evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 6.

June 28, 2023 Pulmonary Function Study

Dr. Sargent examined Claimant on June 28, 2023, which included the administration of a pulmonary function study. Employer's Exhibit 2. The administering technician stated that Claimant was unable to produce acceptable and reproducible spirometry data with the best effort reported. *Id*. at 15. The technician also noted that "[Claimant] would not inhale deeply for the [diffusing capacity of lung for carbon dioxide] DLCO, [and] four tests were performed with only one test that resulted in data. Poor test effort with post testing." *Id*. Dr. Sargent opined the study was invalid because Claimant could not produce "an effort that achieved minimum reproducibility" based on the inconsistent flow volume loops. Employer's Exhibit 4 at 13-14. Dr. Fino also invalidated the study and testified that the values are extremely low because of Claimant's poor effort as indicated by the study's tracings. Employer's Exhibit 3 at 19-20. As the technician who conducted the study and both physicians who reviewed the test opined it was invalid and unreliable, we affirm, as supported by substantial evidence, the ALJ's finding that the June 28, 2023 study was entitled to little weight due to "substantial validity and reliability concerns." *See Compton*, 211 F.3d at 207-08; Decision and Order at 6.

February 16, 2023 Pulmonary Function Study

Claimant also underwent a study on February 16, 2023 at Vansant Respiratory Center. Employer's Exhibit 12. The technician noted good effort and cooperation. *Id*. at 1. Dr. Fino opined this study did not show "absolute maximum lung function" as Claimant "didn't blow all the air out." Employer's Exhibit 3 at 17. Dr. Sargent agreed the study showed better effort but that it was still "less than optimal." Employer's Exhibit 4 at 17.

The ALJ noted the concerns as to the validity of this study but concluded the study was "helpful in analyzing the various physician's validity reports," noting that Drs. Fino and Sargent both classified the study as "one of the Claimant's better assessments." Decision and Order at 7. To the extent the ALJ apparently found this study corroborates the results of the November 9, 2021 pulmonary function study, we vacate her findings as we have vacated her weighing of that study.

Because we have vacated the ALJ's weighing of the June 8, 2021, November 9, 2021, and February 16, 2023 studies, we vacate the ALJ's finding that Claimant did not establish total disability based on the pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i).

Arterial Blood Gas Studies

The ALJ accurately found the three arterial blood gas studies dated November 9, 2021, November 9, 2022, and June 28, 2023, are non-qualifying for total disability. Decision and Order at 7; Director's Exhibit 16 at 9; Employer's Exhibits 1 at 17; 2 at 8. We therefore affirm her finding that the arterial blood gas study evidence does not establish total disability under 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 7-8.

Medical Opinions

Prior to considering the medical opinions, the ALJ reviewed Claimant's CM-913 Description of Coal Mine Work form and testimony to determine the exertional requirements of his usual coal mine employment. Decision and Order at 4. Claimant stated on his CM-913 form that his job as a shop mechanic required him to sit for three to four hours and stand for five to six hours a day, and required him to lift twenty-five to fifty pounds, five to six times a day. Director's Exhibit 5. At his hearing, he testified that he repaired hydraulic jacks, motors, and mine equipment and mostly did overhead hoist lifting. Transcript at 11. When asked, "[W]hat is the most you would lift by yourself?," he responded, "40, 50 pounds." *Id.* Based on this information, the ALJ concluded Claimant's usual coal mine employment required moderate exertion. Decision and Order at 4.

However, in his prior claim filed two years after leaving his coal mine employment, Claimant reported to Dr. Rasmussen that his last job as a shop mechanic required him to use heavy wrenches and move heavy equipment, which led Dr. Rasmsseum to conclude Claimant's employment required moderate to heavy manual labor. Director's Exhibit 1 at 52. In answers to interrogatories completed in 1999, Claimant reported lifting fifteen-pound items two to three times a day. *Id*. at 17. At his November 9, 2021 examination in his current claim, Claimant reported to Dr. Harris that his job required him to lift fifty-to-seventy-five-pound parts, which Dr. Harris classified as heavy exertion. Director's Exhibit

16 at 6. At his November 9, 2022 examination, Claimant reported to Dr. Fino that he last worked as a welder and a mechanic, which entailed "very heavy labor – 20%; heavy labor 30%; moderate labor 40%; and light labor – 10%." Employer's Exhibit 1 at 2. At his June 28, 2023 examination, he reported to Dr. Sargent that he worked as a mechanic and repairman, which Dr. Sargent classified as requiring heavy lifting. Employer's Exhibits 2 at 3; 4 at 9. Because the ALJ did not consider any of this evidence, we vacate her finding that Claimant's usual coal mine employment required moderate exertion.[12] *McCune*, 6 BLR at 1-998.

The ALJ then considered the medical opinions of Drs. Harris, Fino, and Sargent. Decision and Order at 8. She noted that none of the physicians determined that Claimant is totally disabled and therefore concluded that the medical opinion evidence does not support a finding that Claimant is totally disabled. *Id.* Because we have vacated the ALJ's findings concerning the validity of the pulmonary function studies, we must also vacate her crediting of the medicals opinions as they were based, at least in part, on the pulmonary function studies, which influenced the ALJ's weighing of the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8.

Moreover, as we noted, the Act requires that "[e]ach miner who files a claim . . . shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a) ("[e]ach miner who files a claim for benefits under the Act must be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation"), 725.406; *see Hodges*, 18 BLR at 1-93. A complete pulmonary evaluation includes a "report of physical examination, a pulmonary function study, a chest radiograph, and, unless medically contraindicated, a blood gas study." 20 C.F.R. §725.406(a). The district director is also required to schedule the miner for additional examination and testing if the examination or testing is not "in substantial compliance" with the regulations. 20 C.F.R. §725.406(c).

[12] The ALJ stated that she would take official notice of the *Dictionary of Occupational Titles* (DOT) to determine Claimant's exertional requirements if necessary. June 9, 2023 Hearing Notice at 2 (unpaginated). The DOT defines heavy labor as exerting fifty to a hundred pounds of force "occasionally" and/or exerting twenty-five to fifty pounds of force "frequently." *DOT*, Appendix C. Aspects of Claimant's work could establish that his usual coal mine employment required heavy labor because a miner cannot perform his usual coal mine work if he cannot perform the heaviest or hardest parts of that work. *See Eagle v. Armco Inc.*, 943 F.2d 409, 512-13 (4th Cir. 1991); 20 C.F.R. §718.204(b)(1).

On November 9, 2021, Dr. Harris performed Claimant's DOL-sponsored complete pulmonary evaluation and obtained a non-qualifying pulmonary function study and a non-qualifying blood gas study. Director's Exhibit 16. He indicated Claimant has dyspnea on exertion and diagnosed him with a "significant impairment due to his pulmonary disease." *Id*. at 7-8. He noted Claimant's usual coal mine employment required heavy exertion but opined that he "does not meet federal standards to be considered totally disabled due to his pulmonary impairment." *Id*. at 6, 8. As discussed above, the ALJ did not determine if the pulmonary function study conducted as part of the examination was valid and whether Claimant would be entitled to additional testing. *See* 20 C.F.R. §725.406(c); *see also Johnson*, 890 F.2d at 416, 1989 WL 144348 at *1-2. Additionally, to fulfill its obligations under the Act, the DOL must "provid[e] 'a medical opinion that addresses all of the essential elements of entitlement.'" *Greene v. King James Coal Mining, Inc*., 575 F.3d 628, 640 (6th Cir. 2009) (quoting *Smith v. Martin Cnty. Coal Corp*., 233 F. App'x 507, 512 (6th Cir. 2007)).

Here, it is not clear whether Dr. Harris determined that Claimant could perform the exertional requirements of his usual coal mine employment given his "significant impairment" or if he relied solely on whether the objective testing was qualifying for total disability. *See Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000) (even a mild respiratory impairment can be totally disabling when compared to the exertional requirements of a miner's last coal mine employment); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997). Consequently, it is unclear whether Dr. Harris addressed this essential element of entitlement, and the ALJ erred in not considering whether Claimant was provided a complete pulmonary evaluation. *See* 30 U.S.C. §923(b); 20 C.F.R. §§725.406, 725.456(e); *Hodges*, 18 BLR at 1-93; *Greene*, 575 F.3d at 640. We therefore vacate the ALJ's weighing of Dr. Harris's opinion. 30 U.S.C. §923(b); Director's Exhibit 16 at 7-8.

Consequently, we vacate her weighing of the medical opinion evidence and her finding that it does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv).

Claimant's Treatment Records

Claimant's treatment records consist of office notes from Richlands Pulmonology and Breathing Center and Clinch Valley Physicians from December 9, 2015, December 7, 2016, September 7, 2017, June 12, 2018, September 27, 2021, December 8, 2021, March 8, 2022, June 8, 2022, October 3, 2022, and December 31, 2022. Claimant's Exhibits 3, 4; Employer's Exhibits 6-11. The records also include two non-qualifying pulmonary function studies performed on March 14, 2014, and February 16, 2023. Employer's Exhibits 5, 12. The records document symptoms of chest tightness, wheezing, and

shortness of breath; a diagnosis of chronic obstructive pulmonary disease; and treatment with inhalers. Claimant's Exhibits 3 at 2-3; 4 at 2.

Although the ALJ briefly considered the non-qualifying pulmonary function study from February 16, 2023, she failed to otherwise weigh the treatment records. Decision and Order at 6-7. On remand, the ALJ must address the treatment records and determine whether they help support Claimant's burden of establishing total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Scott v. Mason Coal Co*., 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in a physician's report sufficient to establish total disability).

Remand Instructions

On remand, the ALJ must first determine whether Claimant was provided with a complete pulmonary evaluation, including determining the validity of the November 9, 2021 pulmonary function study. Specifically, if the ALJ finds the study invalid on remand or that Dr. Harris's November 9, 2021 medical opinion does not address an element of entitlement, the ALJ should consider whether it is appropriate to remand the case to the district director "to develop only such additional evidence as is required" to remedy the defect. 20 C.F.R. §§725.406(c), 725.456(e); *Greene*, 575 F.3d at 641-42; *Hodges*, 18 BLR at 1-88 n.3.

If the case does not require remand to the district director, the ALJ must reconsider the pulmonary function studies and resolve the conflicts in the evidence. *See Greene*, 575 F.3d at 634. Specifically, the ALJ must determine whether the June 8, 2021 study is valid or in substantial compliance with the regulatory quality standards and explain the basis for the ALJ's findings. *See* 20 C.F.R. §§718.101(b), 718.103(c). The ALJ must set forth findings in detail and explain the ALJ's rationale in accordance with the APA. *Wojtowicz*, 12 BLR at 1-165. Then the ALJ must weigh the pulmonary function studies together and reach a determination as to whether Claimant established total disability at 20 C.F.R. §718.204(b)(2)(i).

The ALJ must then consider all relevant evidence to determine the exertional requirements of Claimant's usual coal mine employment and then reconsider the medical opinions given those requirements. 20 C.F.R. §718.204(b)(1)(i), (b)(2)(iv); *see Eagle v. Armco Inc.*, 943 F.2d 409, 512-13 (4th Cir. 1991); *Black Diamond Mining Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985). The ALJ must also determine whether Claimant's treatment records identify an impairment or physical limitations that would preclude Claimant from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *see Scott*, 60 F.3d at 1141.

If Claimant establishes total disability at either 20 C.F.R. §718.204(b)(2)(i) or (iv), or both, the ALJ must determine whether the evidence as a whole establishes that Claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co*., 10 BLR 1-19 (1987); *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, he will have invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.305. The ALJ must then determine whether Employer has rebutted the presumption. 20 C.F.R. §718.305(d); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-150 (2015).

If Claimant does not establish total disability at 20 C.F.R. §718.204(b)(2), the ALJ may reinstate the denial of benefits. 20 C.F.R. §725.309(c); *White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004).

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

MELISSA LIN JONES
Administrative Appeals Judge