U.S. Department of Labor

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

BRB No. 25-0125 BLA

RAYMOND D. BRYANT Claimant-Respondent v. CRAVAT COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/26/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

Jonathan C. Masters (Masters Law Office, PLLC), South Williamson, Kentucky, for Claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for Employer.

Eirik Cheverud (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2022-BLA-05629) rendered on a claim filed on March 10, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ held a hearing on June 8, 2023. In an Order issued on April 1, 2024, the ALJ determined the Department of Labor (DOL)-sponsored pulmonary evaluation performed by Dr. Forehand did not constitute a complete pulmonary evaluation as Section 413(b) of the Act requires, 30 U.S.C. §923(b); 20 C.F.R. §725.406, because the evaluation's pulmonary function study was invalid. Order of Remand for Complete Pulmonary Evaluation at 2. The ALJ also noted Dr. Forehand incorrectly analyzed the PO_2 and PCO_2 values from Claimant's arterial blood gas studies. *Id.* at 3. Therefore, the ALJ remanded the case to the district director to provide Claimant an additional opportunity to provide a satisfactory pulmonary function study and allow Dr. Forehand to provide a supplemental medical report. *Id*.

The district director returned the case to the Office of Administrative Law Judges on August 16, 2024. Thereafter, the ALJ allowed the parties to submit supplemental medical reports and briefs in response to the evidence developed on remand before closing the record. Decision and Order at 3.

In a Decision and Order dated December 16, 2024, the ALJ credited Claimant with 19.03 years of surface coal mine employment in conditions substantially similar to those in an underground mine[1] and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore concluded Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] 20 C.F.R. §718.305. The ALJ further found Employer did not rebut the presumption and awarded benefits.

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 19.03 years of surface coal mine employment in conditions substantially similar to those in an underground mine. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-10, 23.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

On appeal, Employer argues the ALJ erred in remanding the case to the district director for further development of evidence. On the merits, Employer challenges the ALJ's finding that Claimant is totally disabled and therefore invoked the Section 411(c)(4) presumption or, alternatively, in setting the onset date of Claimant's total disability due to pneumoconiosis for the commencement of benefits. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, responds urging the Benefits Review Board to affirm the ALJ's decision to remand the case to the district director for further development of evidence.

The 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.[3] 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).

Complete Pulmonary Evaluation

The Act requires that "[e]ach miner who files a claim . . . 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), 725.406; *see Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-88 n.3 (1994). The complete pulmonary evaluation the DOL provides must include, among other things, "pulmonary function tests" that are in "substantial compliance" with the regulatory quality standards for such tests. 20 C.F.R. §§718.101(a), 725.406(a), (c). As relevant here, if an ALJ determines that any part of the complete pulmonary evaluation does not comply with those quality standards, the regulations grant the ALJ discretionary authority to remand the case to the district director for further evidentiary development. 20 C.F.R. §725.456(e); *R.G.B.* [*Blackburn*] *v. S. Ohio Coal Co.*, 24 BLR 1-129, 1-140 (2009) (en banc).

Claimant selected Dr. Forehand to perform the DOL-sponsored complete pulmonary evaluation. 20 C.F.R. §725.406; Director's Exhibit 11. Dr. Forehand oversaw the required testing, including a pulmonary function study. Director's Exhibit 12 at 8. Dr. Gaziano opined the pulmonary function study results were acceptable. Director's Exhibit 16. Nevertheless, when later asked to review the study results at his deposition, Dr. Forehand testified the study's volume loops and volume time tracings were not within 5%

[3] 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); Director's Exhibit 3; Hearing Transcript at 16.

of each other as the applicable quality standards require for acceptability and reliability. Employer's Exhibit 12 at 36, 38-39; 20 C.F.R. §718.103(c); 20 C.F.R. App. B(2)(ii)(G).

In light of Dr. Forehand's testimony, the ALJ determined Claimant had not been provided a complete pulmonary evaluation as Section 413(b) of the Act requires. 30 U.S.C. §923(b); 20 C.F.R. §725.406; Order of Remand for Complete Pulmonary Evaluation. She therefore remanded the case to the district director to provide Claimant an additional opportunity to provide a satisfactory pulmonary function study and allow Dr. Forehand to provide a supplemental medical report. Order of Remand for Complete Pulmonary Evaluation; *see* 20 C.F.R. §725.406(c). Thereafter, the ALJ denied Employer's motion for reconsideration, specifically referencing her discretionary authority to remand the case under 20 C.F.R. §725.456(e). Order Denying Employer's Motion to Reconsider Order of Remand at 2.

Employer argues the ALJ erred in remanding the case to the district director for further evidentiary development. Employer's Brief at 5-7. We disagree.

The Board reviews the ALJ's procedural rulings for an abuse of discretion. *Blackburn*, 24 BLR 1-136; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Here, Employer has not shown that the ALJ abused her discretion in remanding the case to the district director for the DOL to provide the required complete pulmonary evaluation.

The regulation at Section 725.456(e) provides:

> If the [ALJ] concludes that the complete pulmonary evaluation provided pursuant to [20 C.F.R.] §725.406, or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement (see [20 C.F.R] §725.202(d)(2)(i) through (iv)) in a manner which permits resolution of the claim, the [ALJ] shall, in his or her discretion, remand the claim to the district director with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

20 C.F.R. §725.456(e).

Employer contends it was error for the ALJ to remand the case because Claimant never alleged the 2021 pulmonary function study was invalid. Employer's Brief at 5. But the plain language of the regulation allows the ALJ to raise and address, sua sponte, issues regarding the regulatory compliance of the complete pulmonary evaluation. 20 C.F.R. §725.456(e); *Blackburn*, 24 BLR at 1-141. Employer also argues the DOL-sponsored

evaluation "did not leave anything out that might cause one to reasonably question the DOL's duty to supply a 'complete pulmonary evaluation.'" Employer's Brief at 7. This argument again ignores both the plain language of the regulation, which allows an ALJ to remand a case when any part of the evaluation fails to comply with the applicable quality standards, and Dr. Forehand's testimony that the volume loops and volume time tracings from the DOL-sponsored pulmonary function study were not within 5% of each other as the applicable standards require for acceptability and reliability. Employer's Exhibit 12 at 36, 38-39; 20 C.F.R. §§718.103(c), 725.456(e).

Employer next notes "[n]o party was given the opportunity to comment on this matter before the order of remand was issued." Employer's Brief at 5. But Section 725.456(e) does not contain a specific notice requirement because the regulation itself constitutes notice to the parties of an ALJ's authority to review the DOL-sponsored evaluation for completeness. *Blackburn*, 24 BLR at 1-141. Nonetheless, the regulations allow a party to request reconsideration of an ALJ's remand order, an opportunity Employer did avail itself of in this case. *Id.*; *see* 20 C.F.R. §725.479(b); 29 C.F.R. §18.93; Employer's Motion to Reconsider Order of Remand.

Finally, Employer argues the ALJ's remand order is contrary to applicable law because the Sixth Circuit, within whose jurisdiction this case arises, has held the "DOL's duty to supply a 'complete pulmonary evaluation' does not amount to a duty to meet the claimant's burden of proof for him." *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 641-42 (6th Cir. 2009); Employer's Brief at 5-6. But Employer's reliance on *Greene* is misplaced. Unlike this case, where the ALJ has found the evaluation incomplete based on the DOL's physician's testimony that the evaluation's required pulmonary function study did not meet the applicable quality standards and, thus, was invalid, *Greene* addressed and rejected a claimant's contention that he did not receive a complete pulmonary evaluation simply because the ALJ there found the evaluation's medical opinion unpersuasive. *See Greene*, 575 F.3d at 640. Thus, contrary to Employer's contention, the Sixth Circuit's holding from *Greene*, which did not address 20 C.F.R. §725.456(e), is not applicable here.

Therefore, we reject Employer's argument that the ALJ abused her discretion in remanding this case to the district director for further evidentiary development. 20 C.F.R. §725.456(e); *Blackburn*, 24 BLR at 1-141.

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, qualifying arterial blood gas studies,[4] 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 consider all relevant evidence and weigh the evidence supporting total disability against the 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 pulmonary function studies, medical opinions, and the evidence considered as a whole.[5] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 13-23.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated March 17, 2022, August 3, 2022, and April 16, 2024.[6] Decision and Order at 13-17. The March 17, 2022 study produced qualifying values both pre- and post-bronchodilator. Employer's Exhibit 1 at 10. The August 3, 2022 study produced qualifying values both pre- and post-bronchodilator. Employer's Exhibit 2 at 10. The April 16, 2024 study produced qualifying values both pre- and post-bronchodilator. Director's Exhibit 94.

[4] 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).

[5] The ALJ noted there was no evidence of cor pulmonale with right-sided congestive heart failure and found the arterial blood gas studies and Claimant's medical treatment record evidence do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii)-(iv); Decision and Order at 11, 17, 22.

[6] At the outset, we reject Employer's argument that the ALJ was precluded from considering the April 16, 2024 pulmonary function study and, rather, was required to consider the April 13, 2021 pulmonary function study based on the parties' evidentiary designations. Employer's Brief at 8. As noted *supra*, the ALJ properly remanded the case for development of the April 16, 2024 pulmonary function study as a required part of the DOL-sponsored complete pulmonary evaluation and, thus, no party was required to designate it as affirmative evidence. *See* 20 C.F.R. §725.456(e).

The ALJ found the April 16, 2024 study valid and the March 17, 2022 and August 3, 2022 studies invalid. Decision and Order at 15-17. She then noted the only valid pulmonary function study produced qualifying pre- and post-bronchodilator results. *Id.* at 17. Thus, she found the pulmonary function study evidence is qualifying and supports a finding of total disability. *Id.*

Employer contends the ALJ erred in finding the April 16, 2024 pulmonary function study valid. Employer's Brief at 9-11. We disagree.

When weighing the pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718103(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). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c). 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 it is proffered." 20 C.F.R. §718.101(b); *Clinchfield Coal Co. v. Director, OWCP* [*Vanderpool*], 164 F.4th 342, 350 (4th Cir. 2026) (claim-developed objective studies need only be in substantial compliance). Thus, 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).

The technician who conducted the April 16, 2024 study noted Claimant's cooperation and ability to understand and follow directions were good and indicated the results met American Thoracic Society criteria. Director's Exhibit 94 at 1-2. Dr. Ranavaya reviewed the study, opined the "[v]ents are not acceptable," and indicated Claimant had "[l]ess than optimal effort, cooperation and comprehension." Director's Exhibit 96. Dr. Forehand reviewed the study and acknowledged Dr. Ranavaya's opinion but stated "the best two pre-and post-bronchodilator efforts were within 5% of each other, lacked delayed onset or premature cessation and demonstrated smooth expiratory flow volume loops," and thus concluded the study provided probative information regarding the presence and severity of an impairment. Director's Exhibit 98 at 2.

The ALJ has discretion to weigh the evidence, draw appropriate inferences, and determine credibility. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997). She permissibly found the April 16, 2024 study valid based on Dr. Forehand's opinion and the administering technician's statements, which she found more persuasive than Dr. Ranavaya's contrary opinion. Decision and Order at 5; *see Mays*, 176 F.3d at 756; *Hicks*, 138 F.3d at 530; *Akers,* 131 F.3d at 439-40.

As it is supported by substantial evidence, we affirm the ALJ's finding the April 16, 2024 study is valid. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 16-17. Because Employer raises no additional arguments regarding the ALJ's weighing of the pulmonary function study evidence, we affirm her determination that the pulmonary function study evidence -- the valid and qualifying April 16, 2024 study -- supports a finding of total disability. 20 C.F.R. §§718.103(c), 718.204(b)(2)(i); Decision and Order at 17.

Medical Opinions

The ALJ considered the opinions of Drs. Forehand, Jarboe, and Zaldivar. Decision and Order at 18-22. In his February 2023 deposition, Dr. Forehand initially opined Claimant is not disabled. Employer's Exhibit 12 at 42. But after reviewing later-developed evidence, he concluded Claimant is totally disabled based on the April 16, 2024 pulmonary function study and the exertional requirements of Claimant's usual coal mine employment. Director's Exhibit 12, 98; Employer's Exhibit 12. Drs. Jarboe and Zaldivar opined Claimant is not disabled and could perform his usual coal mine work even if that job required heavy manual labor. Employer's Exhibits 4 at 22; 5 at 24-25, 29, 31; 15 at 37.

The ALJ found Dr. Forehand's opinion reasoned and documented and gave it the most probative weight. Decision and Order at 22. She further found the contrary opinions of Drs. Jarboe and Zaldivar are unsupported by the qualifying pulmonary function study evidence and their opinions were poorly reasoned because neither reconciled his opinion that Claimant could return to his usual coal mine work, which required moderate to heavy manual labor, with Claimant's reported shortness of breath while climbing one flight of stairs or walking a hundred yards. *Id.* at 20-22. Thus the ALJ found Dr. Forehand's opinion outweighs Drs. Jarboe's and Zaldivar's opinions, and therefore that the medical opinion evidence supports a finding of total disability. *Id.*

Employer argues the ALJ erred in crediting Dr. Forehand's "shifting disability opinion" and in discrediting the medical opinions of Drs. Jarboe and Zaldivar based on the ALJ's allegedly "flawed consideration of the evidence." Employer's Brief at 11-12. We disagree. Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 22.

We further affirm her determination that Claimant established total disability based on the evidence as a whole as supported by substantial evidence. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 22-23. Thus, we affirm her finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 23.

As Employer raises no arguments concerning rebuttal, we also affirm the ALJ's finding that it did not rebut the presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1); Decision and Order at 31. We therefore affirm the award of benefits.

Commencement Date of Benefits

The date for the commencement of benefits is the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the date is not ascertainable, benefits commence the month the claim was filed, unless credible evidence establishes the miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65, 1-69 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-50 (1990).

The ALJ found the record does not establish when Claimant first became disabled due to pneumoconiosis and there is no evidence Claimant was not totally disabled at any time after he filed his claim. Decision and Order at 31. Thus she found benefits commence the month the claim was filed, March 2021. *Id.*

Employer argues benefits should commence in April 2024 because the April 16, 2024 pulmonary function study is the earliest credited evidence of total disability. Employer's Brief at 5-7. We disagree.

The date of the first medical evidence of record indicating total disability does not necessarily establish the onset date. Rather, such evidence only indicates the miner became totally disabled at some prior point in time. *Tobrey v. Director, OWCP*, 7 BLR 1-407, 1-409 (1984); *Hall v. Consolidation Coal Co.*, 6 BLR 1-1306, 1-1310 (1984). Here, the medical evidence the ALJ credited establishes only that Claimant became totally disabled due to pneumoconiosis at some time prior to the date of that evidence. Further, the ALJ did not credit any evidence that Claimant was not totally disabled due to pneumoconiosis at any time subsequent to the filing date. *See generally* Decision and Order. Thus, we affirm the ALJ's determination that benefits commence as of the month the claim was filed, March 2021.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge