



BRB No. 25-0138 BLA

EDWIN G. TAYLOR)

Claimant-Respondent)

v.)

WAMPLER BROTHERS COAL)
COMPANY, INCORPORATED)

and)

SECURITY INSURANCE COMPANY OF)
HARTFORD, c/o ARROWPOINT CAPITAL)

Employer/Carrier-)
Petitioner)

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

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 03/30/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Steven D. Bell,
Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center), Whitesburg, Kentucky,
for Claimant.

H. Brett Stonecipher and Quiyarra McCahey (Reminger Co., L.P.A.),
Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge Steven D. Bell's Decision and Order Awarding Benefits (2022-BLA-05632) rendered on a subsequent claim¹ filed on August 21, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ credited Claimant with 15.22 years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c).³ The ALJ further found Employer failed to rebut the presumption and awarded benefits.

¹ Claimant filed five prior claims for benefits. Director's Exhibit 57. The record from his initial claim was destroyed pursuant to a document retention schedule, and he withdrew his second through fifth claims. *Id.* A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). The ALJ proceeded as if Claimant failed to establish any element of entitlement in his prior denied claim.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

³ 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); *see 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 the ALJ proceeded as if Claimant failed to establish any element of entitlement in the prior claim, Claimant had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of this claim. *Id.*

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption.⁴ Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

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).

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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).

⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 15.22 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-10.

⁵ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his most recent coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 7.

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).

The ALJ found total disability based on the pulmonary function study, medical opinion, and Claimant's treatment record evidence and the evidence as a whole.⁷ Decision and Order at 10-23. Employer argues the ALJ erred in finding Claimant established total disability based on the pulmonary function study evidence. Employer's Brief at 5-10.

The ALJ weighed three pulmonary function studies dated May 7, 2021, November 3, 2021, and June 28, 2023. Decision and Order at 11-14; Director's Exhibits 14, 22, 28; Employer's Exhibit 11. The May 7, 2021 and November 3, 2021 pulmonary function studies produced qualifying values, but the June 28, 2023 pulmonary function study produced non-qualifying values. Director's Exhibits 14, 22, 28; Employer's Exhibit 11. The ALJ found all three studies are valid. Decision and Order at 12-13. Because two of the three studies produced qualifying values, the ALJ found the preponderance of the pulmonary function testing supports total disability. *Id.*

Employer argues the ALJ erred in finding that the three studies are valid.⁸ Employer's Brief at 2, 6-9. We disagree.

When weighing pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards.⁹ 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle*

⁷ The ALJ found the arterial blood gas study evidence does not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii),(iii); Decision and Order at 11, 14.

⁸ Employer also argues the ALJ erred in failing to consider the November 2, 2020 qualifying pulmonary function study. Employer's Brief at 7. We disagree. The ALJ correctly noted Dr. Gaziano invalidated this study, and Claimant obtained the May 7, 2021 study as a replacement to complete his Department of Labor-sponsored complete pulmonary evaluation. Decision and Order at 12 n.72. Further, Employer has not explained how the error it alleges would affect the outcome of this case as this study supports Claimant's burden of proof. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

⁹ An ALJ must consider a reviewing physician's opinion regarding a miner's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

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); see *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984); 20 C.F.R. Part 718, Appendix B.

Employer argues the ALJ erred in finding the May 7, 2021 and June 28, 2023 pulmonary function studies are valid solely because no party challenged their validity. Employer's Brief at 6. As noted above, however, compliance with the quality standards is presumed and the party challenging the validity of a study has the burden to establish the results are unreliable. 20 C.F.R. §718.103(c); see *Vivian*, 7 BLR at 1-361. Because Employer does not allege it submitted evidence invalidating these studies, its argument has no merit.

Employer next argues the ALJ erred in finding the November 3, 2021 pulmonary function study is valid. Employer's Brief at 2, 7-8. We disagree. The ALJ did not credit Dr. Fino's opinion that Claimant did not put forth good effort when performing the November 3, 2021 study. Director's Exhibit 22 at 12; Employer's Exhibit 14 at 7. Dr. Fino noted Claimant had been diagnosed with the COVID-19 virus around the time of the study and that it affected his effort on the test. Employer's Exhibit 14 at 7. But the ALJ found the test itself does not include any notation of inadequate effort and Claimant had been hospitalized with COVID-19 months before the test so it did not occur soon after an acute respiratory illness. Decision and Order at 13. Because the ALJ's reasoning is rational, he permissibly found Dr. Fino did not adequately explain his basis for finding Claimant did not put forth good effort in performing this test. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); see *Clinchfield Coal Co. v. Director, OWCP [Vanderpool]*, 164 F.4th 342, 350-51 (4th Cir. 2026) (substantial evidence supports the ALJ's decision to credit pulmonary function study notwithstanding marginal deviation from quality standards); Decision and Order at 13. We therefore affirm the ALJ's finding that all three studies are valid. Decision and Order at 12-13.

Employer next argues the ALJ should have credited the non-qualifying June 28, 2023 study over the qualifying May 7, 2021 and November 3, 2021 studies because the non-qualifying study is the most recent by almost two years. Employer's Brief at 2, 8-9. We disagree.

The United States Court of Appeals for the Sixth Circuit, whose law applies in this case, has held it is irrational to credit evidence solely because of recency if the evidence indicates the miner's condition has improved. See *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993) (citing *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992)); see also *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-52-53 n.14 (2023). In explaining the

rationale behind the “later evidence rule,” the court reasoned a “later test or exam” is a “more reliable indicator of a miner’s condition than an earlier one” if “a miner’s condition has worsened” given the progressive nature of pneumoconiosis. *Woodward*, 991 F.2d at 319-20. Because the results of the tests do not conflict in such circumstances, “[a]ll other considerations aside, the later evidence is more likely to show the miner’s condition.” *Id.* But if “the tests or exams” show the miner’s condition has improved, the reasoning “simply cannot apply” because one must be incorrect -- “and it is just as likely that the later evidence is faulty as the earlier.” *Id.* Thus, because the miner’s condition allegedly improved, the ALJ correctly did not find the June 28, 2023 study more probative based only on its recency. *See Woodward*, 991 F.2d at 319-20; *Adkins*, 958 F.2d at 51-52; *Kincaid*, 26 BLR at 1-52-53; Decision and Order at 12-14. We therefore reject Employer’s argument to the contrary.

Employer finally contends Dr. Fino credibly explained why the June 28, 2023 study is most probative of the tests. Employer’s Brief at 8-9. Dr. Fino opined that the COVID-19 virus no longer diminished Claimant’s respiratory system when he performed this test but affected the results of the earlier qualifying tests. Employer’s Brief at 8-9; Director’s Exhibit 22; Employer’s Exhibit 14. He also asserted that Claimant’s cardiac condition caused the reduction in values seen on the May 7, 2021 and November 3, 2021 studies, but his use of medication started becoming effective thereafter, thus reflecting the absence of a respiratory impairment on the June 28, 2023 test. *Id.* Based on this reasoning, Employer contends the ALJ should have credited Dr. Fino’s opinion and found the June 28, 2023 study entitled to controlling weight. Employer’s Brief at 8-9.

As discussed above, the ALJ was not persuaded that the COVID-19 virus affected Claimant’s respiratory system because it occurred two months before the first qualifying study. Decision and Order at 12-13. Moreover, the ALJ was not required to credit Dr. Fino’s discussion with respect to the effect Claimant’s cardiac condition had on his respiratory impairment. The relevant inquiry with respect to total disability at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary impairment without the use of medication. The cause of the impairment is addressed at 20 C.F.R. §718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption at 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989).

Employer’s arguments thus 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). We affirm the ALJ’s finding that the pulmonary function study evidence supports a finding of total disability because two of the three studies are qualifying. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 14.

We also affirm the ALJ's finding that the medical opinion evidence and Claimant's treatment record evidence support total disability as Employer does not challenge it. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14-23. Finally, we affirm his finding that the evidence as a whole establishes total disability, 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232, and therefore Claimant invoked the Section 411(c)(4) presumption. As Employer does not challenge the ALJ's finding it failed to rebut the Section 411(c)(4) presumption, we affirm the finding. *Skrack*, 6 BLR at 1-711.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge