U.S. Department of Labor

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

BRB Nos. 23-0200 BLA
and 23-0200 BLA-A

PAUL G. CHAPMAN	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
APOGEE COAL COMPANY	)	
	)	
and	)	
	)	
ARCH RESOURCES	)	DATE ISSUED: 05/30/2024
	)	
Employer/Carrier-	)	
Respondents	)	
Cross-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	
	)	DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Denying Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Deana Lyn Istik (Gilliland Vanasdale Sinatra Istik Law Firm, LLC), Cranberry Township, Pennsylvania, for Claimant.[1]

Michael A. Pusateri and Patricia C. Karppi (Greenberg Traurig, LLP), Washington, D.C., for Employer and its Carrier.

David Casserly (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, 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, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and Employer and its Carrier (Employer) cross-appeal, Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2021-BLA-05572) rendered on a claim filed on February 1, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Apogee Coal Company (Apogee) is the responsible operator and Arch Coal, Incorporated (Arch) is the liable carrier. On the merits of entitlement, the ALJ credited Claimant with 24.81 years of coal mine employment in underground mines and surface mines in conditions substantially similar to underground mines but found he does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). He therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018), or establish entitlement under 20 C.F.R. Part 718. Thus, he denied benefits.

[1] Claimant's appeal and brief were filed by lay representative Lynda D. Glagola of Lungs at Work in McMurray, Pennsylvania. Subsequently, Deana Lyn Istik of Gilliland Vanasdale Sinatra Istik Law Firm, LLC, in Cranberry Township, Pennsylvania, entered her appearance as counsel for Claimant.

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

On appeal, Claimant argues the ALJ erred in finding he did not establish total disability. Employer responds in support of the denial and contends the ALJ erred in finding Claimant's coal mine employment is qualifying for purposes of invoking the Section 411(c)(4) presumption. The Director, Office of Workers' Compensation Programs (the Director), declined to file a response to Claimant's appeal.

On cross-appeal, Employer argues the ALJ erred in finding Arch is the liable carrier. Claimant did not file a response. The Director responds, urging the Benefits Review Board to affirm the ALJ's responsible carrier determination. In response to the Director, Employer reiterates its contentions.[3]

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.[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, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, a 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[5] and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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*

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 24.81 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 23.

[5] The ALJ found Claimant's usual coal mine employment was working as a heavy equipment operator, which required light to moderate exertion. Decision and Order at 7. As no party challenges this finding, we affirm it. *See Skrack*, 6 BLR at 1-711.

recon., 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant failed to establish total disability by any method.[6] 20 C.F.R. §718.204(b)(2); Decision and Order at 21-26.

Claimant contends the ALJ erred in weighing the medical opinion evidence. Claimant's Brief at 3-8.

The ALJ considered the opinions of Drs. Celko, Go, Sood, Zaldivar, and Rosenberg. Decision and Order at 12-19, 23-25. Drs. Celko, Go, and Sood opined Claimant is totally disabled by a respiratory or pulmonary impairment based on his diffusion capacity values. Director's Exhibits 15 at 1, 36; 20; Claimant's Exhibits 1; 1a; 3; 3a. Additionally, Dr. Celko opined Claimant's moderate obstructive ventilatory pattern seen on a pulmonary function study renders him totally disabled. Director's Exhibits 15 at 2, 36; 20 at 1-2. Drs. Zaldivar and Rosenberg opined Claimant is not disabled because the pulmonary function and blood gas studies are not qualifying; they also disputed the usefulness of diffusion capacity for measuring disability where the blood gas studies are not qualifying.[7] Director's Exhibit 18 at 13, 55; Employer's Exhibits 1; 2.

The ALJ found the opinions of Drs. Celko, Go, and Sood are inadequately explained and the opinions of Drs. Zaldivar and Rosenberg are reasoned and documented. Decision and Order at 25. Claimant argues the ALJ erred in discrediting the opinions of Drs. Celko, Go, and Sood. Claimant's Brief at 3-8. We agree.

Drs. Celko, Go, and Sood opined that diffusion capacity is a routine and acceptable method of measuring disability under the American Medical Association (AMA) guidelines. Director's Exhibits 15 at 1-2; 20 at 1-2; Claimant's Exhibits 1 at 9; 1a at 4; 3 at 14. Drs. Zaldivar and Rosenberg agreed with Drs. Celko, Go, and Sood that Claimant has a low diffusion capacity and an obstructive impairment in the form of emphysema. Director's Exhibits 15; 18 at 58, 62; Claimant's Exhibits 1; 3; Employer's Exhibits 1 at 4; 2 at 26; 14 at 11. However, they criticized the opinions of Drs. Celko, Go, and Sood for

[6] We affirm, as unchallenged, the ALJ's findings that the pulmonary function and arterial blood gas studies do not support total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 22-23.

[7] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

relying on diffusion capacity as a measure of disability where the exercise blood gas studies are non-qualifying. Employer's Exhibits 1 at 7; 2 at 25-26.

Specifically, Dr. Zaldivar opined Drs. Celko, Go, and Sood "may emphasize the diffusion as much as they wish, but the role of diffusion is not to be used as an absolute indicator of disability, but rather as an indicator a[s] to whether the blood gases may become abnormal during exercise." Employer's Exhibit 1 at 7. He stated the Department of Labor (DOL) uses blood gas studies as a measure of disability while the AMA relies on diffusion capacity as a surrogate for the blood gases, and "[o]nce the blood gases are measured and found to be normal, the result of the diffusion is superfluous." *Id.* Further, he opined that "not every patient with a low diffusion develops hypoxemia" and Claimant's low diffusion capacity with non-qualifying blood gas studies demonstrates that the etiology of his emphysema is smoking and not coal mine dust exposure. *Id.* at 2.

In his initial opinion, Dr. Rosenberg opined Claimant has a reduced diffusion capacity that is "undoubtedly relate[d] to the presence of a diffuse form of emphysema." Director's Exhibit 18 at 58, 61-62. In his first supplemental report, Dr. Rosenberg opined Claimant has a severely reduced diffusion capacity and a respiratory disability. Employer's Exhibit 2 at 9-11. In his second supplemental opinion, he stated his earlier opinion "should be corrected to state that [Claimant] does not have any pulmonary-related disability." *Id.* at 26. In that same opinion and in his subsequent deposition, he opined "gas exchange, particularly in association with exercise, is far superior to the diffusing capacity measurement in assessing disability," and blood gas studies are the best indicator of a person's work capacity from "among all the tests that are usually performed." Employer's Exhibits 2 at 26; 24 at 9-10. He testified that "diffusing capacity is a measurement of the ability for carbon monoxide to diffuse through the capillary membrane into the blood stream" and thus is "an indirect measure of what blood gases are actually measuring directly." *Id.* at 10. Finally, he maintained that Claimant has a low diffusion capacity which represents "a diffuse destruction of the alveolar capillary bed from diffuse emphysema." *Id.* at 18.

Dr. Go responded to Dr. Zaldivar's opinion "disregard[ing] the diffusion capacity measurements because [Claimant] had non-qualifying arterial blood gas tests." Claimant's Exhibit 1a at 4. He opined that using the AMA guides to consider diffusion capacity is a "widely accepted system to identify and rate the severity of [Claimant's] pulmonary impairment." *Id.* Further, he opined the non-qualifying November 13, 2019 blood gas study results do not exclude the presence of a pulmonary disability because they demonstrated Claimant "was only able to perform [fifty-one] watts of work," which is the equivalent of "light housework, such as making one's bed." *Id.*

Dr. Sood also gave a supplemental opinion after reviewing the opinions of Drs. Zaldivar and Rosenberg, stating that he does not agree Claimant's blood gas study results are normal. Claimant's Exhibit 3a at 6. He acknowledged they are not qualifying but opined they "demonstrate abnormally elevated alveolar-arterial gradient values, indicating inefficient gas exchange [] consistent with the abnormal diffusing capacity." *Id.*

The ALJ summarized the opinions of Drs. Zaldivar and Rosenberg and concluded their opinions are entitled to the most weight because they are "well-documented and well-reasoned." Decision and Order at 24-25. Considering the opinions of Drs. Celko, Go, and Sood, the ALJ found they "did not adequately explain why Claimant's reduced diffusion capacity result indicated that Claimant is totally disabled, in light of normal arterial blood gas studies and pulmonary function tests." *Id.* at 25. He further stated he gave "more weight to the exercising arterial blood gas studies than the diffusing capacity [testing] since the blood gases better represent an individual's potential disability in actually performing his job tasks, whereas diffusing capacity attempts to predict it." *Id.*

While the ALJ acknowledged the disagreement among the physicians about the use of diffusion capacity to measure disability where the blood gas studies are non-qualifying, and appears to have relied upon aspects of Drs. Zaldivar's and Rosenberg's rationales, he failed to explain why their opinions are reasoned and documented and entitled to more weight than the other medical opinions. Decision and Order at 25. As it is unexplained, his finding does not comport with the Administrative Procedure Act (APA),[8] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), and thus we cannot affirm it. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

The ALJ then erred by failing to explain why the opinions of Drs. Celko, Go, and Sood are not reasoned other than stating that Drs. Zaldivar and Rosenberg opined those doctors should not have relied on diffusion capacity to find disability where the exercise blood gas studies are not qualifying.[9] *See id.*; Decision and Order at 25.

[8] The APA 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 on the record . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[9] The ALJ also found "Dr. Rosenberg sufficiently addressed Dr. Sood's concerns regarding the A-a gradient in the November 13, 2019 arterial blood gas study," and "Dr. Sood did not provide a persuasive argument for why Claimant's peak oxygen consumption

Because the ALJ has not explained the basis for his finding that the opinions of Drs. Zaldivar and Rosenberg are reasoned and entitled to determinative weight over the opinions of Drs. Celko, Go, and Sood, we vacate his finding that the medical opinion evidence does not support a finding of total disability and that the evidence overall does not establish total disability. *See Addison*, 831 F.3d at 256-57; *Wojtowicz*, 12 BLR at 1-165; 20 C.F.R. §718.204(b)(2); Decision and Order at 25-26. Thus we vacate his finding Claimant did not invoke the Section 411(c)(4) presumption and the denial of benefits.

Qualifying Coal Mine Employment

In its response brief, Employer argues the ALJ erred in finding Claimant established fifteen or more years of qualifying coal mine employment for purposes of invoking the Section 411(c)(4) presumption. Employer's Reply Brief at 15-18. The Board will consider arguments raised for the first time in a response brief if they are in support of another method by which the ALJ may reach the same result. *See Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 370 (4th Cir., 1994); *Dalle Tezze v. Director, OWCP*, 814 F.2d 129, 133 (3d Cir. 1987); *Whiteman v. Boyle Land & Fuel Co.*, 15 BLR 1-11, 1-18 (1991) (en banc); *King v. Tenn. Consolidated Coal Co.*, 6 BLR 1-87, 1-92 (1983). Employer's argument does not meet this standard. Claimant could still establish entitlement to benefits even if he does not establish fifteen or more years of qualifying coal mine employment. Regardless, we reject Employer's argument on the merits.

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or in "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if [Claimant] demonstrates that [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479 (7th Cir. 2001).

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values should be favored over his non-qualifying exercising arterial blood gases." Decision and Order at 25. To the extent the ALJ discredited those portions of Dr. Sood's opinion because Dr. Rosenberg gave a differing opinion, we again cannot affirm his finding because, as discussed, he has not explained why Dr. Rosenberg's opinion is credible and entitled to more weight than Dr. Sood's opinion. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Wojtowicz*, 12 BLR at 1-165.

Employer asserts the ALJ erred in failing to assess whether Claimant's surface coal mine employment is qualifying. Employer's Reply Brief at 15-18. Employer's argument is unpersuasive.

The ALJ observed that all of Claimant's coal mine work was at surface mines except for the first four years when he worked in underground mines. Decision and Order at 5; Hearing Tr. at 23. He then discussed Claimant's testimony that he worked for Arch of West Virginia, West Virginia Tractor & Equipment, and Cedar Coal in the pits, which he testified were always dusty, sometimes to the point he could not see. Decision and Order at 4; Hearing Tr. at 24, 26-29. In addition, the ALJ discussed Claimant's testimony that he worked as a shuttle car operator for Arch of West Virginia, Cannelton Industries, and Old Hickory Coal and was regularly exposed to coal dust in that position. Decision and Order at 4; Hearing Tr. at 30-32. Thus the ALJ rationally found Claimant's uncontradicted testimony regarding his dust exposure is sufficient to show that he was regularly exposed to coal mine dust and we affirm his finding of at least fifteen years of qualifying coal mine employment. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *see also Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490 (6th Cir. 2014); Decision and Order at 4-8.

Employer's Cross-Appeal – Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Apogee is the correct responsible operator and was self-insured by Arch on the last day Apogee employed Claimant; thus we affirm these findings.[10] *See Skrack v Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 20. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer's Cross-Appeal Brief at 12-38. We disagree.

[10] Employer argues there is no insurance policy or self-insurance agreement establishing Arch's liability. Employer's Cross-Appeal Brief at 21. However, the Notice of Claim specifically identifies Arch as Apogee's insurance carrier, Director's Exhibit 22, and Employer's other arguments acknowledge that Arch was the self-insurer of Apogee at the time of Claimant's last date of employment. *See, e.g.*, Employer's Cross-Appeal Brief at 5, 34-35 (framing the decision to name Arch liable instead of Patriot as involving a choice between Apogee's last insurer or its insurer on the date of Claimant's last exposure to coal mine dust).

In 2005, after Claimant ceased his employment with Apogee, Arch sold Apogee to Magnum Coal (Magnum), and in 2008 Magnum was sold to Patriot. Employer's Cross-Appeal Brief at 5-6; Director's Brief at 1. On March 4, 2011, the DOL authorized Patriot to insure itself and its subsidiaries, retroactive to 1973. Employer's Cross-Appeal Brief at 6; Director's Brief at 1. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Apogee, Patriot later went bankrupt and can no longer provide for those benefits. Employer's Cross-Appeal Brief at 8; Director's Brief at 1. Nothing, however, relieved Arch of liability for paying benefits to miners last employed by Apogee when Arch owned and provided self-insurance to that company. Decision and Order at 20; Director's Brief at 1-2.

Employer raises several arguments to support its contention that Arch was improperly designated the responsible carrier in this claim and thus the Trust Fund, not Arch, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the ALJ evaluated Arch's liability for the claim as a responsible operator or commercial insurance carrier rather than as a self-insurer; (2) the Director did not prove that Arch's self-insurance covered Apogee for this claim; (3) without proof of coverage, the DOL improperly pierced Arch's corporate veil in holding it liable; (4) the sale of Apogee to Magnum released Arch from liability for the claims of miners who worked for Apogee, and the DOL endorsed this shift of liability; (5) the DOL's issuance of Black Lung Benefits Act (BLBA) Bulletin No. 16-01[11] reflects a change in policy through which the DOL retroactively imposed new liability on self-insured mine operators and bypassed traditional rulemaking in violation of the APA.[12] Employer's Cross-Appeal Brief at 13-38; Employer's Reply to the Director's Brief at 2-6.

[11] BLBA Bulletin No. 16-01 is a memorandum the Director of the Division of Coal Mine Workers' Compensation issued on November 12, 2015, to "provide guidance for district office staff in adjudicating claims" affected by Patriot's bankruptcy.

[12] Employer argues the DOL's policy is a retroactive change that amounts to an unlawful taking of its property, in violation of the Fifth Amendment to the United States Constitution. Employer's Cross-Appeal Brief at 37-38. As the Director correctly points out, requiring Employer to satisfy its liability under the Act by paying benefits does not constitute an unconstitutional taking of property. Director's Brief at 6, *citing W. Va. CWP Fund v. Stacy*, 671 F.3d 378 (4th Cir. 2011) ("the mere imposition of an obligation to pay money does not give rise to a claim under the Takings Clause").

Employer also contends that the ALJ did not adequately address its liability evidence or its challenges to BLBA Bulletin No. 16-01. Employer's Cross-Appeal Brief at 23, *citing Arch Coal, Inc. v. Acosta*, 888 F.3d 493 (D.C. Cir. 2018), 23-27; Employer's

The ALJ rejected Employer's arguments because, as he correctly found, the Board has previously considered and rejected these arguments under the same determinative facts in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022) (en banc); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-308-18 (2022); and *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289, 1-295-99 (2022); Decision and Order at 20. We reject employer's contentions and hold the ALJ properly applied *Bailey*, *Howard*, and *Graham*. *See Hill v. Director, OWCP*, 9 BLR 1-126, 1-127 n.1 (1986); Employer's Cross-Appeal Brief at 12-13. Thus we affirm the ALJ's determination that Apogee and Arch are the responsible operator and carrier, respectively, and are liable for this claim.

Remand Instructions

On remand, the ALJ must reconsider whether the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv). In rendering his credibility findings, he should weigh all the medical opinions and consider the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions.[13] *See Milburn Colliery v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Because the ALJ found Dr. Go is the most qualified physician but did not explain how that affected his weighing of the evidence, Decision and Order at 23; Employer's Reply Brief at 14-15, the ALJ should explain on remand what influence his finding has on his weighing of the medical opinions.[14]

Reply to the Director's Brief at 1. Even if Employer's contentions are true, we consider any error to be harmless because Arch's liability is established under the Act, regulations, and evidence – not the Bulletin. *See Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-317 (2022) (rejecting similar challenges to BLBA Bulletin No. 16-01); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[13] Employer argues that, on remand, the ALJ cannot rely on the preamble to the revised 2001 regulations without violating its due process rights because it was prevented from conducting discovery regarding the preamble. Employer's Reply Brief at 18. For the reasons set forth in *Johnson*, BLR , BRB No. 22-0022 BLA, slip op. at 8-9, we reject Employer's argument.

[14] To the extent Employer argues the ALJ should have found Drs. Rosenberg and Zaldivar are better credentialed, its argument amounts 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); Employer's Reply Brief at 14-15.

Additionally, the ALJ should consider that the regulations permit a physician to offer a reasoned medical opinion diagnosing total disability even though the objective studies, including blood gas studies, are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); *Cornett*, 227 F.3d at 587 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"). The ALJ must compare the exertional requirements of Claimant's usual coal mine employment to the physicians' descriptions of his pulmonary impairment and physical limitations. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); 20 C.F.R. §718.204(b)(2)(iv). In reaching his credibility determinations, the ALJ must set forth his findings in detail and explain his rationale in accordance with the APA. *See Wojtowicz,* 12 BLR at 1-165.

If the ALJ determines total disability is demonstrated by the medical opinions on remand, he must weigh all the relevant evidence together to determine whether Claimant is totally disabled. 20 C.F.R. §718.204(b)(2); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Rafferty,* 9 BLR at 1-232; *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), and the ALJ must then determine whether Employer rebutted it. *See* 20 C.F.R. §718.305(d)(1)(i), (ii); *see Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-150 (2015). If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26, 27 (1987).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge