U.S. Department of Labor

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

BRB Nos. 24-0399 BLA
and 24-0399 BLA-A

HANIE D. GILBERT Claimant-Petitioner v. STERLING MINING COMPANY, INCORPORATED Employer-Respondent Cross-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/16/2025 DECISION and ORDER

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

Hanie D. Gilbert, Lebanon, Virginia.

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

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

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

PER CURIAM:

Claimant appeals, without representation,[1] and Employer cross-appeals, Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2022-BLA-05282). This case involves a subsequent claim[2] filed on March 16, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

ALJ Applewhite (the ALJ) credited Claimant with at least 15.51 years of underground or substantially similar surface coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c),[3] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[4] However, she found Employer rebutted the presumption and denied benefits.

[1] On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the Administrative Law Judge (ALJ) Francine L. Applewhite's decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] Claimant filed five prior claims, the latter two of which he withdrew. Director's Exhibits 4, 5. Withdrawn claims are considered not to have been filed. 20 C.F.R. §725.306(b). On August 11, 2003, ALJ Mollie W. Neal denied Claimant's third claim because he failed to establish any element of entitlement. Director's Exhibit 3 at 3-14. Claimant did not appeal that decision.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, an ALJ must also deny the subsequent claim unless he or she 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 ALJ Neal denied Claimant's prior claim for failure to establish any element of entitlement, Claimant had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of this claim. *Id*.; Director's Exhibit 3.

[4] 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

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. In addition, on cross-appeal, Employer challenges the ALJ's findings that Claimant has 15.51 years of qualifying coal mine employment and a totally disabling pulmonary or respiratory impairment. The Acting Director, Office of Workers' Compensation Programs (the Director), submitted a consolidated response, arguing that the ALJ applied an incorrect standard in finding Employer rebutted the Section 411(c)(4) presumption of legal pneumoconiosis, but urging the Board to affirm the ALJ's determination as to the length of Claimant's coal mine employment. Claimant did not respond to Employer's cross-appeal.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). 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'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Claimant's Appeal

Rebuttal of the Section 411(c)(4) Presumption

Initially we address the basis for the ALJ's denial of benefits. Because the ALJ found Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis[6] or "no part of [his] respiratory

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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.

[5] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 8; Hearing Transcript at 11.

[6] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment that is significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer disproved the existence of both clinical and legal pneumoconiosis. Decision and Order at 14-18.

Legal Pneumoconiosis[7]

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the medical opinions of Drs. Nader, Fino, and Sargent. Decision and Order at 17 (unpaginated). Dr. Nader diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to Claimant's exposure to coal dust and cigarette smoke. Director's Exhibits 23, 25. Dr. Fino agreed that Claimant has COPD, but attributed it solely to asthma not caused by either coal dust or cigarette smoke. Claimant's Exhibit 2 at 11-12. Dr. Sargent diagnosed a waxing and waning obstructive ventilatory impairment, consistent with asthma, that is unrelated to coal dust exposure. Employer's Exhibit 1 at 2. After briefly summarizing the physicians' opinions, the ALJ accorded "some weight" to each opinion and found they do not support a finding of legal pneumoconiosis. Decision and Order at 17 (unpaginated). She therefore determined Employer rebutted the presumption of legal pneumoconiosis. *Id.* at 18 (unpaginated). We cannot affirm the ALJ's findings.

As the Director argues, the ALJ's analysis improperly places the burden on Claimant to establish legal pneumoconiosis,[8] rather than evaluates whether Employer met its burden to establish Claimant's coal dust exposure did not "significantly contribute to, or substantially aggravate," his obstructive impairment. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see O'Keeffe*, 880 F.3d at 699; *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 134-35 (4th Cir. 2015); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)

[7] Because we vacate the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, as discussed below, and therefore the burden may be on Claimant to establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a) on remand, we need not address whether the ALJ erred in finding Employer rebutted the presumption of clinical pneumoconiosis.

[8] The ALJ found the medical opinion evidence does not *support* a finding of legal pneumoconiosis. Decision and Order at 17 (unpaginated).

(en banc); Director's Brief at 5-6. Moreover, the Administrative Procedure Act (APA)[9] requires the ALJ to consider all relevant evidence in the record and to set forth her "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). While the ALJ summarized the opinions of Drs. Nader, Fino, and Sargent, she did not make any findings regarding the credibility of each opinion as to the role coal mine dust played in Claimant's obstructive disease, which all the physicians agreed is present. Decision and Order at 17 (unpaginated); Director's Exhibits 23, 25; Claimant's Exhibit 2 at 11-12; Employer's Exhibit 1 at 2. Because the ALJ provided no analysis of the physicians' opinions and failed to explain how she resolved the conflict in the evidence, her findings are not in compliance with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand). We therefore vacate the ALJ's findings that Employer established Claimant does not have legal pneumoconiosis and therefore rebutted the Section 411(c)(4) presumption. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4), 718.305(d)(1)(i)(A); Decision and Order at 17-18 (unpaginated). Further, we vacate the denial of benefits.

Employer's Cross-Appeal

We next address Employer's arguments on cross-appeal that the ALJ erred in determining Claimant established 15.51 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. Employer's Brief at 5-14.

Invocation of the Section 411(c)(4) Presumption

Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of

[9] The Administrative Procedure Act provides 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).

calculation and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In calculating the length of Claimant's coal mine employment, the ALJ considered Claimant's CM-911a Employment History Form and Social Security Administration (SSA) earnings record. Decision and Order at 6-7 (unpaginated); *see* Director's Exhibits 8, 11-13. She used two different methods for calculating the length of Claimant's coal mine employment. First, for the years prior to 1978, the ALJ credited Claimant with a quarter of a year of coal mine employment for each quarter in which he earned at least $50.00 from coal mine operators. Decision and Order at 6 (unpaginated); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 n.2 (1984). On this basis, she credited Claimant with 12.25 years of coal mine employment between 1962 to 1977. Decision and Order at 6 (unpaginated); *see* Director's Exhibits 11-13.

For the years 1978 through 1983, the ALJ compared Claimant's yearly earnings as reported in his SSA earnings record to the yearly earnings for miners who worked 125 days as set forth in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual* to determine whether Claimant's wages demonstrate full or partial calendar years of coal mine employment.[10] Decision and Order at 6-7 (unpaginated). Specifically, she divided Claimant's SSA-reported annual earnings by the coal mine industry's daily average as set forth in Exhibit 610 to calculate the number of days Claimant worked in coal mine employment for each year from 1978 through 1983. *Id.* at 7. For the years in which Claimant's earnings reflected at least 125 working days, the ALJ credited him with a full year of coal mine employment; for those years when his earnings reflected less than 125 working days, the ALJ credited him with a fractional year of coal mine employment by dividing the number of days he worked by 125. *Id.* at 6-7. Based on that method, the ALJ found Claimant established an additional 3.26 years of coal mine employment, for a total of 15.51. *Id.*

Employer asserts the ALJ erred in her use of the "quarter method" for determining Claimant's coal mine employment prior to 1978. Employer's Brief at 7-10. It also argues the ALJ erred in failing to assess whether Claimant's employment relationship from 1978 to 1982 lasted for full calendar years. *Id*. at 10-13. We agree, in part.

Initially, we reject Employer's argument that the ALJ erred in using the "quarter method" in calculating Claimant's length of coal mine employment for years prior to 1978.

[10] Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual* is titled *Average Earnings of Employees in Coal Mining* and sets forth the average "daily earnings" of miners and the "yearly earnings (125 days)" by year for employees in coal mining, as reported by the Bureau of Labor Statistics.

Employer's Brief at 7-10. Both the United States Court of Appeals for the Fourth Circuit and the Board have held it is reasonable to credit a miner for any quarter (in years prior to 1978) in which the record shows earnings of at least $50.00 in coal mine employment. *Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett*, 6 BLR at 1-841 n.2. Thus, we affirm the ALJ's determination that Claimant had 12.25 years of coal mine employment from 1962 to 1977. *Muncy*, 25 BLR at 1-27; Decision and Order at 6 (unpaginated).

In calculating Claimant's post-1977 coal mine employment, the ALJ divided his yearly earnings from coal mine employers set forth in his SSA earnings record by the coal mine industry's average daily earnings, crediting him with a full year of employment when he worked 125 days or more, and with partial periods of employment by dividing his working days by 125 to credit him with a portion of a year. Decision and Order at 6-7 (unpaginated). However, the Board has long interpreted Fourth Circuit case law to require the ALJ to first determine whether the miner was engaged in an employment relationship for a period of one calendar year, i.e., 365 days, or partial periods totaling one year. 20 C.F.R. §725.101(a)(32)(i); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007) (a one-year employment relationship must be established, during which the miner had 125 working days); *Armco, Inc. v. Martin*, 277 F.3d 468, 474-75 (4th Cir. 2002) (recognizing the 2001 amendments to the regulations require a one-year employment relationship during which the miner worked 125 days to establish a year of employment); *Clark*, 22 BLR at 1-280.

If the threshold one-year period is met, the ALJ must then determine whether the miner worked for at least 125 working days within that one-year period.[11] 20 C.F.R. §725.101(a)(32). Proof that a miner worked at least 125 days or that a miner's earnings exceeded the industry average for 125 days of work in a given year, however, does not satisfy the requirement that such employment occurred during a 365-day period and therefore, in itself, does not establish one full year of coal mine employment as defined in the regulations. *See Clark*, 22 BLR at 1-281. Because the ALJ did not make the necessary threshold determination, we vacate her determination that Claimant established 3.26 years of coal mine employment from 1978 to 1983 for a total of 15.51 years of coal mine employment. *Mitchell*, 479 F.3d at 334-36; Decision and Order at 6-7 (unpaginated).

[11] If the threshold one-year period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[,]" in which case the miner would be entitled to credit for one full year of coal mine employment. 20 C.F.R. §725.101(a)(32)(ii).

Thus, we vacate her finding that Claimant had at least fifteen years of coal mine employment and invoked the Section 411(c)(4) presumption.[12]

Total Disability

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 and arterial blood gas studies,[13] 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).

Pulmonary Function Studies

The ALJ considered four pulmonary function studies, dated March 4, 2020, August 6, 2020, April 21, 2021, and March 24, 2022. Decision and Order at 9 (unpaginated). Dr. Forehand's March 4, 2020 study produced qualifying results; bronchodilators were not administered. Director's Exhibit 29 at 16. Dr. Nader's August 6, 2020 study produced qualifying results both pre- and post-bronchodilator. Director's Exhibit 23 at 18. Dr. Fino's April 21, 2021 study produced non-qualifying results; bronchodilators were not administered. Employer's Exhibit 2. Dr. Sargent's March 24, 2022 study produced qualifying results pre-bronchodilator and non-qualifying results post-bronchodilator. Employer's Exhibit 1. Stating that she "f[ound] each physician qualified and afford[ed] their results equal weight, the preponderance of [pulmonary function study] evidence supports a finding of total disability." Decision and Order at 9 (unpaginated). She

[12] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's coal mine employment is qualifying in nature, i.e., it was performed in an underground mine or conditions substantially similar to those in underground mines. 20 C.F.R. §718.305(b)(1)(i); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8 (unpaginated).

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

therefore found Claimant established total disability by pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i). *Id.*

Employer argues the ALJ failed to consider Dr. Sargent's opinion that the March 24, 2022 post-bronchodilator pulmonary function study's results are not disabling after taking into account Claimant's age.[14] Employer's Brief at 13 (referencing Employer's Exhibits 1 at 2, 3 at 17-18). However, because the ALJ considered this study nonqualifying and Employer otherwise fails to explain the significance of its assertion, we reject Employer's argument. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Decision and Order at 9 (unpaginated). As Employer raises no other challenge to the ALJ's finding that the preponderance of pulmonary function studies supports total disability at 20 C.F.R. §718.204(b)(2)(i), we affirm it.

Arterial Blood Gas Studies

The ALJ correctly found the three arterial blood gas studies, dated August 6, 2020, April 21, 2021, and March 24, 2022, are non-qualifying for total disability. Decision and Order at 10 (unpaginated); Director's Exhibit 23; Employer's Exhibits 1, 2. Therefore, we affirm her finding that the arterial blood gas studies do not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 10 (unpaginated).

Cor Pulmonale

The ALJ correctly found that there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 11. Thus, Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

[14] The table values at 20 C.F.R. Part 718, Appendix B, do not go beyond seventy-one years of age. *See K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008) (absent contrary probative evidence, the values for a seventy-one-year-old miner listed in Appendix B of the regulations should be used to determine if miners over the age of seventy-one qualify as totally disabled). At the time Claimant performed the March 22, 2024 pulmonary function study, he was seventy-seven years old. Employer's Exhibit 1 at 2, 16.

Medical Opinions

The ALJ considered the opinions of Drs. Nader, Fino, and Sargent.[15] Decision and Order at 11-13. Dr. Nader opined Claimant is totally disabled based on his pulmonary function study results and clinical symptoms of chronic cough, wheezing, shortness of breath, and mucus expectoration. Director's Exhibits 23 at 3, 25. Dr. Fino opined Claimant's moderate respiratory impairment would prevent him from returning to his last mining job or one requiring similar effort. Claimant's Exhibit 2. Relying on Claimant's March 24, 2022 nonqualifying post-bronchodilator study, Dr. Sargent opined Claimant is not totally disabled and "has the respiratory capacity to do any job that a normal 77-year-old man would be considered able to do." Employer's Exhibits 1 at 2-3, 3 at 17. The ALJ noted all three physicians are qualified to offer an opinion and examined Claimant, while Drs. Nader and Sargent also reviewed the prior examination reports "and maybe medical records not in the record." Decision and Order at 13 (unpaginated). She summarily found each opinion "supported and reasoned" entitled to "some weight," and therefore concluded the medical opinion evidence supports a finding of total disability. *Id.*

We agree with Employer that the ALJ failed to adequately explain how she resolved the conflict in the experts' opinions. As Employer states, the ALJ's summary conclusion appears to impermissibly "count heads." *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016) (ALJ must weigh the quality, not just the quantity of evidence); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992) ("counting heads" is a "hollow" way to resolve conflicts in the evidence); Employer's Brief at 13. Because the ALJ provided no analysis of the physicians' opinions and failed to explain how she resolved the conflict in the evidence, we vacate her finding that Claimant failed to establish total disability based on medical opinion evidence. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 13. We therefore also vacate her finding that Claimant established total disability based on the record as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order 13.

Remand Instructions

On remand, the ALJ must determine the length of Claimant's coal mine employment taking into consideration the relevant evidence and using any reasonable method of calculation. *See Muncy*, 25 BLR at 1-27; *Kephart*, 8 BLR at 1-186. In doing so, and to the extent the evidence permits, she must ascertain the beginning and ending dates of Claimant's coal mine employment. 20 C.F.R. §725.101(a)(32)(ii). If the evidence is

[15] The ALJ also acknowledged multiple treatment records but noted they are silent on the issue of total disability. Decision and Order at 13 (unpaginated); *see* Claimant's Exhibits 3-5; Employer's Exhibits 5-7.

insufficient to establish the beginning and ending dates of Claimant's coal mine employment, the ALJ may, in her discretion, apply the formula at 20 C.F.R. §725.101(a)(32)(iii) to determine calendar years of coal mine employment. If the threshold finding of a calendar year is established, then she is to consider whether Claimant worked for 125 days during each one-year period.

The ALJ must then reconsider whether Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv). In doing so, she must take into consideration the exertional requirements of Claimant's usual coal mine work and determine whether the opinions of Drs. Nader, Fino, and Sargent are reasoned and documented. *See McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988) (ALJ must identify the miner's usual coal mine work and then compare evidence of the exertional requirements of the miner's usual coal mine employment with the medical opinions as to the miner's work capabilities). She must explain the weight she accords each opinion, giving consideration to the physicians' comparative credentials, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

The ALJ then must weigh all relevant evidence together to determine whether Claimant is totally disabled. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b)(2).

If Claimant establishes he has at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment, he will invoke the Section 411(c)(4) presumption, and the ALJ must then address whether Employer has rebutted the presumed fact that Claimant is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305. But if Claimant establishes a totally disabling respiratory or pulmonary impairment and less than fifteen years of coal mine employment, the ALJ must address whether Claimant can establish his entitlement under Part 718. If Claimant fails to establish total disability, an essential element of entitlement, the ALJ must deny benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

In rendering her findings on remand, the ALJ must explain her findings and credibility determinations in compliance with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

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

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge