

U.S. Department of Labor

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



BRB No. 25-0169 BLA

ROY LEE BREEDLOVE )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 CANADA COAL CORPORATION )  
 )  
 and )  
 )  
 ZURICH AMERICAN INSURANCE )  
 GROUP )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 05/07/2026

DECISION and ORDER

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

Leonard Stayton, Inez, Kentucky, for Claimant.

Robert P. Normann (Law Office of Cheryl Esposito Kaufman), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Denying Benefits (2020-BLA-05040) rendered on a subsequent claim filed on July 17, 2018,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Benefits Review Board for the third time.<sup>2</sup>

In her initial Decision and Order Denying Benefits, the ALJ accepted the parties' stipulation that Claimant had twenty-one years of qualifying coal mine employment. However, she found Claimant failed to establish a totally disabling respiratory or pulmonary impairment and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>3</sup> 30 U.S.C. §921(c)(4); 20 C.F.R. §718.204(b)(2). She also found Claimant failed to establish pneumoconiosis at 20 C.F.R. §718.202 and denied benefits.

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<sup>1</sup> Claimant filed two previous claims. On December 4, 2012, the district director denied his more recent previous claim because he failed to establish any element of entitlement. Director's Exhibit 1. When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied Claimant's prior claim for failure to establish any element of entitlement, he had to submit new evidence establishing at least one element in order to have the claim reviewed on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Director's Exhibit 1.

<sup>2</sup> We incorporate the procedural history of the case and the Board's prior holdings, as set forth in *Breedlove v. Canada Coal Corp.*, BRB No. 23-0463 BLA (June 13, 2024) (unpub.) and *Breedlove v. Canada Coal Corp.*, BRB No. 21-0335 BLA (June 23, 2022) (unpub.).

<sup>3</sup> 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); *see* 20 C.F.R. §718.305.

In consideration of Claimant’s first appeal, the Board affirmed the ALJ’s finding that Claimant established twenty-one years of qualifying coal mine employment and the evidence was insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *Breedlove v. Canada Coal Corp.*, BRB No. 21-0335 BLA, slip op. at 3 n.3, 4 n.8 (June 23, 2022) (unpub.). The Board, however, vacated the ALJ’s determination that the medical opinion evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 4-8. Thus, the Board vacated her finding that Claimant did not invoke the Section 411(c)(4) presumption and the denial of benefits and remanded the case for further consideration. *Id.* at 7-8.

In an August 9, 2023 Decision and Order on Remand Denying Benefits, the ALJ again found the medical opinion evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Consequently, she found Claimant failed to establish total disability based on the evidence as a whole and again denied benefits.

In consideration of Claimant’s second appeal, the Board again vacated the ALJ’s finding that the medical opinion did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Breedlove v. Canada Coal Corp.*, BRB No. 23-0463 BLA, slip op. at 5 (June 13, 2024) (unpub.). The Board held that the ALJ again failed to determine the exertional requirements of Claimant’s usual coal mine employment and failed to resolve the conflict in the medical opinions or sufficiently explain why she found them in equipoise. *Id.* Thus, the Board vacated her finding that Claimant did not invoke the Section 411(c)(4) presumption and the denial of benefits and remanded the case for further consideration. *Id.* at 5-6.

In a January 29, 2025 Decision and Order on Remand Denying Benefits (“Decision and Order on Remand”), the subject of the current appeal, the ALJ found Claimant’s usual coal mine employment occasionally required heavy labor. She once again, however, found the medical opinion evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Consequently, she found Claimant failed to establish total disability and again denied benefits.

In the present appeal, Claimant contends the ALJ erred in finding that he failed to establish total disability. Employer and its Carrier (Employer) respond in support of the denial of benefits. The Director, Office of Workers’ Compensation Programs, has not filed a response brief.

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.<sup>4</sup> 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).

### **Invocation of the Section 411(c)(4) Presumption: 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)(i). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.<sup>5</sup> *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,<sup>6</sup> 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 recon.*, 9 BLR 1-236 (1987) (en banc).

### **Medical Opinion Evidence**

The ALJ considered the medical opinions of Drs. Shah and Rosenberg. Decision and Order on Remand at 3-5 (unpaginated); Director’s Exhibit 16; Claimant’s Exhibit 1; Employer’s Exhibit 1. Dr. Shah opined Claimant’s objective testing results showed an “obstructive and restrictive ventilatory defect, mechanical ventilatory limitation to exercise, gas exchange abnormality[,] and diffusion abnormality with abnormal oxygen transfer.” Director’s Exhibit 16 at 6; Claimant’s Exhibit 1. Based on these results, she determined Claimant does not have the pulmonary capacity to continue the heavy and very

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<sup>4</sup> The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 10; Director’s Exhibit 6.

<sup>5</sup> The ALJ found Claimant’s usual coal mine employment, as an electrician and mechanic, “on occasion had a heavy exertional requirement.” Decision and Order on Remand at 3 (unpaginated). As this finding is unchallenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

<sup>6</sup> 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).

heavy manual labor required by his last coal mine employment. *Id.* Dr. Rosenberg opined Claimant has no obstruction or restriction and has a normal diffusion capacity. Employer's Exhibit 1 at 3-4. He therefore opined Claimant is not totally disabled from performing his previous coal mine work, and any exercise limitations are unrelated to a pulmonary disorder. *Id.*

Previously, the ALJ found both physicians equally qualified, and found their opinions well-documented and well-reasoned. Aug. 9, 2023 Decision and Order on Remand at 5 (unpaginated). She then summarily concluded that the medical opinions are in equipoise. *Id.*

The Board vacated the ALJ's findings as inadequately explained, holding she "did not critically analyze the physicians' explanations for their conclusions or the underlying documentation," or otherwise explain the bases for her findings. *Breedlove*, BRB No. 23-0463 BLA, slip op. at 5. Thus, the Board instructed the ALJ to resolve the conflicts in the evidence or explain her reasons for finding the medical opinion evidence in equipoise. *Id.*

On remand, the ALJ again noted the physicians were qualified to offer a medical opinion, and then summarily stated:

Each qualified physician considered the results of the Claimant's medical testing and whether the non-qualifying results nonetheless show an ability to perform the Claimant's prior coal mine employment. Drs. Shah and Rosenberg issue opposite opinions on total disability in this regard. Evaluating each opinion, I find them both well documented and well-reasoned. Affording both opinions full weight, I find them in equipoise. I find that the reasoned medical opinion evidence does not establish total disability.

Decision and Order on Remand at 4-5 (unpaginated).

Claimant contends the ALJ failed to properly consider whether he is totally disabled in accordance with the Board's remand instructions and asserts her discussion of the medical opinion evidence is almost identical to her previous findings. Claimant's Brief at 16-21. We agree.

The Board previously instructed the ALJ to:

determine whether the opinions of Drs. Shah and Rosenberg are well-reasoned and documented, explaining the weight she accords each medical opinion based on her consideration of the physicians' comparative credentials, their understanding of the exertional requirements of Claimant's

usual coal mine work, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions.

*Breedlove*, BRB No. 23-0463 BLA, slip op. at 6.

However, on remand, the ALJ's only additional discussion of the medical opinion evidence is a single sentence indicating the physicians "considered the [non-qualifying] results of the Claimant's medical testing" to determine whether he is totally disabled. Decision and Order on Remand at 4-5 (unpaginated); Claimant's Brief at 16. Once again, the ALJ did not critically analyze the physicians' explanation for why they determined whether or not Claimant has a totally disabling pulmonary or respiratory impairment that would render him unable to perform the exertional requirements of his usual coal mine employment. Contrary to the Board's instructions, the ALJ specifically failed to analyze the physicians' understanding of the exertional requirements of Claimant's usual coal mine work, the explanations for their medical findings, the documentation underlying their medical opinions, and the sophistication of, and bases for, their conclusions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Consequently, the ALJ's findings do not comply with the explanatory requirements of the APA or the Board's remand instructions.<sup>7</sup> *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53, 255-56 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support her conclusion and render necessary credibility findings); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); 20 C.F.R. §718.204(b)(2)(iv); *see also Breedlove*, BRB No. 23-0463 BLA, slip op. at 5.

As the Board previously noted, while a claimant fails to meet his burden of proof when the evidence is equally balanced, the ALJ must nevertheless explain her rationale for reaching that conclusion. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 279-81 (1994); *Breedlove*, BRB No. 23-0463 BLA, slip op. at 6. The mere fact that the relevant evidence may be conflicting does not authorize the ALJ to declare Claimant failed to establish total disability. *See generally Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010) (If the ALJ cannot "identify the more probable of the disputed

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<sup>7</sup> When the Board remands a case, the ALJ must comply with its instructions and "implement both the letter and spirit of the mandate." *See Edd Potter Coal Co. v. Dir., OWCP [Salmons]*, 39 F.4th 202, 210 (4th Cir. 2022) (quoting *United States v. Bell*, 5 F.3d 64, 66 (4th Cir. 1993)); *see also Scott v. Mason Coal Co.*, 289 F.3d 263, 267 (4th Cir. 2002).

expert opinions,” then she “has a duty to explain, on scientific grounds, why a conclusion cannot be reached. Merely stating the evidence is ‘evenly balanced, and should receive equal weight,’ without further explanation, is not sufficient.”) (citations omitted); *Wojtowicz*, 12 BLR at 1-165. It is the ALJ’s duty to evaluate conflicting evidence, draw appropriate inferences, and assess probative value. *See Hicks*, 138 F.3d at 533; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Because the ALJ did not properly resolve the conflict in the medical opinions or adequately explain her findings, we must vacate her determination that the medical opinion evidence does not establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 5 (unpaginated).

Based on the foregoing errors, we vacate the ALJ’s finding that Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the evidence as a whole. Consequently, we vacate her conclusion that Claimant failed to invoke the Section 411(c)(4) presumption and the denial of benefits.

### **Remand Instructions**

On remand, the ALJ must reconsider whether the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv). The ALJ must resolve the conflict in the medical opinion evidence by addressing the physicians’ comparative credentials, their understanding of the exertional requirements of Claimant’s usual coal mine work, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. In making their credibility determinations, the ALJ must set forth their findings in detail and explain their rationale in accordance with the APA’s requirements. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

The ALJ must then weigh all relevant evidence together to determine whether Claimant is totally disabled. 20 C.F.R. §718.204(b)(2); *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 invoke the Section 411(c)(4) presumption, and the ALJ must then consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1)(i), (ii). If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Accordingly, the ALJ's Decision and Order on Remand Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration in accordance with this opinion and the Board's prior opinions in this case.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge