U.S. Department of Labor

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

BRB Nos. 25-0170 BLA
and 25-0170 BLA-A

ROGER L. MCCOY

Claimant-Petitioner
Cross-Respondent

v.

OSAKA MINING CORPORATION c/o ANR, INCORPORATED/CONTURA ENERGY

and

AIP/GALLAGHER BASSETT SERVICES INCORPORATED

Employer/Carrier-Respondents
Cross-Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 05/27/2026

DECISION and ORDER

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

D. Allison Mullins (Allison Mullins Attorney at Law), Birchleaf, Virginia, for Claimant.

John R. Sigmond and Jason A. Mullins (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer and its Carrier.

Amanda Torres (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, JONES and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals and Employer and its Carrier (Employer) cross-appeal Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2022-BLA-05500) rendered on a claim filed on July 30, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant had 21.53 years of underground coal mine employment and established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4). However, she found Employer rebutted the presumption and denied benefits.

On appeal, Claimant argues the ALJ erred in finding Employer rebutted the presumption. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), urges the Benefits Review Board to vacate the ALJ's finding that Employer rebutted the Section 411(c)(4) presumption.

On cross-appeal, Employer argues the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment. Claimant responds, asserting the Board should affirm the ALJ's finding that Claimant is totally disabled. The Director did

[1] 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); *see* 20 C.F.R. §718.305.

not respond to Employer's cross-appeal. Employer filed a reply to Claimant's brief reiterating its contentions.[2]

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, 361-62 (1965).

Claimant's Appeal

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,[4] or "no part of [his] respiratory 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); *Wolf Run Mining Co. v. Director, OWCP* [*Baisden*], 172 F.4th 304, 308 (4th Cir. 2026); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8. (2015). The ALJ found Employer disproved the existence of both clinical and legal pneumoconiosis and therefore did not reach the question of whether Employer established that no part of his respiratory or pulmonary total disability was caused by pneumoconiosis. Decision and Order at 13-14. Claimant contends the ALJ

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 21.53 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

[3] 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); Director's Exhibit 3.

[4] "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). "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).

erred in finding Employer disproved the existence of legal pneumoconiosis.[5] Claimant's Brief at 1-3 (unpaginated).

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." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 695 (4th Cir. 2018); *Minich*, 25 BLR at 1-155 n.8.

The ALJ considered the medical opinions of Drs. Rajbhandari, Fino, and Sargent. Decision and Order at 13-14. Dr. Rajbhandari diagnosed Claimant with legal pneumoconiosis in the form of chronic obstructive pulmonary disease due to coal mine dust exposure. Director's Exhibit 12 at 3. Dr. Fino opined Claimant does not have legal pneumoconiosis as he did not find credible evidence of a lung disease or impairment. Director's Exhibit 18 at 10; Employer's Exhibits 2 at 31; 3 at 1-2. Dr. Sargent diagnosed Claimant with a mild-to-moderate restrictive ventilatory impairment related to his obesity but not related to coal mine dust exposure. Employer's Exhibit 1 at 2.

After briefly summarizing the physicians' opinions, the ALJ summarily found Drs. Rajbhandari, Fino, and Sargent are qualified to render an opinion and their opinions are entitled to "some weight." Decision and Order at 14. She then concluded that Employer demonstrated Claimant does not suffer from legal pneumoconiosis based on the preponderance of the overall reasoned medical opinion evidence. *Id.*

The Director argues the ALJ's findings do not comply with the Administrative Procedure Act (APA) as she failed to provide any explanation for her conclusion that all three opinions are entitled to equal weight and are sufficient to rebut the presumption of legal pneumoconiosis. *See* Director's Brief at 2; Decision and Order at 13-14. We agree.

The APA 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). Here, the ALJ summarily credited the opinions of each of the physicians—one who found no disease or impairment, one who found a respiratory impairment due to a nonpulmonary disease, and one who found a respiratory impairment due to coal mine dust exposure. Decision and Order at 14. The ALJ's unexplained finding that these

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Employer disproved the existence of clinical pneumoconiosis. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 13.

contradictory opinions are all entitled to "some weight" and her apparent reliance on a head count of contrary opinions is an insufficient basis to find Employer has rebutted the existence of legal pneumoconiosis and is not adequately explained as the APA requires. *See Wojtowicz*, 12 BLR at 1-165; *see* also *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); Decision and Order at 14. The ALJ has a duty to resolve any conflicts in the evidence and explain her basis for doing so. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803 (4th Cir. 1998); *Wojtowicz*, 12 BLR at 1-165. We therefore vacate the ALJ's finding that Employer established Claimant does not have legal pneumoconiosis as well as her determination that Employer rebutted the Section 411(c)(4) presumption.[6] 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 14. Consequently, we vacate the denial of benefits.

Employer's Cross-Appeal

We next address Employer's argument on cross-appeal that the ALJ erred in determining Claimant established a totally disabling respiratory or pulmonary impairment. Employer's Brief at 5-11.

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 or arterial blood gas studies,[7] evidence of pneumoconiosis and cor

[6] The ALJ found the medical opinion evidence "preponderantly weighs against establishing legal pneumoconiosis." Decision and Order at 14. To the extent the ALJ improperly placed the burden on Claimant to establish legal pneumoconiosis, this was error. It is Employer's burden to establish Claimant's coal mine dust exposure did not "significantly contribute to, or substantially aggravate," his obstructive impairment. *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 695 (4th Cir. 2018); 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 14.

[7] 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).

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). The ALJ found Claimant established total disability based on the pulmonary function study evidence.[8] Decision and Order at 11.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated April 27, 2021, November 3, 2021, and February 21, 2023. Decision and Order at 9. The April 27, 2021 and November 3, 2021 studies produced qualifying results before and after the administration of bronchodilators. Director's Exhibits 11 at 9; 18 at 15. The February 21, 2023 study produced non-qualifying results before the administration of bronchodilators but qualifying results after bronchodilators. Employer's Exhibit 1 at 16. Stating "all but one of [Claimant's] results meet [Department of Labor] standards for total disability," the ALJ found the pulmonary function testing established total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 9.

Employer argues the ALJ erred in weighing the pulmonary function studies because she failed to consider all relevant evidence and failed to consider the validity of the studies. Employer's Brief at 5. We agree.

Initially, the record contains a non-qualifying pulmonary function study dated December 7, 2015, included in Claimant's treatment records, which the ALJ did not consider. Employer's Exhibit 11 at 1; *see* Employer's Brief at 9. Further, the ALJ failed to address Dr. Fino's opinions that all the pulmonary function testing is invalid because Claimant did not give maximum effort when exhaling or inhaling and that his November 3, 2021 study was invalid because of a "premature termination to exhalation and a lack of reproducibility in the expiratory tracings." *See* Director's Exhibit 18 at 7; Employer's Exhibit 2 at 15-16, 19, 24; Employer's Brief at 6-8. She also failed to address Dr. Sargent's opinion that the pulmonary function testing is invalid, likely underestimating Claimant's "true lung function," and that Claimant was unable to generate reproducible results during

[8] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant did not establish total disability based on the arterial blood gas studies and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 8-9.

his February 21, 2023 study. *See* Employer's Exhibit 1 at 1-2, 15; Employer's Brief at 7-8.

Because the ALJ did not consider the December 7, 2015 pulmonary function study and assess relevant conflicting evidence regarding the validity of the pulmonary function studies, we vacate her finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(i). *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *Addison*, 831 F.3d at 252-53; *McCune*, 6 BLR at 1-998; Decision and Order at 16.

Medical Opinions

The ALJ also considered the medical opinions of Drs. Rajbhandari, Fino, and Sargent. Decision and Order at 10-11. Dr. Rajbhandari opined Claimant is totally disabled from performing his last coal mine job based on his pulmonary function study results demonstrating reduced to significantly reduced FEV1, FVC, MVV and diffusion capacity values as well as a significantly reduced exercise tolerance with complaints of cough, wheezing, and phlegm production. Director's Exhibit 3 at 3. Dr. Fino opined Claimant is not totally disabled because "there is no valid objective evidence to show any respiratory impairment or pulmonary disability." Director's Exhibit 18 at 10. Dr. Sargent diagnosed Claimant with a mild-to-moderate restrictive impairment but opined that he "doubts" that Claimant is totally disabled because the pulmonary function test results underestimate his lung capacity. Employer's Exhibit 1 at 1-2. The ALJ noted all three physicians are qualified to offer an opinion and found Claimant's usual coal mine work required heavy labor.[9] Decision and Order at 11. She then summarily found each opinion documented, well-reasoned, and entitled to "some weight," and concluded the medical opinion evidence does not support a finding of total disability. *Id.*

Employer argues that the ALJ provided no analysis of the physicians' opinions and failed to explain why she found Dr. Rajbhandari's opinion reasoned, documented, and sufficient to establish total disability, as the APA requires. Employer's Brief at 9-10; Decision and Order at 11.

Employer misreads the ALJ's decision. She found that the medical opinions do not support a finding of total disability. Decision and Order at 11. Employer, however, is correct that the ALJ set forth no analysis for why she found Dr. Rajbhandari's disability

[9] The ALJ found Claimant's usual coal mine work setting timbers, lifting roof bolts, hanging curtains and cables, climbing ladders, and rock dusting required heavy exertion. Decision and Order at 11 (citing Hearing Transcript at 10-12, 19-20; Director's Exhibit 4). Because the ALJ's finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 11.

opinion to be documented and well-reasoned. Because the ALJ provided no analysis, the Board also vacates her weighing of the medical opinions at 20 C.F.R. §718.204(b)(2)(iv).[10] *See Wojtowicz*, 12 BLR at 1-165. We therefore also vacate her findings that Claimant established total disability based on the record as a whole and invoked the Section 411(c)(4) presumption. *See* 20 C.F.R. §§718.204(b)(2), 718.305; Decision and Order 11.

Remand Instructions

On remand, the ALJ must reconsider whether the pulmonary function study evidence establishes a total respiratory or pulmonary disability at 20 C.F.R. §718.204(b)(2)(i). The ALJ must consider all the pulmonary function studies in the record, including the December 7, 2015 study. *See* Employer's Exhibit 11. In weighing the pulmonary function study evidence, the ALJ must first resolve the conflicting evidence regarding the validity of the studies, including the validity opinions of Drs. Fino and Sargent. *See Addison*, 831 F.3d at 256-57; *McCune*, 6 BLR at 1-998. In assessing the validity of pulmonary function studies, the ALJ must determine whether the claim-developed studies are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c).[11] *Clinchfield Coal Co. v. Director, OWCP* [*Vanderpool*], 164 F.4th 342, 350 (4th Cir. 2026). The ALJ must then weigh the studies together to determine if they support total disability, undertaking a qualitative and quantitative analysis of the

[10] To the extent the ALJ's weighing of the medical opinion evidence was based on her evaluation of the pulmonary function studies, which we have vacated, we also vacate her weighing of the medical opinions, but because the ALJ provided no analysis, the basis for her finding is unclear.

[11] "In the absence of evidence to the contrary, compliance with the [regulatory quality standards] shall be presumed." 20 C.F.R. §718.103(c). 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 quality standards, however, do not apply to pulmonary function studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101, 718.103; *see J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). The ALJ must still determine, however, if treatment record pulmonary function studies are sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. *Clinchfield Coal Co. v. Director, OWCP* [*Vanderpool*], 164 F.4th 342, 350 (4th Cir. 2026); 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

evidence and providing an adequate rationale for how the ALJ resolves conflicts in the evidence. 20 C.F.R. §718.204(b)(2)(i); *Wojtowicz*, 12 BLR at 1-165.

The ALJ must also reevaluate the medical opinions of Drs. Rajbhandari, Fino, and Sargent on the issue of total disability, taking into consideration their findings regarding the objective studies and comparing the exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and physical limitations.[12] *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); 20 C.F.R. §718.204(b)(2)(iv). Specifically, the ALJ must explain the weight accorded to each opinion, giving consideration to 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. *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). If the ALJ finds total disability established based on either the pulmonary function study or medical opinion evidence, they must weigh all of the relevant evidence together to determine whether Claimant has established total disability. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198.

If Claimant establishes total disability, he will have invoked the Section 411(c)(4) presumption and the ALJ must then reconsider whether Employer has rebutted it. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305. 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 their findings on remand, the ALJ must consider all relevant evidence and explain their 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.

[12] On remand, the ALJ should also address Claimant's arguments that Drs. Fino's and Sargent's medical opinions on the issue of total disability are entitled to less weight due to bias and an inadequate understanding of the exertional requirements of Claimant's usual coal mine employment, in contrast to Dr. Rajbhandari's medical opinion. Claimant's Brief at 2-3 (unpaginated).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge