

U.S. Department of Labor

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



BRB No. 25-0178 BLA

JUDY CAMPBELL)
(o/b/o JOHNNY W. CAMPBELL))
))
Claimant-Petitioner)
))
v.)
))
SMITH BROTHERS EXCAVATING)
))
Employer-Respondent)
))
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 of the Decision and Order Denying Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Judy Campbell, Manchester, Kentucky.

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

PER CURIAM:

Claimant¹ appeals, without representation,² Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Denying Benefits (2022-BLA-05804) rendered on a miner's claim³ filed on February 9, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. Further, she accepted the parties' stipulation that the Miner worked eleven years in coal mine employment and therefore found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,⁴ 30 U.S.C. §921(c)(4). Considering the claim without the benefit of a presumption under 20 C.F.R. Part 718, the ALJ found the Miner did not have a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). Thus, as she found Claimant failed to establish an essential element of entitlement, she denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Neither the Employer nor the Director, Office of Workers' Compensation Programs, have filed response briefs.⁵

¹ Claimant is the widow of the Miner, who died on April 10, 2022, while his claim was pending. Director's Exhibit 13. Claimant is pursuing this claim on behalf of the Miner's estate. *Id.*

² On Claimant's behalf, Robin Napier, a lay representative with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

³ The Miner filed a previous claim but subsequently withdrew it. Director's Exhibits 1, 3. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

⁴ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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.

⁵ Employer filed a letter with the Board, dated January 19, 2026, stating no response was necessary at the time, but that it may file a brief upon the Board's acknowledgment it

In an appeal a claimant files without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁶ 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions⁷ may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any one of these elements precludes an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁸ evidence of

received the record from the Office of Administrative Law Judges. Notwithstanding, Employer has not filed a response brief or sought an extension of time to do so.

⁶ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 5; Hearing Transcript at 15.

⁷ Because the ALJ correctly found the record contains no evidence of complicated pneumoconiosis, we affirm her finding that Claimant is unable to invoke the irrebuttable presumption at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); *see* 20 C.F.R. §718.304; Decision and Order at 3 n.4.

⁸ A "qualifying" pulmonary function study or arterial blood gas study yields values 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 exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

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). The ALJ determined Claimant failed to establish the Miner was totally disabled by any method.⁹ Decision and Order at 13-16; 20 C.F.R. §718.204(b)(2).

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated October 12, 2021, January 12, 2022, and March 2, 2022. Decision and Order at 7-8; Director's Exhibits 15, 21, 24. Because the studies reported different heights, the ALJ permissibly averaged them to find the Miner was 70.6 inches tall. *See Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); Decision and Order at 8 n.7. The October 12, 2021 study produced qualifying values before and after the administration of bronchodilators, while the March 2, 2022 study produced non-qualifying values before and after the administration of bronchodilators. Director's Exhibits 15 at 8-11; 24 at 3-4. The January 12, 2022 study, obtained during the Miner's treatment, resulted in non-qualifying values; bronchodilators were not administered. Director's Exhibit 21 at 3.

We affirm the ALJ's determination that the preponderance of the pulmonary function study evidence is non-qualifying and thus does not support a finding of total disability as rational and supported by substantial evidence. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 13. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

Cor Pulmonale with Right-Sided Congestive Heart Failure

Relevant to whether Claimant can establish total disability at 20 C.F.R. §718.204(b)(2)(iii), the record contains x-ray, treatment record, and medical opinion evidence. In his interpretation of the October 12, 2021 x-ray, Dr. Tarver found no evidence of clinical pneumoconiosis, but reported findings of "cardiomegaly,¹⁰ likely with cor

⁹ The ALJ accurately determined none of the arterial blood gas studies produced qualifying values. Director's Exhibits 15, 24; Decision and Order at 8-9, 13. Thus, we affirm her determination that the arterial blood gas study evidence does not support total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 13.

¹⁰ "Cardiomegaly" is "abnormal enlargement of the heart from either hypertrophy or dilatation." Dorland's Illustrated Medical Dictionary 294 (32d ed. 2012).

pulmonale.” Director’s Exhibit 23 at 2. While not specifying cor pulmonale, Dr. Meyer similarly noted an “enlarged cardiac silhouette” with findings of pulmonary hypertension. Director’s Exhibit 22. Dr. Forehand’s x-ray interpretation also noted an “enlarged cardiac silhouette.” Director’s Exhibit 15. The Miner’s treatment x-rays also consistently noted cardiomegaly or an enlarged cardiac silhouette. Director’s Exhibit 21 at 5, 24, 30, 31. Also of record is a January 28, 2020, computed tomography (CT) scan of the Miner’s abdomen obtained during his treatment which notes “enlargement of the right atrium and right ventricle,” and cardiomegaly. Director’s Exhibit 21.

Based on his testing and examination of the Miner on behalf of the Department of Labor, Dr. Forehand diagnosed restrictive lung disease, attributing it to coal dust exposure, obesity, and congestive heart failure. Director’s Exhibit 15. Dr. Tuteur also opined the Miner’s abnormalities were due to congestive heart failure but unrelated to coal mine dust exposure. Director’s Exhibit 24; Employer’s Exhibit 4. He indicated that the Miner had congestive heart failure “presumably due to hypertension” which led to “right sided failure with pulmonary hypertension.” Director’s Exhibit 24 at 2; *see also* Employer’s Exhibit 4 at 2-3. Dr. Rosenberg opined the Miner had pulmonary hypertension secondary to left-sided heart failure. Employer’s Exhibit 3 at 5. Dr. Hays listed “congestive heart failure with right heart failure” as one of the discharge diagnoses in his May 8, 2017 discharge summary included in the Miner’s treatment records. Director’s Exhibit 21 at 13.

In her analysis of the record, the ALJ noted Dr. Tarver’s October 12, 2021 x-ray interpretation and Dr. Hays’s discharge summary report. Decision and Order at 13. She indicated that while the record contains “extensive documentation” regarding the Miner’s lung and heart conditions, these are the only two references to cor pulmonale or a “right-sided heart condition,” and she found them insufficient to establish the Miner had cor pulmonale with right-sided congestive heart failure. Decision and Order at 13.

Cor pulmonale is “heart disease due to hypertension secondary to disease of the blood vessels of the lungs.” *See Newell v. Director, OWCP*, 13 BLR 1-37, 1-39 (1989) (internal citations omitted). When pulmonary hypertension is severe, it may cause right-sided heart failure. *See id.*; 20 C.F.R. §718.204(b)(2)(iii).

While the ALJ is correct that only Dr. Tarver referred to cor pulmonale by name, Dr. Meyer noted findings of pulmonary hypertension on x-ray and Drs. Rosenberg and Tuteur also noted pulmonary hypertension in their medical opinions. Director’s Exhibits 22-24; Employer’s Exhibits 3, 4. In addition, Dr. Hays’s discharge summary is not the only reference to right-sided heart disease. All the physicians providing medical opinions opined that the Miner had congestive heart failure, with Dr. Tuteur specifying that Claimant had right-sided heart failure with pulmonary hypertension. Director’s Exhibits 15, 24; Employer’s Exhibits 3, 4. Further, as the ALJ noted but did not address in her analysis, a

2020 treatment CT scan indicated that the Miner's right atrium and ventricle were enlarged. Director's Exhibit 21. As the ALJ failed to consider all the relevant evidence when arriving at her conclusions, we vacate her determination that the evidence is insufficient to establish the Miner had cor pulmonale with right-sided congestive heart failure and thus cannot establish total disability at 20 C.F.R. §718.204(b)(2)(iii). *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand).

Further, even if the ALJ was correct that only Dr. Tarver's x-ray reading and Dr. Hays's discharge summary identified either cor pulmonale or a "right-sided heart condition," she did not explain why this evidence was insufficient to establish cor pulmonale with right-sided congestive heart failure, particularly given the "extensive documentation" in the Miner's treatment records that consistently noted congestive heart failure and an enlarged heart. *See Martin*, 400 F.3d at 305 (ALJ must adequately explain her reasoning for crediting or discrediting evidence); Decision and Order at 13. Thus, we vacate the ALJ's determination that Claimant cannot establish the Miner was total disabled under 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 13.

Medical Opinions

In assessing total disability, an ALJ must determine the exertional requirements of a miner's usual coal mine work and then consider them in conjunction with the medical opinions. *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000). A miner's usual coal mine employment is the most recent job he performed regularly and over a substantial period of time. *Pifer v. Florence Mining Co.*, 7 BLR 1-153, 1-155 (1985); *Daft v. Badger Coal Co.*, 7 BLR 1-124, 1-127 (1984); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

Before weighing the medical opinions, the ALJ addressed the exertional requirements of the Miner's last coal mine work as a coal truck driver. She considered the Miner's Employment History Form CM-911a (CM-911a), Description of Coal Mine Work Form 913 (CM-913), Coal Truck Driver Questionnaire, Employer's Questionnaire, the Miner's deposition testimony, and Claimant's hearing testimony. Decision and Order at 3-6.

On his CM-911a form, the Miner stated his last coal mine job was working as a truck driver and worker at the tippie. Director's Exhibit 4 at 1. On his CM-913 form, the Miner indicated this job entailed loading trucks, hauling coal to processing plants, and general maintenance at the coal tippie. Director's Exhibit 5 at 1. For the exertional requirements, he noted sitting for eight to twelve hours and standing for one to two hours

daily, but did not report any crawling, lifting, or carrying. *Id.* at 1. On both questionnaires, he indicated his duties consisted of driving a truck, as well as hauling and unloading coal from the strip job to the tipple. Director's Exhibits 33; 35 at 4. He further explained that when there was no coal at the strip job, he performed labor at the tipple including cleaning the hopper, loading coal trucks at the tipple, and performing general maintenance on the coal tipple. Director's Exhibit 35 at 4. During his deposition, the Miner testified, with Claimant's assistance, that he drove a truck hauling coal, ran a loader, and "clean[ed] the mines." Director's Exhibit 48 at 20-21. Claimant also testified at the hearing that the Miner's last job was as a coal truck driver. Hearing Transcript at 11. She described additional duties as "climb[ing] on the coal tipple" to ensure the belt carrying coal was running. *Id.* at 12-13.

The ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc).

Here, the ALJ found Claimant's various statements during the hearing such as: "as I understood it" and "I was never there" rendered her testimony uncertain. Decision and Order at 5; Hearing Tr. at 12-13. She also found the Miner's deposition testimony regarding his employment unclear. Decision and Order at 5; Director's Exhibit 48. But she found the information contained in the CM-913 form and in both questionnaires were "relatively consistent." Decision and Order at 5-6. Thus, the ALJ permissibly found the Miner's written descriptions of his last job are consistent and thus more reliable than the testimony of record. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002) (ALJ has discretion to weigh the evidence, draw appropriate inferences, and determine credibility); Decision and Order at 5-6.

The ALJ then concluded that the Miner's report of sitting for eight to twelve hours and standing for one to two hours daily in his CM-913 form is "the most clear and specific first-hand evidence" of the exertional requirements of his last job and concluded his job as a coal truck driver required at most "light physical exertion." Decision and Order at 6. We cannot affirm the ALJ's findings.

While the Miner's CM-913 form reported only sitting or standing in response to prompted questions, the same document also included explanations that he had other job requirements when he was not hauling coal, including maintenance at the tipple. Director's Exhibit 5. Similarly, descriptions in the Miner's questionnaire, evidence the ALJ also found credible, noted cleaning the hopper and general maintenance at the tipple. Director's

Exhibit 35. If the additional tasks of maintenance at the tipple and cleaning the hopper are found credible, the Miner did not simply sit or stand the entirety of his work shift. Further, even if sitting and standing were the most frequent aspects of the Miner's job, the ALJ must consider all required duties and determine the exertional requirements based on the most difficult tasks he performed. *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991). Thus, we vacate the ALJ's finding that the Miner's usual coal mine employment required at most light manual labor and remand the case for the ALJ to reconsider the entirety of the evidence regarding this issue.

The ALJ then considered the medical opinions of Drs. Forehand, Tuteur, and Rosenberg. Decision and Order at 13-16. Dr. Forehand opined the Miner was totally disabled, while Drs. Tuteur and Rosenberg concluded he was not. Director's Exhibits 15, 24; Employer's Exhibits 3, 4. The ALJ found Dr. Forehand's opinion undermined given he misunderstood the exertional requirements of the Miner's usual coal mine employment and as it was inconsistent with her findings regarding the weight of the objective testing. Decision and Order at 14, 16. Thus, she found the medical opinion evidence insufficient to support a finding of total disability.¹¹ *Id.* at 16.

Dr. Forehand stated the Miner's most recent coal mine employment as a coal truck driver required him to load under an auger from a truck and his job as a loader operator required him to clean tracks. Director's Exhibit 15 at 1. When describing the level of exertion, Dr. Forehand indicated it was "very heavy." *Id.* Dr. Forehand opined the Miner had a significant respiratory impairment that would preclude him from performing his most recent coal mine employment. *Id.* at 4. Specifically, he opined the October 12, 2021 pulmonary function study demonstrates the Miner had "insufficient residual ventilatory capacity" to perform his last coal mine employment. *Id.* at 5. He explained an FEV1 of 1.75 liters on the pulmonary function study would leave him insufficient "ability to increase ventilation in response to an increase in physical activity." *Id.* at 6.

As the ALJ's discounting of Dr. Forehand's diagnosis of a totally disabling respiratory impairment relies in part on her finding that he misunderstood the physical demands of the Miner's usual coal mine employment, we vacate her finding that Dr. Forehand's opinion is inadequate to support a finding of total disability. *See Cornett*, 227

¹¹ Drs. Tuteur's and Rosenberg's opinions do not support a finding of total disability. Nonetheless, the ALJ also provided credibility determinations regarding their opinions. The ALJ found Dr. Tuteur's opinion undermined as he did not demonstrate an understanding of the Miner's usual coal mine employment. Decision and Order at 16. The ALJ credited Dr. Rosenberg's opinion as he best understood the exertional requirements of the Miner's usual coal mine employment. *Id.*

F.3d at 578; *Eagle*, 943 F.2d at 512-13; Decision and Order at 14. Further, as the ALJ's determination to accord greatest weight to Dr. Rosenberg's opinion relies in large part on her determination that his opinion is consistent with her findings regarding the exertional requirements of the Miner's usual coal mine work, we also vacate her credibility findings regarding Dr. Rosenberg's opinion.¹² Decision and Order at 15-16.

The ALJ also found Dr. Forehand based his total disability assessment solely on the qualifying pulmonary function study he conducted, which is contrary to the predominantly non-qualifying studies of record, and he did not discuss the impact of the Miner's non-qualifying arterial blood gas study. Decision and Order at 14. Dr. Forehand did not rely solely on the qualifying nature of the pulmonary function testing conducted during his examination; he also explained that, based on the FEV1 value on the pulmonary function test, the Miner would be unable to get sufficient air with an increase in physical activity. Director's Exhibit 15 at 6. Total disability can be established with a reasoned medical opinion even "[w]here total disability cannot be shown" by qualifying objective testing, as non-qualifying testing may still render a miner incapable of performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett*, 227 F.3d at 578 (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). Therefore, as the ALJ did not consider the entirety of Dr. Forehand's opinion or determine whether it is sufficiently reasoned to establish total disability notwithstanding non-qualifying testing, we also vacate her discrediting of Dr. Forehand's opinion on this basis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ must examine the medical opinions' reasoning in light of studies and objective indications upon which the medical conclusions are based); *Cornett*, 227 F.3d at 578; *see also Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993) (pulmonary function studies and blood gas studies measure different types of impairment); Decision and Order at 14.

Therefore, we vacate the ALJ's finding that Claimant failed to establish total disability.

¹² While the ALJ also found Dr. Tuteur's opinion undermined in part due to his not demonstrating an understanding of the Miner's job duties, Decision and Order at 16, we need not vacate her credibility finding regarding his opinion. While noting the Miner's job title, Dr. Tuteur provided no explanation regarding his understanding of the Miner's job duties. Decision and Order at 10; Director's Exhibit 24. Thus, we affirm the ALJ's finding that Dr. Tuteur's opinion on total disability is worthy of less weight. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); Decision and Order at 15-16.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant can establish that the Miner was totally disabled. Initially, the ALJ must consider all the relevant evidence to determine if it is sufficient to establish the Miner had cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2).

Next, the ALJ must consider all the relevant evidence to determine the exertional requirements of the Miner's usual coal mine employment. *See McMath*, 12 BLR at 1-10. The ALJ must then evaluate whether the medical opinion evidence establishes the Miner was totally disabled, keeping in mind a miner can be disabled notwithstanding non-qualifying objective testing. *See Cornett*, 227 F.3d at 578; 20 C.F.R. §718.204(b)(2). She must resolve the conflict in the medical opinion evidence by addressing the physicians' comparative credentials, explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Banks*, 690 F.3d at 482-83; *Napier*, 301 F.3d at 713-14.

If the ALJ determines the preponderance of the evidence in a particular evidentiary category supports a finding of total disability, the ALJ must weigh all the relevant evidence together to determine whether the Miner was totally disabled at the time of his death. 20 C.F.R. §718.204(b)(2); *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, then the ALJ must consider if she established the remaining elements of entitlement under 20 C.F.R. Part 718. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. However, if Claimant fails to establish the Miner was totally disabled, the ALJ may reinstate the denial of benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

In doing so, she must set forth her findings in detail and explain her rationale in accordance with the requirements of the Administrative Procedure Act.¹³ *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

¹³ The Administrative Procedure Act provides that 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).

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

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge