

U.S. Department of Labor

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



BRB No. 25-0181 BLA

PAUL KING)
)
 Claimant-Petitioner)
)
 v.)
)
 ENTERPRISE MINING COMPANY, LLC)
)
 and)
)
 AIG PROPERTY & CASUALTY)
 COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 05/14/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Paul King, Happy, Kentucky.

Daniel G. Murdock (Fulton, Devlin & Powers, LLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,¹ Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Denying Benefits on Remand (2019-BLA-05618) rendered on a claim² filed on January 18, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). The case is before the Board for a second time.³

In his previous Decision and Order Denying Benefits, 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); 20 C.F.R. §718.304. He found Claimant established fifty years of coal mine employment based on the parties' stipulation but did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus, he found Claimant did not invoke the Section 411(c)(4) presumption⁴ or establish entitlement under 20 C.F.R. Part 718 and denied benefits.

Pursuant to Claimant's appeal without representation, the Board affirmed the ALJ's finding that Claimant did not establish complicated pneumoconiosis, that the arterial blood gas study evidence does not support a finding of total disability, and that there was no evidence of cor pulmonale with right-sided congestive heart failure. *King v. Enterprise*

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

² Claimant filed two prior claims. Director's Exhibits 1, 2. The ALJ indicated Claimant withdrew his prior claims and therefore considered them to not have been filed. Decision and Order on Remand at 2 n.3; 20 C.F.R. §725.306(b).

³ We incorporate the procedural history of this case as set forth in *King v. Enterprise Mining Co.*, BRB Nos. 23-0272 BLA & 23-0272 BLA-A (June 13, 2024) (unpub.). Chief Administrative Appeals Judge Daniel T. Gresh and Administrative Appeals Judge Glenn E. Ulmer are substituted on the panel for Administrative Appeals Judges Judith S. Boggs and Greg J. Buzzard, who are no longer members of the Board.

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 substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

Mining Co., BRB Nos. 23-0272 BLA & 23-0272 BLA-A, slip op. at 5-8 (June 13, 2024) (unpub.). However, the Board held the ALJ erred in weighing the pulmonary function study evidence and medical opinion evidence on the issue of total disability. *Id.* at 6-9. Thus, the Board vacated the ALJ's finding that Claimant did not establish this element of entitlement and therefore vacated his denial of benefits. *Id.* at 9. On remand, the ALJ again found Claimant failed to establish a totally disabling respiratory or pulmonary impairment and therefore denied benefits. 20 C.F.R. §718.204(b)(2).

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer filed a response in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

In an appeal filed 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.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 (1965).

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

To invoke the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4) or establish entitlement under 20 C.F.R. Part 718, Claimant must prove he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b), 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 work⁶ and comparable gainful work.

⁵ 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 Exhibits 5, 12.

⁶ The ALJ found Claimant's usual coal mine employment was working as an equipment operator. Decision and Order on Remand at 4; Hearing Transcript at 17-18. Specifically, the ALJ noted Claimant's testimony that he did not perform heavy lifting and was not required to walk long distances. Decision and Order on Remand at 4. We note Claimant also testified that he was required to climb a ladder to get up and down from his equipment, approximately eight to ten feet off the ground. Hearing Transcript at 20. As it is supported by substantial evidence, we affirm the ALJ's finding that Claimant's usual coal mining work was as an equipment operator and this job required moderate manual labor. *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Shortridge v. Beatrice Coal Co.*, 4 BLR 1-535, 1-538-39 (1982) (miner's usual coal mine employment

See 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies, qualifying arterial blood gas studies,⁷ 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). The ALJ found the pulmonary function studies and medical opinion evidence do not support a finding of total disability and, as the Board previously affirmed his determination that the arterial blood gases do not support total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure, he denied benefits. Decision and Order on Remand at 4-7.

Pulmonary Function Studies

The ALJ considered five pulmonary function studies dated December 21, 2017, February 13, 2018, January 31, 2019, December 31, 2019, and October 19, 2020.⁸ Decision and Order on Remand at 4-5; Director's Exhibit 18, 22; Claimant's Exhibit 5; Employer's Exhibits 3, 6. The December 21, 2017 and December 31, 2019 studies produced qualifying results; bronchodilators were not administered. Director's Exhibit 22; Claimant's Exhibit 5. The February 13, 2018 study produced qualifying results both before and after administration of a bronchodilator. Director's Exhibit 18 at 13-16. The January 31, 2019 study produced non-qualifying results both before and after administration of a bronchodilator. Employer's Exhibit 3 at 11. Finally, the October 19, 2020 study produced non-qualifying results before the administration of a bronchodilator but produced qualifying results after. Employer's Exhibit 6 at 5.

is the most recent job he or she performed regularly and over a substantial period of time); Decision and Order on Remand at 4.

⁷ A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

⁸ Because the studies reported varying heights for Claimant ranging from 71 to 72 inches, the ALJ permissibly calculated an average height for Claimant of 71.4 inches. See *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order on Remand at 4-5, 4 n.14; Director's Exhibits 18, 22; Claimant's Exhibit 5; Employer's Exhibits 2, 6. The average height of 71.4 inches falls between the heights of 71.3 inches and 71.7 inches listed in the table values of Appendix B of 20 C.F.R. Part 718.

In resolving the conflicting pulmonary function study evidence, the ALJ acknowledged that he could not accord greater weight to the more recent evidence when the results demonstrated improvement. Decision and Order on Remand at 5. He further noted there is an “inconsistency” in the pulmonary function values through the years but indicated there is no medical evidence that “discusses fully” the inconsistency or why there is a disparity and, as he is not a physician, he cannot resolve the inconsistency. *Id.* So, the ALJ found he “must continue to find the testing inconsistent and equivocal.” *Id.* The ALJ thus concluded that Claimant did not establish total disability based on the pulmonary function study evidence. *Id.* at 5-6.

The ALJ acknowledged that three of the five pulmonary function studies were qualifying and one study, while non-qualifying before the administration of bronchodilators, was qualifying after the administration of bronchodilators. Decision and Order on Remand at 4-5. The ALJ has not adequately explained how this renders the results of the studies equivocal. He further has not adequately explained why the presence of both qualifying and non-qualifying results renders the values inconsistent. *See Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991) (because pneumoconiosis is a chronic condition, on any given day it is possible to do better than one’s typical condition would permit). The mere presence of conflicting evidence is not a valid basis to find Claimant failed to satisfy his burden to establish total disability. *See generally Gunderson v. U.S. Dep’t of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010) (“[ALJ] has a duty to explain, on scientific grounds, why a conclusion cannot be reached”). It is the responsibility of the ALJ to resolve conflicts in the evidence and explain the basis for his findings. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994); *Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016) (ALJ has a duty to resolve any conflicts in the evidence and explain his basis for doing so); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (ALJ erred by failing to adequately explain why he credited certain evidence and discredited other evidence).

The ALJ’s findings with respect to the pulmonary function testing do not satisfy the explanatory requirements of the Administrative Procedure Act (APA).⁹ *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). Thus, we vacate his finding that Claimant did not

⁹ The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of “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).

establish total disability at 20 C.F.R. §718.204(b)(2)(i). *See McCune*, 6 BLR at 1-998; Decision and Order on Remand at 4-6.

Medical Opinions

The ALJ considered the medical opinions of Drs. Ajjarapu, Jarboe, and Tuteur. Decision and Order on Remand at 6-7; Director's Exhibit 18; Employer's Exhibits 3, 6, 8. Dr. Ajjarapu opined Claimant has a "severe pulmonary impairment" based on the qualifying pulmonary function study obtained in her examination and that Claimant does not have the pulmonary capacity to perform his previous coal mine employment. *Id.* at 7. Drs. Jarboe and Tuteur determined that Claimant is not totally disabled. Employer's Exhibits 3 at 8; 6 at 3. Specifically, Dr. Tuteur opined Claimant has a mildly reduced FEV1 value in his most recent pulmonary function testing and retains the pulmonary capacity to perform his usual coal mine employment. Employer's Exhibit 6 at 3-4. Dr. Jarboe acknowledged qualifying and non-qualifying pulmonary function studies and "significant" differences between test results in a short time, but relied on his pulmonary function testing obtained on January 31, 2019, and Dr. Tuteur's testing on October 19, 2020, which he indicated were non-qualifying, stating Claimant's function is "at least as good" as those results which demonstrate no impairment. Employer's Exhibit 8 at 21.

The ALJ found Dr. Ajjarapu's opinion well-reasoned and documented based on the evidence she considered. Decision and Order on Remand at 6. He also found Drs. Tuteur's and Jarboe's opinions well-reasoned based on the testing they reviewed. *Id.* Noting Dr. Ajjarapu opined Claimant was totally disabled from performing his usual coal mine employment, while Drs. Tuteur and Jarboe did not, the ALJ stated he can "only review the evidence before me" and continued to find the preponderance of the medical opinion evidence does not support total disability. *Id.* at 6-7. The ALJ again erred in assessing the medical opinion evidence.

The ALJ's inference that the opinions of Drs. Ajjarapu, Tuteur, and Jarboe are all entitled to equal weight and his apparent reliance on a head count of the medical opinions fails to properly resolve the conflict in the medical opinions. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992) ("counting heads" is a "hollow" way to resolve conflicts in the evidence); *Wojtowicz*, 12 BLR at 1-165; Decision and Order on Remand at 6-7. Further, he failed to critically analyze the physicians' opinions, explain why he determined they are reasoned given the underlying evidence and the exertional requirements of Claimant's usual coal mine employment or otherwise provide adequate explanations as the APA requires. *See Addison*, 831 F.3d at 256-57 (ALJ has a duty to resolve any conflicts in the evidence and explain his basis for doing so); *Hicks*, 138 F.3d at 533 (ALJ erred by failing to adequately explain why he credited certain evidence and discredited other evidence); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991) (in

determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of the miner's usual coal mine work with the physicians' description of the miner's pulmonary impairment and physical limitations).

Because the ALJ's error in weighing the pulmonary function study evidence may have affected his weighing of the medical opinion evidence, and because he did not properly resolve the conflict in the medical opinions or adequately explain his findings, we vacate his determination that the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 6-7.

Thus, we also vacate the ALJ's findings that Claimant failed to establish total disability based on the evidence as a whole.¹⁰ 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232. We further vacate his findings that Claimant failed to invoke the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305. Consequently, we vacate the ALJ's denial of benefits and remand the case for further consideration.

Remand Instructions

On remand, the ALJ must reconsider the pulmonary function study evidence and resolve the conflicting pulmonary function study evidence to determine whether Claimant established total disability at 20 C.F.R. §718.204(b)(2)(i). *See Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718 (4th Cir. 1993); *Adkins*, 958 F.2d at 51-52. He must also reevaluate whether the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Addison*, 831 F.3d at 256-57; *Eagle*, 943 F.2d at 512 n.4; *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000). In rendering his credibility findings, the ALJ must consider the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

If the ALJ finds total disability is demonstrated by the pulmonary function studies, medical opinions, or both, he must weigh all the evidence together to determine whether Claimant is totally disabled. 20 C.F.R. §718.204(b)(2); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198. If Claimant fails to establish total disability, the ALJ may reinstate the denial of benefits. *See Anderson v. Valley Camp*

¹⁰ As we previously held, the ALJ permissibly determined that while Claimant's treatment records note symptoms, including cough, wheezing, shortness of breath, and fatigue, they do not provide sufficient information to determine whether Claimant could perform his usual coal mine employment. *King*, BRB Nos. 23-0272 BLA & 23-0272 BLA-A, slip op. at 9 n.14; Decision and Order on Remand at 6.

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, 1-2 (1986) (en banc).

However, if Claimant establishes total disability, the ALJ must determine whether he has established at least fifteen years of his stipulated fifty years of coal mine employment is underground or substantially similar coal mine employment to invoke the Section 411(c)(4) presumption. If the presumption is invoked, the ALJ must determine whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1). On the other hand, if Claimant fails to invoke the presumption, the ALJ must consider whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. In rendering his credibility determinations and findings on remand, the ALJ must explain his decision in compliance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, we vacate the ALJ's Decision and Order Denying Benefits on Remand 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