



BRB No. 25-0197 BLA

LARRY W. BARKER)
)
 Claimant-Petitioner)
)
 v.)
)
 CUMBERLAND RESOURCES)
 CORPORATION)
)
 and)
)
 BRICKSTREET MUTUAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 05/15/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Jeremy B. O'Quinn (The O'Quinn Law Office, PLLC), Wise, Virginia, for Claimant.

Joseph D. Halbert and Jason H. Halbert (Halbert Legal PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Denying Benefits (2021-BLA-05748) rendered on a claim filed on April 4, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant established thirty-one years of qualifying coal mine employment based on the parties' stipulation. Further finding Claimant did not establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in failing to find Claimant established total disability. Employer responds in support of the ALJ's denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

The Benefits Review 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.¹ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe 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 presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any element precludes an award 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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,² evidence of pneumoconiosis and cor pulmonale with

¹ 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 Tr. at 15-16.

² A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718,

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 did not establish total disability by pulmonary function study, blood gas study, or medical opinion evidence, nor the record as a whole.³ 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 5-21. Claimant challenges only the ALJ's weighing of the medical opinions as to total disability.⁴ Claimant's Brief at 10-17.

Medical Opinions

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 establish a miner is incapable of performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) (“[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion.”); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may find total disability by comparing physician's impairment rating and any physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (miner is totally disabled if he cannot perform the exertional requirements of his previous job).

The ALJ found Claimant's usual coal mine work required medium-to-heavy exertion and considered the opinions of Drs. Green, Habre, and Posin that Claimant is

respectively. A “non-qualifying” study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

³ The ALJ found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 15.

⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-16.

totally disabled.⁵ Decision and Order at 4, 16-21; Director’s Exhibit 29; Claimant’s Exhibits 6, 7. Despite finding each physician adequately understood the exertional demands of Claimant’s usual coal mine employment, the ALJ found their opinions insufficiently reasoned and that Claimant therefore did not establish total disability by medical opinion evidence. Decision and Order at 16-20. Although the record contains opinions from Drs. Dahhan and Agarwal that Claimant is not totally disabled and can perform his usual coal mine employment, the ALJ did not assess the credibility of these opinions. *Id.* at 20; Employer’s Exhibits 6, 10, 15, 17.

In challenging the ALJ’s finding, Claimant summarizes the opinion of each doctor and summarily asserts the opinions of Drs. Green, Habre, and Posin are documented and reasoned and that substantial evidence does not support the ALJ’s finding otherwise. Claimant’s Brief at 10-13. We disagree in part.

Initially, we reject Claimant’s assertion that the ALJ erred in discrediting Dr. Green’s opinion as not well-reasoned. Claimant’s Brief at 10-11. The ALJ accurately observed Dr. Green predicated his disability opinion on qualifying pulmonary function and blood gas studies, contrary to the ALJ’s findings that the preponderance of the studies are non-qualifying under 20 C.F.R. §718.204(b)(2)(i),(ii). Decision and Order at 17-18; Director’s Exhibit 29. As Claimant identifies no specific error in this finding and it is supported by substantial evidence, we affirm the ALJ’s determination to discredit Dr. Green’s disability opinion. *See Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (ALJ may discount opinion that is based on facts contrary to the ALJ’s findings); *Consolidation Coal Co. v. Director, OWCP [Burris]*, 732 F.3d 723, 735 (7th Cir. 2013) (same).

We additionally reject Claimant’s assertion that the ALJ erred in discrediting Dr. Habre’s opinion as not well-reasoned. Claimant’s Brief at 11-12. Although a physician may diagnose total disability notwithstanding non-qualifying objective studies, the opinion must be supported by reasoned medical judgment to be credited. 20 C.F.R. §718.204(b)(2)(iv). As the ALJ observed, Dr. Habre reviewed Claimant’s medical, social, and work histories, considered his June 18, 2021 nonqualifying diagnostic tests, and opined Claimant has “substantial decline in his pulmonary reserve and underlying disabling lung disease as shown on his pulmonary function study.” Decision and Order at 18 (quoting Claimant’s Exhibit 6 at 2). The ALJ permissibly found this opinion “conclusory” because Dr. Habre did not describe any functional limitations or otherwise explain how Claimant’s non-qualifying pulmonary function study demonstrates an impairment that prevents

⁵ The ALJ noted Drs. Dahhan and Agarwal opined Claimant does not have a disabling respiratory or pulmonary impairment and therefore their opinions do not aid him in establishing his burden at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 20.

Claimant from performing the exertional requirements of his last coal mine job. *See Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 691-95 (4th Cir. 2024) (ALJ errs in treating evidence of disease as proof of total disability); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-154 (1989) (physician’s diagnosis of “marked degree of hypoxia,” alone, is insufficient basis for concluding miner cannot perform usual coal mine employment); Decision and Order at 18-19. We therefore affirm the ALJ’s determination to discount Dr. Habre’s opinion. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 310 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441-42 (4th Cir. 1997).

But we agree with Claimant that the ALJ erred in his consideration of Dr. Posin’s opinion. The ALJ accurately summarized Dr. Posin’s opinion as follows:

Conclusion: Patient presents with increasing shortness of breath primarily with exertion. His spirometry did show an obstructive defect but it appears he is been [*sic*] maximized with medical management. His initial ABG did not show significant abnormalities. His B read is consistent with pneumoconiosis. Exercise testing had to be stopped due to his desaturation. His sats dropped to 80% rapidly and so the test was stopped due to hypoxia. He does have an extensive occupational exposure but also has a moderate smoking exposure. The patient was unable to ambulate due to hypoxia therefore meeting full impairment criteria. His chest x-ray is consistent with pneumoconiosis. In my opinion to a degree of medical certainty the patient will be unable to perform his last coal mining job due to his total pulmonary impairment of which is occupational exposure is a significant contributing factor.

Decision and Order at 19 (quoting Claimant’s Exhibit 7 at 4). The ALJ found this opinion not well-reasoned because the weight of the objective studies is non-qualifying and “Dr. Posin did not define what constitutes ‘full impairment criteria,’” nor “explain how Claimant met that ‘criteria.’” *Id.* at 19-20. He further found Dr. Posin’s statement that Claimant was unable to ambulate due to hypoxia during blood gas testing a “mere recitation of symptoms” and insufficient to support a finding of a disabling respiratory impairment. *Id.* at 20 (citing *Clark*, 12 BLR at 1-154, and *Heaton v. Director, OWCP*, 6 BLR 1-1222, 1-1224 (1984) (mere recitation of symptoms is not evidence of a respiratory limitation that precludes a miner’s performing his usual coal mine work)). Substantial evidence does not support the ALJ’s basis for discrediting Dr. Posin.

Unlike Dr. Habre, whose opinion the ALJ permissibly found conclusory because he did not identify functional limitations arising from Claimant’s impairment, Dr. Posin identified a specific exertional limitation. He concluded Claimant was unable to ambulate due to hypoxia because his oxygen saturation rapidly dropped to eighty percent during

exercise and resulted in test termination. Claimant's Exhibit 7 at 4. Contrary to the ALJ's finding, this conclusion reflects Dr. Posin's medical assessment based on testing, not recitation of Claimant's subjective symptoms. Because a medical opinion may be sufficient to establish total disability if it describes physical limitations from which the ALJ can reasonably infer an inability to perform the miner's usual coal mine employment, the ALJ erred in concluding Dr. Posin's opinion was not well reasoned without addressing this aspect of his assessment. *See Scott*, 60 F.3d at 1141; *Budash*, 9 BLR at 1-51-52. We therefore vacate the ALJ's credibility determination, the ALJ's findings that Claimant failed to establish total disability by medical opinion evidence and on the record as a whole, and his ultimate denial of benefits.

Remand Instructions

We note the record also contains opinions from Drs. Dahhan and Agarwal that Claimant is not totally disabled; the ALJ did not assess these opinions. In addition, because the ALJ improperly discounted Dr. Posin's opinion, he did not fully evaluate his opinion in conjunction with the remaining opinions in determining whether Claimant established total disability by a preponderance of evidence at 20 C.F.R. §718.204(b)(2)(iv). *See Shedlock*, 9 BLR at 1-198. On remand, the ALJ must consider these physicians' descriptions of and opinions regarding Claimant's pulmonary impairment, symptoms, and physical limitations in conjunction with his finding that Claimant's last coal mine work required medium-to-heavy exertion. *See Scott*, 60 F.3d at 1141; *Budash*, 9 BLR at 1-51-52. 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; *Akers*, 131 F.3d at 441-42. After reweighing the medical opinions, the ALJ must weigh the evidence as a whole to determine whether Claimant is totally disabled. *See 20 C.F.R. §718.204(b)(2); Defore*, 12 BLR at 1-28-29. If the ALJ again finds Claimant is not totally disabled, he may reinstate the denial of benefits. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

If Claimant establishes total disability, Claimant will have invoked the Section 411(c)(4) presumption and the ALJ must determine whether Employer has rebutted that presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1).⁶

⁶ 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(b).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this decision.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge