



BRB No. 21-0106 BLA

JACKIE HATFIELD)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 09/29/2021
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan PSC), South Williamson, Kentucky, for Claimant.

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Denying Benefits (2018-BLA-05244) rendered on a claim filed pursuant to the Black

Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a Miner's subsequent claim filed on January 26, 2016.¹

The ALJ credited Claimant with at least seventeen years of underground coal mine employment but found he failed to establish he is totally disabled by a respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant failed to establish a change in an applicable condition of entitlement,² 20 C.F.R. §725.309(c), and could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.³ 30 U.S.C. §921(c)(4) (2018). The ALJ therefore denied benefits.

On appeal, Claimant contends the ALJ erred in finding he did not establish total disability. The Director, Office of Workers' Compensation Programs (the Director), responds,⁴ conceding that he failed to provide Claimant with a complete pulmonary

¹ This is Claimant's second claim for benefits. An ALJ denied Claimant's first claim on October 30, 2014, because Claimant did not establish he was totally disabled, and that denial is final. Director's Exhibit 1.

² When a miner files a claim for benefits more than one year after the final denial of a previous claim, the ALJ must also deny the subsequent claim unless he 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 Claimant did not establish total disability in his prior claim, he had to submit new evidence establishing this element in order to obtain review of the merits of his current claim. Director's Exhibit 1.

³ 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

⁴ By Order dated November 25, 2019, the ALJ granted the Director's motion to dismiss Grace Coal Company as the responsible operator. Order of Dismissal of Employer/Carrier at 2. The Black Lung Disability Trust Fund assumed potential liability for the payment of benefits in this claim. *Id.* at 1; Hearing Transcript at 4.

evaluation and requesting a remand to the district director for the Department of Labor (DOL) physician to complete her opinion.⁵

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.⁶ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(4) Presumption—Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 consider all relevant evidence and weigh the evidence supporting total disability against the 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 new medical evidence consists of the objective testing data and medical opinion generated by Dr. Sikder, who examined Claimant on May 19, 2016, on behalf of the DOL. The ALJ found the May 19, 2016 pulmonary function study and blood gas study non-qualifying for total disability,⁷ and found there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order

⁵ We affirm, as unchallenged on appeal, the finding that Claimant has at least seventeen years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

⁶ We will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc). Hearing Transcript at 10-11; Director's Exhibits 12, 13.

⁷ 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).

at 5-7. We affirm these findings as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Before analyzing Dr. Sikder's medical opinion, the ALJ found that Claimant's usual coal mine work was working as a repairman. Decision and Order at 6. Based on Claimant's description of his job duties, the ALJ further found that Claimant's usual coal mine work as a repairman required heavy labor. *Id.* We also affirm these findings as unchallenged. *Skrack*, 6 BLR at 1-711.

Turning to Dr. Sikder's opinion, the ALJ first considered her initial report in which she opined that, based on the May 19, 2016 non-qualifying pulmonary function study, Claimant "has no disability in spite of having moderate obstructive airway disease." Director's Exhibit 11 at 5. He then considered Dr. Sikder's supplemental report that she generated in response to a letter from a DOL claims examiner requesting a more detailed rationale for her opinion regarding total disability. Director's Exhibit 20. Dr. Sikder responded that Claimant's pulmonary function study reflected moderate obstructive airway disease with reduced diffusion, and she concluded that "[b]ased on the FEV1 status, [Claimant] **is disabled** from his previous coal mining employment."⁸ *Id.* at 2 (emphasis in original).

The ALJ found Dr. Sikder's opinion did not establish total disability. He found that although Dr. Sikder opined that Claimant's pulmonary function study shows he is disabled, the study was non-qualifying overall⁹ and Dr. Sikder did not otherwise explain her opinion. Decision and Order at 8. He found Dr. Sikder "provided no opinion whether Claimant

⁸ The record contains a second supplemental report from Dr. Sikder, but it does not address total disability. Director's Exhibit 56. In that report, Dr. Sikder addressed whether Claimant's pneumoconiosis was caused by coal mine dust exposure. *Id.* at 11; Director's Brief at 2.

⁹ The ALJ correctly noted that a qualifying FEV1 value, alone, does not make a pulmonary function study qualifying for total disability. Decision and Order at 8; *see* 20 C.F.R. §718.204(b)(2)(i). The ALJ further found it appeared that Dr. Sikder changed her mind based on inaccurate information from the claims examiner stating that the pulmonary function study was qualifying for total disability. *Id.*; *see* Director's Brief at 1-2 (noting Dr. Sikder's supplemental report was based, in part, on incorrect information received from the claims examiner).

could or could not perform the work of a coal miner with the non-qualifying level of impairment shown on objective testing.”¹⁰ *Id.*

Claimant contends the ALJ erred in “discard[ing]” Dr. Sikder’s opinion based on his findings regarding the pulmonary function study, when a reasoned medical opinion can establish total disability despite non-qualifying tests. Claimant’s Brief at 4. We disagree, because substantial evidence supports the ALJ’s finding that Dr. Sikder did not *address* whether Claimant is totally disabled from his work as a repairman despite his non-qualifying objective studies reflecting moderate obstructive airway disease. *See* 20 C.F.R. §718.204(b)(2)(iv); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000). However, while substantial evidence supports the ALJ’s findings regarding Dr. Sikder’s opinion, we must vacate the denial of benefits in view of the Director’s concession that he failed to provide Claimant with a complete pulmonary evaluation.

Complete Pulmonary Evaluation

The Act requires that “[e]ach miner who files a claim . . . shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.” 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406; *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994). To fulfill its obligations under the Act, the DOL must “provid[e] ‘a medical opinion that addresses all of the essential elements of entitlement.’” *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 640 (6th Cir. 2009), *quoting Smith v. Martin Cnty. Coal Corp.*, 233 F. App’x 507, 512 (6th Cir. 2007).

The Director concedes the DOL failed to satisfy its obligation because, as the ALJ found, Dr. Sikder failed to address whether Claimant can perform his usual coal mine work as a repairman with the degree of pulmonary impairment that she diagnosed.¹¹ Director’s Brief at 3. Because the Director concedes Dr. Sikder’s opinion does not address an essential element of entitlement, i.e., whether Claimant is totally disabled, the Director requests the case be remanded for Dr. Sikder to provide a supplemental report addressing the issue. *Id.* Given the Director’s concession that the DOL failed to provide Claimant with a complete pulmonary evaluation that the Act requires, we grant the Director’s request

¹⁰ The ALJ additionally found that Dr. Sikder “failed to demonstrate an understanding of Claimant’s usual coal mine work.” Decision and Order at 8.

¹¹ The Director concedes that Dr. Sikder’s opinion “was based solely on her incorrect view that the results of Claimant’s pulmonary function tests were qualifying when they were not,” and agrees with the ALJ’s finding that she did not otherwise address whether Claimant can perform his usual coal mine work. Director’s Brief at 3.

to remand this case. 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406; *Greene*, 575 F.3d at 641-42; *R.G.B. [Blackburn] v. S. Ohio Coal Co.*, 24 BLR 1-129, 1-137-40 (2009) (en banc). Consequently, we vacate the ALJ's denial of benefits.

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part, vacated in part, and the case is remanded to the district director for further development of the evidence.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge