



BRB No. 19-0016 BLA

ROBERT R. BENAMATI, SR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
HELVETIA COAL COMPANY)	
)	
and)	
)	
ROCHESTER & PITTSBURGH COAL)	DATE ISSUED: 11/14/2019
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Deanna Lyn Istik (Sutter Williams, LLC), Pittsburgh, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2017-BLA-06106) of Administrative Law Judge Drew A. Swank on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on November 4, 2015.¹

The administrative law judge credited claimant with thirty years of underground coal mine employment² and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found claimant invoked 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) (2012). The administrative law judge further found employer did not rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in finding total disability and in invoking the Section 411(c)(4) presumption. Employer also argues he erred in finding the presumption unrebutted.⁴ Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Awarding Benefits if it is rational,

¹ Claimant filed a previous claim, but withdrew it. Therefore, it is considered not to have been filed. *See* 20 C.F.R. §725.306(b); Decision and Order at 2; Director's Exhibit 1.

² Claimant's coal mine employment was in Pennsylvania. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis where the evidence establishes 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) (2012); *see* 20 C.F.R. §718.305.

⁴ We affirm, as unchallenged on appeal, the administrative law judge's finding of thirty years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 362 (1965).

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 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 cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge 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 administrative law judge considered two pulmonary function studies. The March 9, 2016 pulmonary function study produced non-qualifying values,⁵ both before and after the administration of a bronchodilator. Director’s Exhibit 14. The October 30, 2017 pulmonary function study produced qualifying values before the administration of a bronchodilator, but non-qualifying values after the administration of a bronchodilator. Employer’s Exhibit 3. The administrative law judge accorded more weight to the results of the more recent pulmonary function study conducted on October 30, 2017 and found the pulmonary function studies established total disability. Decision and Order at 15.

Employer contends the administrative law judge did not adequately explain how he resolved the conflict in the pulmonary function study evidence. Employer’s Brief at 15. We agree. Where a pulmonary function study, such as the October 30, 2017 study, contains both a pre-bronchodilator and post-bronchodilator result and one qualifies while the other does not, an administrative law judge must weigh the values and explain those results he finds more probative. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480-81 (6th Cir. 2011); *Keen v. Jewell Ridge Coal Corp.*, 6 BLR 1-454, 1-459 (1983). Here, the administrative law judge did not reconcile the qualifying and non-qualifying results. Therefore, his analysis of the pulmonary function studies does not comport with the Administrative Procedure Act (APA), which provides that every adjudicatory decision must be accompanied by a statement of “findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record.” 5

⁵ A “qualifying” pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B, for establishing total disability. *See* 20 C.F.R. §718.204(b)(2)(i). A “non-qualifying” study exceeds those values.

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). We therefore vacate the administrative law judge’s weighing of the pulmonary function studies at 20 C.F.R. §718.204(b)(2)(i) and remand the case for him to reconsider whether the pulmonary function studies establish total disability.⁶ As the administrative law judge’s findings on the pulmonary function studies affected his weighing of the medical opinions on total disability,⁷ we also vacate his finding at 20 C.F.R. §718.204(b)(2)(iv).

Because we have vacated the administrative law judge’s finding of total disability, we also vacate his finding that claimant invoked the Section 411(c)(4) presumption.⁸ 30 U.S.C. §921(c)(4).

⁶ Because there are substantial differences in the recorded heights between the January 5, 2016 and October 30, 2017 pulmonary function studies (sixty-six inches and seventy inches), the administrative law judge must make a factual finding to determine the miner’s actual height. *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983).

⁷ The administrative law judge credited Dr. Alam’s opinion that claimant is totally disabled because the doctor “relied on the objective medical data” to support his conclusion. Decision and Order at 20. Conversely, the administrative law judge found the opinions of Drs. Basheda and Rosenberg that claimant has no pulmonary disability entitled to less weight because their conclusions were “contrary to [his] finding that [c]laimant’s pulmonary function test results did qualify under the regulations” *Id.*

⁸ We decline to address, at this time, employer’s challenge to the administrative law judge’s determination that it failed to rebut the presumption. On remand, should the administrative law judge again find that claimant has invoked the Section 411(c)(4) presumption, employer may challenge the administrative law judge’s rebuttal findings.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge