U.S. Department of Labor

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

BRB No. 21-0588 BLA

JOSEPH C. OXENRIDER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
KIMMEL'S MINING, INCORPORATED	)	
	)	
and	)	
	)	
ROCKWOOD CASUALTY INSURANCE COMPANY	)	DATE ISSUED: 04/17/2023
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for Claimant.

Christopher Pierson (Burns White LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Denying Benefits (2020-BLA-05081) rendered on a claim filed on November 15, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 12.11 years of coal mine employment and failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Consequently, he determined Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018), or establish entitlement to benefits under Part 718. The ALJ therefore denied benefits.

On appeal, Claimant argues the ALJ erred in calculating the length of his coal mine employment and in finding he is not totally disabled. He also contends the ALJ erred in failing to make findings regarding pneumoconiosis and the cause of his disability. Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, has 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.[2] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption – Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or surface coal mines in conditions "substantially similar" to underground mines. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing the length of his coal mine employment. *See Kephart v.*

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is 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 impairment. 30 U.S.C. §921(c)(4) (2018).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 8.

Director, OWCP, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold the ALJ's determination if it is based on a reasonable method of calculation and supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-26 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The regulations define a "year" of coal mine employment as "a period of one calendar year (365 days, 366 days if one of the days is February 29), or partial periods totaling one year, during which a miner worked in or around a coal mine or mines for at least 125 'working days.'" 20 C.F.R. §725.101(a)(32); *see Clark v. Barnwell Coal Co.*, 22 BLR 1-275, 1-280-81 (2003). If the miner's employment "lasted for a calendar year or partial periods totaling a 365-day period amounting to one year," the regulations presume, in the absence of contrary evidence, "that the miner spent at least 125 working days in such employment." 20 C.F.R. §725.101(a)(32)(ii). The regulations further provide that an ALJ may rely on a comparison of the miner's yearly income from coal mine work to the average daily earnings in the coal mining industry "[i]f the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year . . . ."[3] 20 C.F.R. §725.101(a)(32)(iii).

The ALJ noted Claimant alleged between twenty and twenty-five years of coal mine employment, between the years 1986 and 2013. Decision and Order at 7. In evaluating Claimant's length of coal mine employment, he considered Claimant's Social Security Administration (SSA) earnings record, tax documents and pay stubs,[4] Claimant's

[3] The regulation at 20 C.F.R. §725.101(a)(32)(iii) provides, in pertinent part:

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

20 C.F.R. §725.101(a)(32)(iii). The average earnings for a coal miner as reported by the BLS are provided in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*. *Id*. Exhibit 610 sets forth the average "daily earnings" and the "yearly earnings (125 days)" by year for employees in coal mining.

[4] The documentary evidence included pay stubs provided for certain pay periods in October through December 1988 for Kocher Coal Company (Kocher Coal); W-2 forms for 1989 for Kocher Coal and International Anthracite Corporation; tax returns for the years

testimony, and his CM-911a form. Decision and Order at 3-4, 7. Because beginning and ending dates of employment could not be determined, the ALJ found the SSA earnings record to be the most reliable evidence. *Id.* at 7. He also found the tax documentation supported Claimant's testimony that he had coal mine employment in the form of self-employment from 2011 through 2013 with S&M Coal Company (S&M Coal).[5] *Id.* Because he found the evidence insufficient to establish the beginning and ending dates of Claimant's coal mine employment, the ALJ used the formula at 20 C.F.R. §725.101(a)(32)(iii), applied to the earnings provided in the SSA earnings record, and found Claimant established 12.11 years of coal mine employment between 1986 and 2013.[6] Decision and Order at 7-8.

Claimant argues the ALJ did not sufficiently consider the evidence in determining the length of his coal mine employment before resorting to calculating fractional years of coal mine employment using the method at 20 C.F.R. §725.101(a)(32)(iii). Claimant's Brief at 19-21. He further argues the ALJ did not sufficiently explain his findings given the evidence in the record and Claimant's testimony. *Id.* at 14, 19. We disagree.

The ALJ addressed the documentary evidence of record and Claimant's testimony and rationally found no specific beginning or ending dates of employment could be ascertained. Decision and Order at 3-4, 7; Director's Exhibits 5, 8. Thus, the ALJ permissibly found the SSA earnings record to be the most reliable evidence of record to determine Claimant's length of coal mine employment. Decision and Order at 7; *see Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA earnings records over testimony). Further, contrary to Claimant's argument, given the evidence was

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1999 through 2001 related to West Buck Mining (West Buck); a W-2 form for RS&W Coal Company, Inc. for 2003; W-2 forms for the years 2004 through 2005 for West Point Mining Corporation; a W-2 form for 2008 for Kimmel's Mining, Inc.; and 1099 tax forms for the years 2011 through 2013 for S&M Coal Company (S&M Coal). Director's Exhibit 5.

[5] The ALJ also included in his calculation additional years of self-employment listed on Claimant's Social Security Administration (SSA) earnings record for 1999 through 2001 with West Buck. Decision and Order at 7-8. As the ALJ noted, Claimant provided tax forms for his coal mine employment for those years. Decision and Order at 3; Director's Exhibit 5.

[6] The ALJ included coal mine employment for the years 1986, 1988 through 1990, 1999 through 2008, and 2011 through 2013 in his calculations. Decision and Order at 7-8.

insufficient to determine beginning and ending dates of employment, the ALJ permissibly used the method provided at 20 C.F.R. §725.101(a)(32)(iii). *Clark*, 22 BLR at 1-280.

Claimant also argues the ALJ failed to consider all of his coal mine employment, alleging he had eleven years of self-employment in the SSA earnings record,[7] as well as employment with K&R Trucking Company, Inc. (K&R Trucking). Claimant's Brief at 14, 20-21. However, the ALJ addressed the documentary evidence and testimony relevant to Claimant's self-employment. As addressed above, the ALJ found Claimant's tax documents supported a finding that the self-employment listed in the SSA earnings record for 1999 through 2001 constituted coal mine employment for West Buck Mining and the self-employment for the years 2011 through 2013 constituted coal mine employment for S&M Coal. Decision and Order at 3, 7-8. Claimant points to no other evidence that would support a finding that the remaining years of self-employment on the SSA earnings record constituted coal mine employment.[8] Claimant's Brief at 16-17.

Further, contrary to Claimant's characterization of his employment with K&R Trucking as constituting coal mine employment, his CM-911a form indicated his employment with K&R Trucking did not expose him to "dust, gas, or fumes" and his counsel stated at the hearing that this employment was not coal mine employment. Director's Exhibit 3; Hearing Transcript at 15. Thus, the ALJ rationally excluded this employment from his calculation of Claimant's coal mine employment.

As the ALJ's findings are rational and supported by substantial evidence, we affirm his finding of 12.11 years of coal mine employment. *Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Clark*, 22 BLR at 1-280. Thus, Claimant has not established sufficient coal mine employment to invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 4, 8.

Due Process Argument

Claimant also argues that the use of Exhibit 610 to calculate the length of his coal mine employment violates his due process rights, as his earnings as a coal miner in Pennsylvania may be less than the average daily earnings provided in Exhibit 610, resulting in less coal mine employment. Claimant's Brief at 20. Claimant's argument lacks merit.

[7] The SSA earnings record lists self-employment earnings for the years 1991, 1995 through 2001, 2004, and 2011 through 2013. Director's Exhibit 8.

[8] The only testimony Claimant provided regarding his self-employment was that he was self-employed when working at S&M Coal. Hearing Transcript at 23.

Due process requires notice and an opportunity to be heard. *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 883-84 (6th Cir. 2000); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 807 (4th Cir. 1998). Claimant was given notice that the district director initially found less than fifteen years of coal mine employment based on the evidence, Director's Exhibit 37, and Claimant was not precluded from providing evidence and testimony regarding his actual pay or the specific time periods he worked for various employers. Indeed, Claimant submitted additional evidence regarding some of his coal mine employment. Claimant has failed to explain how he was precluded from a fair opportunity to be heard; thus, we reject his due process argument. *Lockhart*, 137 F.3d at 807.

Entitlement Under 20 C.F.R Part 718

To be entitled to benefits under the Act without the benefit of a presumption, 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. Failure to establish any one element 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).

Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful 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 weigh the relevant evidence supporting a finding of 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 ALJ found Claimant did not establish total disability based on any category of evidence.[9] 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 9-11, 15-16.

[9] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant failed to establish total disability via arterial blood gas studies, and there is no evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10-11.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies, dated February 22, 2019, November 20, 2019, and January 3, 2020.[10] 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 9-10. None of the studies produced qualifying[11] results; thus, he found Claimant could not establish total disability under 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 10.

Claimant concedes that the pulmonary function study evidence is non-qualifying but contends the ALJ erred in failing to consider "the significance of the reduced values." Claimant's Brief at 25-26. We disagree.

The ALJ properly determined the pulmonary function studies were non-qualifying. *See* 20 C.F.R. §718.204(b)(2)(i). Further, contrary to Claimant's contention, the ALJ is not authorized to interpret the medical data, which is a matter for medical experts; thus, he could not make his own assessment of the significance of the studies' values. *See Marcum v. Director,* OWCP, 11 BLR 1-23, 1-24 (1987). Therefore, we affirm the ALJ's finding that the pulmonary function study evidence does not establish total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 10.

Medical Opinions and Treatment Record Evidence

Notwithstanding non-qualifying objective testing, total disability may be established by a reasoned medical opinion that the miner is unable to perform his usual coal mining work. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (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. *Shortridge v. Beatrice Coal Co.*, 4 BLR 1-535, 1-538-39 (1982). The ALJ found Claimant's usual coal mine employment was

[10] The ALJ also noted a summary of the results of a pulmonary function study dated September 5, 2018, submitted as a treatment record. Decision and Order at 10; Claimant's Exhibit 5. The ALJ indicated he would not consider this evidence when addressing the pulmonary function studies under 20 C.F.R. §718.204(b)(2)(i), as required information was not provided. *Id.* at 10 n.5. In either event, the ALJ indicated that the study would not have been qualifying under the regulations. *Id.*

[11] 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).

working as a heister, operating a loader to load trucks with coal, and that this job involved lifting 100-plus pound timbers every two days. Decision and Order at 8. He found this job required medium exertion with periods of heavy exertion. *Id.* The parties do not challenge these findings; thus, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ considered the medical opinions of Drs. Futerfas, Durrani, Fino, and Prince. Decision and Order at 11-15; Director's Exhibit 13; Claimant's Exhibit 9; Employer's Exhibits 2, 4, 6, 8. He found them all "well-qualified" as Board-certified in Pulmonary Disease, and thus found no reason to give any opinion greater weight based on their credentials. Decision and Order at 15. Dr. Futerfas found a mild to moderate obstructive impairment, but opined Claimant is not totally disabled as none of the testing was qualifying. Director's Exhibit 13. Dr. Durrani did not address the level of impairment, but concluded the objective testing did not demonstrate disability. Employer's Exhibit 2. Dr. Fino diagnosed a mild to moderate obstructive defect but opined that Claimant retains the pulmonary capacity to perform his last coal mine job unless he were required to do bursts of heavy labor more than every two days. Employer's Exhibits 4, 6, 8. Dr. Prince, however, opined that Claimant did not retain the pulmonary capacity to perform the lifting and carrying required by his last coal mine employment based on the November 19, 2020 pulmonary function study, which demonstrated moderate obstruction.[12] Claimant's Exhibit 9.

The ALJ found Drs. Futerfas's, Durrani's, and Fino's opinions that Claimant is not totally disabled to be well-reasoned and consistent with the overall weight of the non-qualifying objective testing. Decision and Order at 15. He found Dr. Prince's contrasting opinion undermined because he did not review the other testing of record. *Id*. Thus, the ALJ found Dr. Prince's opinion outweighed and that the medical opinion evidence did not establish total disability. *Id*.

Claimant argues the ALJ erred in failing to consider whether the experts adequately addressed if Claimant's impairment prevents him from performing his usual coal mine employment notwithstanding the non-qualifying test results. Claimant's Brief at 27-35. Moreover, Claimant contends the ALJ erred in rejecting Dr. Prince's opinion solely

[12] Dr. Prince's report was submitted as a validation report for the November 19, 2020 pulmonary function study. Claimant's Exhibit 9. The ALJ determined the report, which also assessed Claimant's respiratory impairment, was "more properly characterized as a medical report." Decision and Order at 14. Because the report did not exceed Claimant's evidentiary limitations, the ALJ considered it with the other medical opinions. *Id.*

because he did not consider the other pulmonary function studies of record, when he accepted the opinions of Drs. Fino and Futerfas, who also did not consider all the evidence. Claimant's Brief at 29-30, 33-34. Claimant's argument has merit, in part.[13]

Dr. Prince diagnosed a significant respiratory impairment, based on the November 20, 2019 non-qualifying pulmonary function study. Claimant's Exhibit 9. He explained the study demonstrated moderate obstruction with air trapping and a moderate diffusion abnormality, which he opined would prevent Claimant from returning to his last coal mine employment working as a heister, which required, among other activities, lifting and carrying 100-plus pounds. *Id.* The ALJ acknowledged that Dr. Prince reported the exertional requirements of Claimant's usual coal mining work but found his opinion insufficient to support total disability because it was based solely on his review of the non-qualifying November 20, 2019 pulmonary function study. Decision and Order at 14-15 (citing *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (ALJ may assign less weight to a medical opinion which presents an incomplete picture of the miner's health)).

The ALJ found Dr. Prince's opinion undermined for lack of consideration of the other medical evidence of record because it is "uncertain how or whether" the additional evidence would have changed his opinion, but the ALJ does not explain how Dr. Prince's consideration of this additional evidence could have done so. Decision and Order at 15. As Claimant argues, and as discussed above, the other experts who considered one or more pulmonary function studies and assessed the level of Claimant's impairment based on these studies indicated that, while not qualifying under the regulations, the studies demonstrate a mild to moderate obstructive impairment. Claimant's Brief at 28-35; Director's Exhibit 13; Employer's Exhibit 6 at 15-16.

These findings are at least facially consistent with the opinion of Dr. Prince, who found moderate obstruction based on the pulmonary function study he reviewed. Claimant's Exhibit 9. Thus, the ALJ failed to adequately explain his determination to find Dr. Prince's opinion undermined because he was unaware of other evidence, including the other pulmonary function studies. *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997) (ALJ must adequately explain his credibility determinations); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because the ALJ did not adequately explain his findings, they do not satisfy the requirements of the Administrative

[13] Dr. Futerfas performed an examination of Claimant on behalf of the Department of Labor and considered only the testing obtained in this examination. Director's Exhibit 13. Dr. Fino did not examine Claimant; however, contrary to Claimant's allegation, it appears he considered all the medical evidence of record. Employer's Exhibits 4, 6, 8.

Procedure Act (APA)[14] and must be vacated. *See Wojtowicz*, 12 BLR at 1-165; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact-finder's failure to discuss relevant evidence requires remand).

Next, Claimant contends the ALJ erred in failing to consider that Dr. Fino's opinion also supports a finding that Claimant is totally disabled, alleging Dr. Fino opined that Claimant would be unable to perform his more "arduous" lifting and carrying work if he had to do it more than two days a week.[15] Claimant's Brief at 32. Claimant argues the ALJ did not consider Dr. Fino's opinion in light of Claimant's testimony that at times he had to do this heavy exertional work of lifting and loading timbers more frequently. Claimant's Brief at 32. We agree.

Dr. Fino understood that Claimant's usual coal mining work required some heavy labor, as he had to lift and carry 100 pounds about twenty feet, every two days. Employer's Exhibit 6 at 23. He indicated when Claimant did this work it would be "a short burst of heavy labor"; thus, he believed Claimant could perform this work. Employer's Exhibit 6 at 23. On cross-examination, however, he acknowledged that if Claimant had to do such heavy exertion more frequently, he would not be capable of performing it. Employer's Exhibit 6 at 32.

While the ALJ summarized Dr. Fino's alternative opinion regarding Claimant's ability to perform his more strenuous coal mine employment, he credited Dr. Fino's opinion that Claimant is not totally disabled based solely on finding it consistent with the ALJ's finding that the objective testing was non-qualifying. Decision and Order at 14-15. As Claimant argues, a finding of total disability may be made notwithstanding non-qualifying test results. Claimant's Brief at 28-29; *Cornett*, 227 F.3d at 577. Yet, the ALJ

[14] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), requires the ALJ to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A).

[15] Claimant incorrectly states that Dr. Fino opined Claimant would be unable to perform his usual coal mine employment if he had to lift and carry 100 pounds "more than two days a week." Claimant's Brief at 32. Dr. Fino stated Claimant could handle that task *every two days*, referencing Claimant's description of his coal mining work on his CM-913 form. Employer's Exhibit 6 at 22-23; Director's Exhibit 4. Claimant's misstatement, however, does not affect our analysis given Dr. Fino's discussion of Claimant's work is consistent with what Claimant provided in the record.

did not consider whether Dr. Fino's opinion was consistent with a finding that Claimant is totally disabled given: 1) Dr. Fino's acknowledgement that if Claimant performed his heavy work more than every two days, then he would be incapable of performing this work; and 2) Claimant's testimony regarding the frequency of this heavy work.[16] While noting Claimant's testimony, the ALJ did not determine its credibility or how it affected Dr. Fino's opinion regarding disability, if at all. Decision and Order at 3. Because the ALJ failed to adequately consider Dr. Fino's opinion and Claimant's testimony, we must vacate the ALJ's determination that Dr. Fino's opinion does not support a finding of total disability. Decision and Order at 15; *see 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."); *McCune*, 6 BLR at 1-998.

Similarly, Claimant contends the ALJ erred in crediting the opinions of Drs. Futerfas and Durrani as neither addressed whether Claimant could perform his usual coal mine work based on his level of impairment. Claimant's Brief at 28-31. Claimant's argument has merit.

While Dr. Durrani did not specify the level of any impairment, Dr. Futerfas explained that Claimant has a mild to moderate obstructive defect, but the doctor found him not disabled as the results of his studies were not qualifying. Director's Exhibit 13; Employer's Exhibit 2. However, even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *Poole*, 897 F.2d at 894. As all physicians who assessed the level of impairment diagnosed at least a mild obstructive pulmonary impairment, the ALJ erred in failing to address whether Claimant's impairment precludes him from performing the exertional requirements of his last coal mine job. *See Scott*, 60 F.3d at 1141.

Finally, Claimant argues the ALJ failed to consider whether the evidence from his treating pulmonologist, Dr. Evans, supports a finding of total disability. Claimant's Brief at 32-33. Employer argues that even if the ALJ failed to adequately consider this evidence, it is a harmless error as nothing in the treatment records address total disability. Employer's Response at 12. We agree with Employer.

[16] When asked if he had to lift and send down the timbers weighing 100 or more pounds more than every two days, Claimant responded: "Occasionally we'd run out and I'd have to send some down." Hearing Transcript at 18.

Initially, the ALJ noted these treatment records and addressed the pulmonary function study results they contained. Decision and Order at 5, 10. Moreover, even assuming the ALJ's consideration of these records was inadequate, Claimant has not explained how the evidence could support a finding of total disability. Claimant's Brief at 33. While the treating physician interpreted the pulmonary function studies as demonstrating mild to moderate obstruction, nothing in the treatment records address whether this impairment would be totally disabling or indicate any understanding of the exertional requirements of Claimant's usual coal mine employment, deficits Claimant argues are present in certain other medical opinions, addressed above. Claimant's Brief at 32-33; Claimant's Exhibit 5. Thus, any error in the ALJ's consideration and weighing of Claimant's treatment records is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984).

Because the ALJ did not adequately consider the medical opinion evidence to determine if Claimant's level of impairment precludes him from performing his usual coal mine employment, we vacate the ALJ's determination that Claimant failed to establish total disability. 20 C.F.R. §718.204(b)(2); *Witmer,* 111 F.3d at 354; *Wojtowicz,* 12 BLR at 1-165; Decision and Order at 15-16.

Remand Instructions

On remand, the ALJ must reconsider whether the medical opinion evidence supports a finding of total disability, taking into consideration the physicians' respective credentials, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See Witmer*, 111 F.3d at 354-55; *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). Further, we instruct the ALJ to consider the medical opinions in light of the exertional requirements of Claimant's usual coal mine employment. *See Gonzales v. Director, OWCP*, 869 F.2d 776, 779-80 (3d Cir. 1989); *Killman*, 415 F.3d at 721-22; *Cornett*, 227 F.3d at 577. He must also set forth his findings in detail, including the underlying rationale for his decision as the APA requires. *See Wojtowicz,* 12 BLR at 1-165. If Claimant establishes total disability based on the medical opinion evidence, the ALJ must determine whether he is totally disabled taking into consideration all relevant evidence. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232.

If the ALJ again finds Claimant has failed to establish total disability, he may reinstate the denial of benefits as Claimant will not have invoked the Section 411(c)(4) presumption and will have failed to establish a necessary element of entitlement. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27. However, if the ALJ finds total disability established, he must determine if Claimant is able to establish the remaining elements of entitlement. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits, and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge