U.S. Department of Labor

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

BRB No. 22-0137 BLA

BILLY R. MIDKIFF	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOUTHERN OHIO COAL COMPANY	)	
	)	
and	)	
	)	DATE ISSUED: 8/30/2023
CONSOL ENERGY, INCORPORATED	)	
	)	
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 Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Billy R. Midkiff, Langsville, Ohio.

Toni J. Williams (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2019-BLA-05913) rendered on a subsequent claim filed on September 27, 2017,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 17.375 years of underground coal mine employment but did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he concluded Claimant failed to invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30

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[1] Claimant's notice of appeal with the Benefits Review Board was filed by his counsel at the time, Justin DeLuca of Ellis Legal, P.C. However, Claimant's counsel later filed a Motion to Withdraw as Counsel of Record, explaining the attorney who had represented Claimant before the ALJ had since left the firm and no other attorney at the firm had the requisite knowledge in this area of law. The Board granted counsel's motion to withdraw and advised it would consider this appeal as filed by a *pro se* claimant; thus, it will consider the appeal based on the general standard of review under 20 C.F.R. §§802.211(e), 802.220. *Midkiff v. S. Ohio Coal Co.*, BRB No. 22-0137 BLA (June 27, 2022) (unpub. Order).

[2] The district director denied Claimant's prior claim for benefits, filed on September 3, 2015, for failure to establish any element of entitlement. Director's Exhibit 1. Claimant took no further action. Where a miner files a claim for benefits more than one year after the 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)(1); *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 his prior claim was denied for failure to establish any element of entitlement, Claimant had to submit new evidence establishing at least one element of entitlement in order to obtain a review on the merits of his claim. *White*, 23 BLR at 1-3; Director's Exhibit 1.

[3] Section 411(c)(4) 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) (2018); *see* 20 C.F.R. §718.305.

U.S.C. §921(c)(4) (2018), or establish entitlement under 20 C.F.R. Part 718. Therefore, he denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer and its Carrier (Employer) respond, urging affirmance of the ALJ's denial of benefits.[4] The Director, Office of Workers' Compensation Programs, did not file a response.

In an appeal filed without representation, the Board considers 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 or establish entitlement under 20 C.F.R. Part 718, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). A miner is totally disabled if he has a pulmonary or respiratory impairment which, 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 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 ALJ found Claimant failed to establish total disability by any method.[6] 20 C.F.R. §718.204(b)(2); Decision and Order at 21.

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[4] We affirm, as unchallenged, the ALJ's finding that Claimant established 17.375 years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6; Employer's Response at 4-5.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 19; Director's Exhibit 4.

[6] The ALJ rationally found the arterial blood gas study evidence does not support total disability as all of the studies in the record were non-qualifying. Decision and Order

Pulmonary Function Studies

The ALJ considered two pulmonary function studies, dated March 27, 2018, and October 2, 2019. Decision and Order at 9; Director's Exhibit 14; Employer's Exhibit 2. He found both were non-qualifying,[7] both before and after the administration of bronchodilators, based on a height of 59.8 inches[8] and an age of 71 years. Decision and Order at 19. Claimant's age at the time of the studies was 84 years and 85 years, respectively, which exceeds the ages provided in Appendix B. Director's Exhibit 14; Employer's Exhibit 2. Thus, pursuant to the Board's holding in *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008), the ALJ considered whether the studies were qualifying based on the values provided for the age of 71 years.[9] Decision and Order at 9. As the ALJ's finding that the pulmonary function study evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i) is supported by substantial evidence, we affirm it. *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 19.

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at 19. A "qualifying" blood gas study yields values that are equal to or less than the values specified in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii). The ALJ also correctly observed the record contains no evidence of cor pulmonale with right-sided congestive heart failure. *Id.* at 18. Therefore, we affirm, as supported by substantial evidence, his findings that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii),(iii). *Id.* at 18-19.

[7] A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the table at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[8] The ALJ noted Claimant's conflicting heights provided for each study and permissibly resolved the discrepancy by averaging the heights together to find 59.5 inches. Decision and Order at 9 n.8; *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983). As the height falls between those provided in Appendix B, the ALJ used 59.8 inches, the next highest height provided, to determine qualifying values. Decision and Order at 9 n.9.

[9] As discussed in more detail below, Dr. Krefft opined the values in Appendix B for a 71-year-old man do not reflect the predicted normal values for a miner of Claimant's age; however, she did not provide what values would be "qualifying." Claimant's Exhibit 1 at 6-8.

Medical Opinions

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 Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005). 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 working as a continuous miner operator, which required heavy exertion. Decision and Order at 6. Employer has not challenged this determination; thus, it is affirmed. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

The ALJ considered the medical opinions of Drs. Feicht, Krefft, Zaldivar, and Rosenberg. Decision and Order at 19-21; Director's Exhibit 14; Claimant's Exhibits 1, 2; Employer's Exhibits 2, 2A, 4, 4A, 5, 6. He found Drs. Krefft and Rosenberg to be the best-qualified given their board-certifications in pulmonology, relevant medical publications, professorships, and affiliations with teaching hospitals. Decision and Order at 19. Drs. Feicht, Krefft, and Zaldivar opined Claimant is incapable of performing his usual coal mine employment. Director's Exhibit 14; Claimant's Exhibits 1, 2; Employer's Exhibits 2, 2A, 5. Dr. Rosenberg opined Claimant is disabled as a whole person due to age and various health issues but is not totally disabled strictly from a pulmonary perspective, as none of the objective testing qualified as disabling pursuant to the Department of Labor's (DOL) criteria. Employer's Exhibits 4, 4A, 6. The ALJ accorded greater weight to Dr. Rosenberg's opinion, found the opinions supporting total disability not well-reasoned, and thus concluded the medical opinion evidence does not support total disability. Decision and Order at 19-21.

Dr. Feicht noted Claimant had "various" duties throughout his mining career, where he worked underground at the face. Director's Exhibit 14 at 4. He noted "moderately severe" exertional dyspnea, as Claimant reported he could climb only one flight of stairs and could walk approximately fifty yards. *Id.* The physician found the pulmonary function study Claimant performed consistent with "severe COPD [chronic obstructive pulmonary disease]." *Id.* at 5. Dr. Feicht opined Claimant is "fully impaired" from performing his last coal mine employment, basing his determination on the abnormal pulmonary function study and chest x-ray obtained during his examination. *Id.* at 5-6. After considering additional evidence, Dr. Feicht provided a supplemental report, again noting his opinion that Claimant had "severe and disabling COPD" and "moderately severe" dyspnea. Claimant's Exhibit 2.

The ALJ accorded less weight to Dr. Feicht's opinion because the doctor found Claimant is totally disabled based on the "abnormal" pulmonary function test obtained during his examination without adequately explaining why the study was abnormal particularly given that it was non-qualifying. *Id.* at 20-21. But the significance of even non-qualifying objective tests is for a physician to determine and a physician may find that such test results indicate that a miner would be unable to perform his last coal mine employment. *See McMath v. Director, OWCP*, 12 BLR 1-6, 1-10 (1989); *Smith v. Director, OWCP*, 8 BLR 1-258, 1-261 (1985); *Marsiglio v. Director, OWCP*, 8 BLR 1-190, 1-192 (1985).

While Dr. Feicht did not specifically address the non-qualifying results of the pulmonary function studies, he opined Claimant's obstructive disease is "severe" and his shortness of breath is "moderately severe," and he is "fully impaired." Director's Exhibit 14; Claimant's Exhibit 2. 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 mining job. *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."); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may infer total disability by comparing the severity of impairment or related physical limitations that a physician diagnoses with the exertional requirements of the miner's usual coal mine work). Even a mild impairment can be disabling, depending on the exertional requirements of the miner's usual coal mining work. *Cornett*, 227 F.3d at 578.

As the ALJ did not adequately explain his rejection of Dr. Feicht's opinion that Claimant cannot do his usual coal mining work, we vacate the ALJ's discrediting of Dr. Feicht's opinion. *Martin*, 400 F.3d at 305; *Cornett*, 227 F.3d at 578; *Budash*, 9 BLR at 1-51-52.

Dr. Krefft summarized Claimant's various jobs and the duties required for each. Claimant's Exhibit 1 at 1. She diagnosed Claimant with moderately severe airflow obstruction and hyperinflation with air trapping. *Id.* at 5, 8-9. To assess the level of Claimant's impairment, Dr. Krefft relied on the Global Lung Initiative (GLI) standards. Claimant's Exhibit 1 at 6. She indicated the values obtained in Claimant's most recent pulmonary function study from 2019 demonstrated lung function being at 59 or 60% predicted for the FEV1 result, depending on the height used, which is "below or very near" meeting the DOL disability criteria of less than 60% of predicted. Claimant's Exhibit 1 at 6-8. Dr. Krefft opined Claimant would be unable to perform his most recent coal mine employment because his level of impairment and symptoms would preclude him from

shoveling, lifting and carrying items in excess of twenty-five pounds, and walking for prolonged periods of time. Claimant's Exhibit 1 at 9.

The ALJ accorded less weight to Dr. Krefft's opinion because her analysis of the pulmonary function studies was "arbitrarily" based on a different set of disability standards than the one that the DOL uses. Decision and Order at 21. However, Dr. Krefft explained why she used the GLI standards in assessing Claimant's level of impairment, indicating the Knudsen predicted values were not reliable for determining the predicted normal value for miners over the age of 75 and the GLI standards are recommended by a number of medical societies as the basis for determining lung function in older miners such as Claimant. Claimant's Exhibit 1 at 6-7. The ALJ did not explain why he rejected Dr. Krefft's use of the GLI standards or found Dr. Krefft's explanation deficient. *Martin*, 400 F.3d at 305.

Moreover, the ALJ failed to consider whether Dr. Krefft's opinion could support a finding that Claimant is totally disabled from performing his usual coal mine employment notwithstanding his non-qualifying objective tests. 20 C.F.R. §718.204(b)(2)(iv); *Cornett*, 227 F.3d at 587. As the ALJ failed to consider the entirety of Dr. Krefft's opinion in finding it undermined and further did not adequately explain his findings, we vacate the ALJ's weighing of Dr. Krefft's opinion and remand the case for the ALJ to reconsider the physician's opinion. *Martin*, 400 F.3d at 305; *McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand).

Dr. Zaldivar indicated Claimant's last job was working as a general laborer and would have required "exertional" work. Employer's Exhibits 2, 5 at 27-28. The doctor found mild to moderate obstruction and a mild diffusion abnormality. Employer's Exhibits 2 at 1, 7; 5 at 59. Recognizing that Claimant's objective test results were non-qualifying pursuant to the DOL regulations, he nevertheless opined Claimant is incapable of performing his usual coal mining work from a pulmonary perspective given his advanced age and FEV1 value of 1.10 on pulmonary function testing. Employer's Exhibits 2 at 3; 2A at 5, 7; 5 at 57-59, 94-98.

The ALJ found Dr. Zaldivar's opinion equivocal because the physician indicated the pulmonary function studies were non-qualifying and yet still found Claimant totally disabled. Decision and Order at 21. In addition, the ALJ found Dr. Zaldivar did not adequately explain why Claimant's age rendered him totally disabled "solely from a respiratory standpoint." *Id.*

The ALJ erred in finding Dr. Zaldivar's opinion equivocal on this basis, as a physician may offer a reasoned medical opinion diagnosing total disability even though the

objective studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett*, 227 F.3d at 587; *Killman*, 415 F.3d at 721-22. Moreover, the ALJ appears to confuse the issue of total disability with disability causation, indicating Dr. Zaldivar failed to adequately explain why Claimant's age rendered him totally disabled from a respiratory or pulmonary perspective. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); 20 C.F.R. §718.204(a) ("If . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis."). Dr. Zaldivar opined that Claimant's ventilation "is simply not there to allow him to do heavy labor." Employer's Exhibit 5 at 58. Setting aside his opinion as to the cause of Claimant's pulmonary impairment, Dr. Zaldivar opined Claimant could not do his coal mining work from a pulmonary perspective. Thus, the ALJ erred in finding Dr. Zaldivar's opinion equivocal on this basis.

Dr. Rosenberg acknowledged Claimant has mild airflow obstruction, which had worsened recently. Employer's Exhibits 4A at 3; 6 at 21, 25. However, Dr. Rosenberg determined Claimant "is not disabled strictly from a pulmonary perspective," as none of the objective testing results are qualifying.[10] Employer's Exhibits 4 at 4-5; 4A at 2; 6 at 28. The physician opined Claimant is "disabled from whole person disorders," and thus would be incapable of performing his last coal mine job from an overall medical perspective due to his age, severe vascular disease, and overall medical condition. Employer's Exhibits 4 at 4-5; 6 at 28-30.

The ALJ found Dr. Rosenberg's opinion well-reasoned and documented, as consistent with the non-qualifying objective testing. But the ALJ erred in making this

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[10] Dr. Rosenberg agreed with Dr. Krefft that the pulmonary function study values set forth in Appendix B for a 71-year-old man do not accurately reflect disabling values for an older miner such as Claimant. Employer's Exhibit 4A. However, Dr. Rosenberg indicated the Knudsen predicted values should be used to extrapolate the qualifying values, given that method was used to create the table in Appendix B. *Id.* He opined that when both extrapolating the values based on Claimant's age using the Knudsen predicted values and when relying solely on the values for a 71-year-old in Appendix B, the values obtained in Claimant's testing are non-qualifying. Employer's Exhibit 6 at 47-48.

finding. As discussed above, a physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Cornett*, 227 F.3d at 578; 20 C.F.R. §718.204(b)(2)(iv). Consequently, the ALJ erred by failing to address whether Dr. Rosenberg adequately explained why Claimant's mild obstructive impairment was not disabling independent of whether the pulmonary function studies or arterial blood gases are non-qualifying. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). Moreover, the ALJ failed to consider whether Dr. Rosenberg's opinion supports a finding of total disability given his opinion that Claimant is incapable of performing his usual coal mine employment due to various health issues. *See* 20 C.F.R. §718.204(a).

Finally, the ALJ erred in finding Drs. Feicht's, Krefft's, and Zaldivar's opinions undermined for failing to consider the non-qualifying arterial blood gas studies. Decision and Order at 21. Initially, each physician addressed the resting arterial blood gases and acknowledged they were non-qualifying under the regulations. Director's Exhibit 14 at 6; Claimant's Exhibit 1 at 8; Employer's Exhibit 5 at 56-58. Moreover, because pulmonary function studies and arterial blood gas studies measure different types of impairment, non-qualifying blood gas studies do not necessarily preclude a finding of total disability. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.* 6 BLR 1-797, 798 (1984).

The ALJ erred in focusing solely on whether the objective studies were qualifying and not considering whether the medical opinions could support a finding that Claimant could not perform his usual coal mine employment notwithstanding the non-qualifying studies, particularly given that all the experts agreed Claimant had at least some measure of impairment. Again, the significance of even non-qualifying objective tests is for a physician to determine and a physician may find that such test results indicate that a miner would be unable to perform his usual coal mine employment. *See McMath*, 12 BLR at 1-10; *Smith*, 8 BLR at 1-261; *Marsiglio*, 8 BLR at 1-192.

Based on the foregoing, we vacate the ALJ's finding that the medical opinion evidence does not support total disability, 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the record as a whole. 20 C.F.R. §718.204(2); Decision and Order at 21. Thus, we further vacate his finding that Claimant did not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); Decision and Order at 21.

Remand Instructions

On remand, the ALJ must reconsider the medical opinion evidence and determine whether Claimant has established total disability based on this evidence. 20 C.F.R. §718.204(b)(2)(iv). The ALJ should recognize that a physician may offer a reasoned

medical opinion diagnosing total disability even if the objective studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *Cornett*, 227 F.3d at 578. In rendering his credibility findings, the ALJ should address 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 Napier,* 301 F.3d at 713-14; *Crisp,* 866 F.2d at 185; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). He must explain his findings in accordance with the Administrative Procedure Act (APA).[11] 5 U.S.C. §557(c)(3)(A); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). The ALJ must then reweigh the evidence together as a whole and determine whether Claimant has established total disability pursuant to 20 C.F.R. §718.204(b). *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989). Because Claimant established 17.375 years of underground coal mine employment, if the ALJ finds Claimant established he is totally disabled, he will invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis. The ALJ must then consider whether Employer has rebutted the presumption. 20 C.F.R. §718.305(d)(1).

[11] The APA requires every adjudicatory decision include "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), as incorporated into the Act by 30 U.S.C. §932(a).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

While I agree that remand is required for the ALJ to reconsider the opinions of Drs. Krefft, Zaldivar, and Rosenberg on the issue of total disability, I respectfully disagree with my colleagues and would affirm the ALJ's discrediting of Dr. Feicht's opinion as to whether Claimant is totally disabled. The ALJ found that Dr. Feicht's opinion was not reasoned because the doctor did not provide an explanation as to why the test results, while non-qualifying, were abnormal. Decision and Order at 20-21. Dr. Feicht provided conclusory statements that based on "abnormal PFT [pulmonary function test]," Claimant had "Severe COPD [chronic obstructive pulmonary disease], Emphysema," and consequently that Claimant is totally disabled. Director's Exhibit 14. However, the doctor never explained how the test results demonstrated that Claimant had such severe disease that he could not perform his usual coal mine employment. Director's Exhibit 14; Claimant's Exhibit 2.

It is within the purview of the ALJ to determine whether an opinion is reasoned, and within that, to determine whether the doctor's explanation of his opinion is adequate to support his conclusion. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (the determination of whether an opinion is reasoned and documented requires the ALJ to examine the validity of a medical opinion's reasoning in light of studies conducted and objective indications upon which medical conclusion is based). Since one simply cannot tell from Dr. Feicht's opinion how Dr. Feicht "knew" from the pulmonary function test results that Claimant could not do his last usual coal mining job (he does not explain what the abnormality is in the test results), the ALJ's determination that his explanation was inadequate was well within the ALJ's discretion.

JUDITH S. BOGGS
Administrative Appeals Judge