U.S. Department of Labor

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

BRB No. 20-0158 BLA

GARRY FREEMAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CUMBERLAND COAL RESOURCES, LP	)	DATE ISSUED: 06/29/2021
	)	
Employer-Petitioner	)	
	)	
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 Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long), Ebensberg, Pennsylvania, for Claimant.

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer.

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

BUZZARD, Administrative Appeals Judge:

Employer appeals the Decision and Order Awarding Benefits (2019-BLA-05331) of Administrative Law Judge Natalie A. Appetta rendered on a claim filed on July 8, 2017 pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge found Claimant has thirty-eight years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. She therefore determined that Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). She further found that Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the administrative law judge erred in finding Claimant established total disability and invoked the Section 411(c)(4) presumption. Employer further argues she erred in finding it did not rebut the presumption.[1] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. Employer has filed a reply brief, reiterating its contentions.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge'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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of Section 411(c)(4) Presumption - Total Disability

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. 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 testing, 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 of the relevant evidence and weigh the evidence supporting a finding of total disability

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

[2] The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 5-8.

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 the opinions of Drs. Basheda, Werntz, and Spagnolo.[3] Decision and Order at 8-13. Drs. Werntz and Basheda opined Claimant has a totally disabling respiratory impairment, while Dr. Spagnolo opined he does not. Director's Exhibits 19, 25, 26, 27; Employer's Exhibits 6, 9, 10. The administrative law judge found the opinions of all three physicians documented and reasoned. Decision and Order at 14-15. Determining "the majority of the best-explained opinions" supported disability, she found the medical opinions established total disability. *Id.* at 15.

Employer argues that the administrative law judge failed to explain why she accorded the professional qualifications of Drs. Werntz, Basheda, and Spagnolo similar weight. Decision and Order at 14; Employer's Brief at 4-5. Employer's contention lacks merit. As the trier-of-fact, the administrative law judge has broad authority to assess the credibility of the medical opinions and assign them appropriate weight. *See Balsavage* v. *Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). The administrative law judge explained her conclusion, stating: "[a]ll three physicians have significant experience in pulmonary and occupational medicine. Pulmonary medicine and occupational medicine are each relevant to the diagnosis of [coal workers' pneumoconiosis]."[4] Decision and Order at 12. Employer's

[3] The administrative law judge found the pulmonary function studies and blood gas studies did not establish total disability. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 8-9. She also found no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 7 n.7.

[4] The administrative law judge recounted the physicians' credentials, noting Dr. Wertnz is Board-certified in occupational medicine, is an associate professor at West Virginia University, has published articles on occupational medicine, and is an intermittent consultant with the surveillance branch of the National Institute for Occupational Safety and Health's division of respiratory and disease studies. Decision and Order at 10; Director's Exhibit 21. Dr. Basheda is a B reader and is Board-certified in internal medicine with subspecialties in pulmonary diseases and critical care, is chief of the pulmonary disease section at Saint Clair Memorial Hospital in Pittsburgh, Pennsylvania, and has published several articles on pulmonary topics. Decision and Order at 11; Director's Exhibit 26. Dr. Spagnolo is Board-certified in internal medicine with a subspecialty in pulmonary diseases, a professor of medicine at the George Washington University School of Medicine, a senior attending physician in pulmonary diseases and medical director of

assertion that Dr. Werntz is less qualified than Drs. Basheda and Spagnolo amounts to a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). We therefore affirm the administrative law judge's determination that the physicians' credentials are deserving of similar weight. *See Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163; Decision and Order at 14.

Employer next argues the administrative law judge erred by not addressing whether Dr. Werntz's "shifting opinion" undermined his credibility. Employer's Brief at 7. However, Employer identifies no inconsistency she should have addressed. Dr. Werntz opined Claimant is totally disabled by both a restrictive lung disease reflected on the September 21, 2017 pulmonary function testing and an impaired gas exchange reflected on arterial blood gas testing. Director's Exhibit 19 at 5. He stated that while Claimant could perform a "majority" of the duties required by his last coal mine employment, his pulmonary impairment prevents him from performing the "more aerobic parts of his job." *Id*. In response to the district director's request for clarification, he reiterated that Claimant has a restrictive impairment and gas exchange impairment. Director's Exhibit 25 at 1-2. He further explained that Claimant's blood gas testing is the "best evidence" of his impaired gas exchange and indicates Claimant's previous coal mine job requires "more effort tha[n] he could sustain[.]" *Id*. Specifically, Dr. Werntz explained the exercise blood gas testing demonstrated oxygen desaturation at 6.6 metabolic equivalents (METS) of exercise, which he opined is incompatible with Claimant's previous coal mine employment requiring the ability to perform work at seven to eight METS. Director's Exhibits 19, 25, 27. He later reviewed the July 6, 2018 testing Dr. Basheda performed and opined that Claimant's pulmonary function studies show a totally disabling restrictive impairment. Director's Exhibit 27 at 2-4. As Dr. Werntz has consistently opined Claimant is totally disabled by both a restrictive lung disease and impaired gas exchange, Director's Exhibit 19 at 5, there is no basis for Employer's assertion that his opinion shifted or that there is a conflict in his rationale. Relatedly, Employer's argument that Dr. Werntz failed to explain how Claimant's impairment renders him totally disabled is belied by the evidence. Employer's Brief at 7.

We also reject Employer's contention that the blood gas testing did not demonstrate sufficient oxygen desaturation for Dr. Werntz to diagnose total disability. Employer's Brief at 7-8. The fact that blood gas study evidence does not establish total disability does not preclude a finding of total disability based on the medical opinion evidence. *See*

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respiratory care at the Veterans Affairs Medical Center in Washington, D.C., and is well-published on pulmonary topics. Decision and Order at 13; Employer's Exhibit 7.

Balsavage, 295 F.3d at 396; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997); 20 C.F.R. §718.204(b)(2)(iv). Non-qualifying[5] test results alone do not establish the absence of an impairment. *Estep v. Director, OWCP*, 7 BLR 1-904, 1-905 (1985). Rather, the relevant inquiry at 20 C.F.R. §718.204(b)(2)(iv) is whether Claimant's respiratory or pulmonary impairment precludes the performance of his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1)(i), (ii), (b)(2)(iv).

We further reject Employer's argument that Dr. Werntz's diagnosis of total disability is undermined by Dr. Basheda's and Dr. Spagnolo's assertion that Claimant's decreased oxygen saturation was caused by a heart condition. Employer's Brief at 7-8. Employer conflates the issues of total disability and disability causation. As properly analyzed by the administrative law judge, the 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. §718.204(c) or in consideration of whether an employer rebuts the Section 411(c)(4) presumption. *See Mabe v. Bishop Coal Co*., 9 BLR 1-67, 1-68 (1986); *Sisak v. Helen Mining Co*., 7 BLR 1-178, 1-181 (1984); 20 C.F.R. §718.204(b), (c).

Employer's argument the administrative law judge did not address conflicts between the opinions of Drs. Basheda and Werntz is also without merit. Employer's Brief at 10. As the administrative law judge noted, Dr. Basheda conducted ambulatory pulse oximetry testing and stated it revealed no exercise-induced oxygen desaturation. Decision and Order at 12; Director's Exhibit 26. She nevertheless credited Dr. Werntz's "thorough" explanation that Claimant's stable heart rate during that testing demonstrated it was not sufficiently strenuous to be used in place of exercise blood gas testing which he found totally disabling.[6] Decision and Order at 14; Director's Exhibit 27. Moreover, regardless

[5] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

[6] Employer also alleges error in the administrative law judge's discrediting of Dr. Basheda's pulse oximetry test which revealed no oxygen desaturation. However, Employer misstates the record in suggesting that Dr. Spagnolo refuted Dr. Werntz's opinion that the pulse oximetry is an unreliable measure of Claimant's exercise capacity due to his low heart rate during the test. Dr. Spagnolo simply stated Claimant's heart rate on pulse oximetry "probably didn't go up as much as it could have" because of his use of a beta blocker. Employer's Exhibit 9 at 31. He did not indicate that the pulse oximetry was therefore performed at an appropriate level of exercise for purposes of determining Claimant's ability to perform his coal mine employment. Rather, when asked "if

of any difference in opinion on the probative value of pulse oximetry testing versus blood gas testing, both physicians are in agreement that Claimant is totally disabled based on his pulmonary function studies.[7] Decision and Order at 11-12; Director's Exhibits 26, 27; Employer's Exhibit 10.

As it is the province of the administrative law judge to evaluate the medical opinion evidence and assess its credibility and probative value, we affirm the administrative law judge's determination Dr. Werntz's opinion is credible and reject Employer's argument to the contrary. *See Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163.

We further reject employer's contention that the administrative law judge failed to explain her finding that, when weighed together, the evidence established a totally disabling impairment. Employer's Brief at 4-5. The administrative law judge acknowledged the non-qualifying nature of Claimant's pulmonary function studies and blood gas studies as a whole, but permissibly credited the opinions of Drs. Basheda and Werntz that the objective testing nonetheless reflected the existence of a totally disabling respiratory or pulmonary impairment. *See Balsavage*, 295 F.3d at 396; *Estep*, 7 BLR at 1-905; 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-13. Thus, the administrative law judge both separately considered the pulmonary function study and blood gas study results pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii), and integrated her consideration of the objective test results into her consideration of the medical opinions. Decision and Order

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[Claimant's] heart rate went up to the correct amount that is required in order to do a proper exercise" study, he replied that pulse oximetry "walk tests" (such as that performed by Dr. Basheda) "are not totally used in place of [blood gas] exercise testing" (such as that performed and relied on by Dr. Werntz to diagnose total disability). *Id*. Moreover, Employer fails to explain how the alleged error in rejecting the pulse oximetry test undermines the administrative law judge's crediting of Dr. Werntz's and Dr. Basheda's diagnoses of a totally disabling impairment based on the separate pulmonary function tests each conducted.

[7] As Drs. Werntz and Basheda both opined Claimant's pulmonary function studies are totally disabling and reveal a restrictive impairment, Employer does not explain how Dr. Basheda's opinion that Claimant also developed an obstructive impairment after Dr. Wernzt's examination undermines either physician's opinion that Claimant is totally disabled. Employer's Brief at 10.

at 6-13. Therefore, she adequately considered all contrary probative evidence.[8] *See Shedlock*, 9 BLR at 1-198.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that Claimant established total disability and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 13.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[9] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R.

[8] While Employer asserts the administrative law judge erred by not addressing Dr. Spagnolo's opinion regarding the validity of the July 6, 2018 pulmonary function study, it fails to explain how rejection of this study as invalid would have made any difference given the administrative law judge's finding that the pulmonary function study evidence is non-qualifying for total disability. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how "error to which he points could have made any difference"); Employer's Brief at 5-6. We further reject its very general assertion that the study's alleged invalidity might impact the credibility of the medical opinions that relied on it. As the administrative law judge found, despite opining this study is invalid, Dr. Spagnolo found it sufficient for diagnostic purposes. Employer's Exhibits 6 at 7; 9 at 17-20. Likewise, while acknowledging deficiencies in the study, Dr. Basheda still found it sufficiently reliable to opine it demonstrates Claimant is totally disabled from performing his usual coal mine work. Director's Exhibit 26 at 8-9, 12; Employer's Exhibit 10 at 12-14. Thus, while Drs. Spagnolo and Basheda both identified aspects of this study that were less than optimal, they nevertheless identified relevant, probative information they gleaned from this study and relied upon that data to support their disability opinions. Therefore, any error in not rendering a specific finding on the validity of the July 6, 2018 pulmonary function study was harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[9] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

§718.305(d)(1)(i), (ii). The administrative law judge found that Employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

To disprove legal pneumoconiosis,[10] Employer must demonstrate that Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-1-55 n.8 (2015) (Boggs, J., concurring and dissenting).

Employer relies on the opinions of Drs. Basheda and Spagnolo, both of whom opined Claimant does not have legal pneumoconiosis. Director's Exhibit 26; Employer's Exhibits 6, 8, 10. Dr. Basheda diagnosed obesity and asthma unrelated to pneumoconiosis, explaining the changes in the pulmonary function studies were consistent with asthma and indicating Claimant would have been unable to work in coal mines for over thirty years if his coal mine employment affected his asthma. Decision and Order at 11-13, 19; Director's Exhibit 26. Dr. Spagnolo diagnosed intermittent asthma complicated by obesity and heart disease, and unrelated to pneumoconiosis. Decision and Order at 13-14, 18-19; Employer's Exhibit 6, 8. The administrative law judge found the opinion of Dr. Spagnolo poorly documented and entitled to little weight, and concluded Dr. Werntz's opinion refuted the opinion of Dr. Basheda. Decision and Order at 18-19.

Employer contends that the administrative law judge erred in rejecting the opinions of Drs. Basheda and Spagnolo. Employer's Brief at 12-21. We disagree. The administrative law judge permissibly found that, though Dr. Spagnolo provided a variety of explanations for Claimant's impairment, the physician did not adequately explain why his history of coal mine dust exposure did not significantly contribute, along with his other conditions, to his impairment. *See Balsavage*, 295 F.3d at 396; *Mancia v. Director, OWCP*, 130 F.3d 579, 588 (3d Cir. 1997); *Lango v. Director, OWCP*, 104 F.3d 573, 577-78 (3d Cir. 1997); Decision and Order at 19.

Employer further argues the administrative law judge did not provide sufficient rationale for her evaluation of the opinions of Drs. Basheda and Werntz. It therefore contends her decision does not comply with the explanatory requirements of the Administrative Procedure Act (APA). 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. 932(a); Employer's Brief at 20-21. We disagree.

[10] The administrative law judge found Employer established Claimant does not have clinical pneumoconiosis. Decision and Order at 20.

The APA provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). If a reviewing court can discern what the administrative law judge did and why she did it, the duty of explanation under the APA is satisfied. *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013).

The administrative law judge discounted Dr. Basheda's opinion because she found more credible Dr. Werntz's contrary opinion that Claimant does not meet the clinical criteria for asthma, as well as his opinion, supported by citations to medical literature, that obesity could not account for the degree of restriction shown on the pulmonary function studies. Decision and Order at 19; Director's Exhibit 27. Contrary to Employer's argument, the administrative law judge permissibly credited the opinion of Dr. Werntz over that of Dr. Basheda because he provided specific rationale and discussion of diagnostic criteria demonstrating Claimant's condition is inconsistent with the clinical indications for asthma.[11] *See Balsavage*, 295 F.3d at 396; *Mancia*, 130 F.3d at 588; Decision and Order at 29; Director's Exhibit 27. She further permissibly credited Dr. Werntz's opinion because he relied on medical literature specifically addressing and supporting his opinion on the effects of Claimant's obesity.[12] *See Balsavage*, 295 F.3d at 396; *Lango*, 104 F.3d at 578; Decision and Order at 29; Director's Exhibit 27.

As the trier-of-fact, the administrative law judge has the discretion to assess the credibility of the medical opinions and to assign them weight; the Board may not reweigh the evidence or substitute its own inferences for the administrative law judge's. *See Balsavage*, 295 F.3d at 396; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Anderson*, 12 BLR at 1-113; *Fagg*, 12 BLR at 1-79. Because the administrative law judge permissibly discredited the only medical opinions supportive of a finding that

[11] Employer cites to an August 5, 2016 treatment note as support for its contention Claimant was previously diagnosed with asthma. Employer's Brief at 14, 21; Employer's Exhibit 1 at 4. However, that note simply reflects Claimant endorsed the symptoms of shortness of breath and asthma. Employer's Exhibit 1 at 4. It does not contain a diagnosis of asthma. *See id.* at 6-7.

[12] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Spagnolo and Basheda, any error in discrediting their opinions for other reasons would be harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address Employer's remaining arguments regarding the weight accorded to their opinions.

Claimant does not have legal pneumoconiosis, we affirm her finding that Employer failed to disprove the existence of the disease. Decision and Order at 23-24. Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The administrative law judge found the opinions of Drs. Spagnolo and Basheda insufficient to establish no part of Claimant's total respiratory disability was due to legal pneumoconiosis. Decision and Order on Remand at 21-22. Employer raises no specific error with regard to the administrative law judge's finding other than to reassert Claimant does not have legal pneumoconiosis. *See* Employer's Brief at 21-22. As we rejected Employer's arguments on legal pneumoconiosis, we affirm the administrative law judge's finding that it did not rebut the Section 411(c)(4) presumption by establishing no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 22.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

I concur.

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the award of benefits because I agree with Employer that the administrative law judge committed multiple errors in finding Claimant established total disability that require remand. 20 C.F.R. §718.204(b)(2).

Initially, Employer correctly points out that the administrative law judge erred by not addressing Dr. Spagnolo's opinion that the June 28, 2018 pulmonary function test is invalid. *See Director, OWCP v. Siwiec*, 894 F.2d 635, 638 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1327 (3d Cir. 1987); Employer's Brief at 5-6. Contrary to the majority's conclusion, the fact that Drs. Spagnolo and Basheda managed to identify some useful information in an otherwise invalid study does not justify the failure to consider the opinion that the study is invalid or otherwise unreliable in assessing total disability. Moreover, this error was not harmless because the administrative law judge gave both pulmonary function studies equal credibility when weighing the medical opinion evidence, and Drs. Werntz and Basheda relied in part upon this pulmonary function study in opining Claimant is disabled. *See Siwiec*, 894 F.2d at 639-40; *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986); Director's Exhibit 26; Employer's Exhibits 10, 27.

Employer also correctly notes the administrative law judge's evaluation of the medical opinion evidence does not satisfy the requirements of the Administrative Procedure Act (APA). Employer's Brief at 7-9, 22-25. The APA requires the administrative law judge to consider all relevant evidence in the record, and to set forth her "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). While the administrative law judge summarized the opinions of Drs. Werntz, Basheda, and Spagnolo, though some more fully than others, she failed to explain which opinions she found more credible or to provide rationale for her credibility findings. Decision and Order at 10-15. Consequently, she failed to explain, in compliance with the APA, why she determined the opinion evidence is sufficient to establish that Claimant has a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(4). *Wojtowicz*, 12 BLR at 1-165; *see Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997). Instead, as Employer rightly points out and the majority fails to address, she improperly found the opinion evidence supports a finding of total disability solely because more doctors opined Claimant is disabled than opined he is not.

Employer's Brief at 4; Decision and Order at 15; *see Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992).

Moreover, though she equally credited the opinions of Drs. Werntz, Basheda, and Spagnolo, Decision and Order at 14, the administrative law judge failed to resolve conflicts within the opinion evidence. Likewise, while the administrative law judge credited the opinions of Drs. Werntz and Basheda that the pulmonary function studies demonstrate total disability, Decision and Order at 14-15, she failed to address the disparate bases for their opinions. Dr. Werntz opined the pulmonary function studies show Claimant has restrictive lung disease with no obstruction, whereas Dr. Basheda asserts the studies demonstrate an obstructive impairment consistent with asthma. Director's Exhibits 26, 27; Employer's Exhibit 10. Further, she credited Dr. Werntz's conclusion that Claimant's stable heart rate during the July 8, 2018 pulse oximetry testing demonstrated the study was a poor reflection of Claimant's exercise capacity, Decision and Order at 14, but failed to address Dr. Spagnolo's opinion that Claimant's heart rate during this testing can be explained by his prescription for beta blockers, which he opined "prevent the heart rate from going up." Employer's Exhibit 9 at 12. The administrative law judge's evaluation of the opinion evidence thus does not comply with the APA, which requires the administrative law judge to resolve conflicts among the opinions and explain her findings and rationale. *See Kertesz*, 788 F.2d at 163; *Wojtowicz*, 12 BLR at 1-165.

The administrative law judge's error is not harmless because Claimant has the burden of proof to establish total disability and, thus, the administrative law judge must specifically address whether the medical opinions Claimant relies on to satisfy that burden are reasoned and documented. *See generally Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988). Thus, I would vacate the award of benefits and remand the claim for further consideration of the pulmonary function studies and medical opinions relevant to whether Claimant established a totally disabling respiratory impairment. 20 C.F.R. §718.204(b). The administrative law judge should address the physicians' explanations for their conclusions, the documentation underlying their medical judgements, and the sophistication of, and bases for, their diagnoses. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002). Further, I would instruct the administrative law judge on remand to explain the bases for all of her credibility determinations, setting forth in detail how she resolves the conflicts in the evidence, as the Administrative Procedure Act requires. *See Wojtowicz*, 12 BLR at 1-165. Because the administrative law judge's determinations with respect to the doctors' opinions as to total disability would affect invocation of the 411(c) presumption, and, potentially, her weighing of the evidence were she again to find the

presumption invoked, I would not address her determinations relating to rebuttal at this time.

For these reasons I respectfully concur in part and dissent in part from the opinion of the majority.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge