U.S. Department of Labor

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

BRB No. 20-0218 BLA

GOEBEL R. BURKE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KIAH CREEK MINING COMPANY	)	
	)	DATE ISSUED: 03/30/2021
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 Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Evan B. Smith (AppalReD Legal Aid), Prestonburg, Kentucky, for Claimant.

Paul Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge Christopher Larsen's Decision and Order Awarding Benefits (2018-BLA-05668) rendered on a claim filed on July 12, 2016 pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge found Employer is the properly designated responsible operator. He credited Claimant with eighteen years of underground coal mine employment and found he established complicated pneumoconiosis. Thus Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018). He also found Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203. Alternatively, the administrative law judge found Claimant has a totally disabling respiratory or pulmonary impairment and thus invoked 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); 20 C.F.R. §718.204(b)(2). He further found Employer did not rebut the presumption. Accordingly, he awarded benefits.

On appeal, Employer argues the administrative law judge erred in finding it is the responsible operator. It contends the administrative law judge also erred in finding Claimant has complicated pneumoconiosis. It further asserts he erred in finding Claimant is totally disabled and, therefore, invoked the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response.

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

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that Claimant had eighteen years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript 15-16.

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner.[4] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another "potentially liable operator" that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

The administrative law judge noted the district director designated Employer, Kiah Creek Mining Company (Kiah Creek) aka Branham and Baker, as the responsible operator in this claim because it employed Claimant in coal mining for more than one year from 1989 to 1997. Decision and Order at 6; *see* Director's Exhibit 58. He acknowledged Employer's argument that Branham and Baker is a separate entity that should have been named as the responsible operator because it more recently employed Claimant and is a successor operator to Kiah Creek. Decision and Order at 6. In support of its argument, Employer relied on Claimant's hearing and deposition testimony and documentary evidence in the form of "Articles of Merger." *Id.*

The administrative law judge concluded, however, that Employer did not timely submit the "Articles of Merger" to the district director. 20 C.F.R. §725.456(b)(1). Thus he declined to consider this evidence on the responsible operator issue.[5] Decision and Order at 6-7. He further found Employer's argument that Branham and Baker is a successor operator unpersuasive. *Id*. He found the evidence insufficient to meet

[4] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[5] Employer does not challenge the administrative law judge's exclusion of the "Articles of Merger" as untimely submitted. Decision and Order at 6. We thus affirm this evidentiary ruling. *Skrack*, 6 BLR at 1-711.

Employer's burden of establishing another potentially liable operator more recently employed Claimant. *Id*. Thus he found Employer is the responsible operator. *Id*.

Employer argues the administrative law judge erred in finding Kiah Creek aka Branham and Baker is the responsible operator. Employer's Brief at 5-7. Specifically it argues Claimant's testimony establishes Branham and Baker is a separate entity, it "purchased the assets of Kiah Creek," and Kiah Creek "then became known as Branham and Baker." Employer's Brief at 5-6. Employer argues that "for all intents and purposes, Branham and Baker was a separate company from Kiah Creek [and] a successor operator of Kiah Creek." Employer's Brief at 5-6. Employer's argument has no merit.

We first hold Employer is precluded from relying on Claimant's testimony because Claimant was not designated as a liability witness as the regulations require. 20 C.F.R. §§725.414(c), 456(b)(1), (2).

On August 11, 2016, the district director issued a Notice of Claim to Kiah Creek aka Branham and Baker advising that it had been named as a potentially liable operator. Director's Exhibit 32. Employer controverted the claim but did not submit any evidence pertaining to the responsible operator issue. Director's Exhibits 36. On January 27, 2017, the district director issued a Schedule for the Submission of Additional Evidence naming Kiah Creek aka Branham and Baker as the designated responsible operator. Director's Exhibit 49. The district director advised Employer that it could no longer submit evidence regarding its status as a potentially liable operator because it did not submit such evidence within ninety days of receiving the Notice of Claim. *Id.*, *citing* 20 C.F.R. §725.408(b)(2). The district director further advised Employer must identify liability witnesses relating to its status as the designated responsible operator by March 28, 2017, and that this date could be extended for good cause. *Id.*, *citing* 20 C.F.R. §725.414(b), (c). The district director also noted Employer's failure to identify a liability witness before the case was transferred to the Office of Administrative Law Judges for a hearing would preclude it from using the testimony of a witness on the responsible operator issue in future proceedings. *Id.*, *citing* 20 C.F.R. §725.456(b)(1).

At no point did Employer inform the district director that it was designating Claimant as a liability witness. Where no party provides notice to the district director of the name and address of a witness whose testimony pertains to liability of a potentially liable operator, the witness's testimony "will not be admitted in any hearing" absent extraordinary circumstances. 20 C.F.R. §725.414(c). Employer did not argue extraordinary circumstances before the administrative law judge, nor does it do so before the Board.

Notwithstanding Employer's failure to designate Claimant as a liability witness, there is no merit to its argument that his testimony establishes Branham and Baker, as a successor to Kiah Creek, is the responsible operator. Employer's Brief at 5. A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a). A successor operator is created when an operator ceases to exist due to reorganization, liquidation, sale of assets, merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3).

During his deposition, Claimant testified he worked for eight years for the same entity that "changed names several times." Director's Exhibit 54 at 15-16. Claimant worked for this entity when it was named KT Construction, then Kiah Creek, then Branham and Baker. *Id*. At the hearing Claimant again testified the company "went through a lot of names." Hearing Transcript at 15. He testified it was Kiah Creek when he started, then KTH Construction at one time, and Branham and Baker when he left, but they were all the "same outfit." *Id*. at 15, 28-29.

Contrary to Employer's argument, Claimant's testimony does not establish Employer sold or transferred Kiah Creek, including its mines, assets, or mining operations, to a distinct entity named Branham and Baker, nor is there evidence that Employer ceased to exist. Claimant's testimony supports the administrative law judge's finding that Kiah Creek aka Branham and Baker is the responsible operator, as it establishes, at most, only that Kiah Creek changed its name to Branham and Baker while Claimant worked there. *See* Director's Exhibit 54 at 15-16.

Employer also argues Claimant's Social Security Administration (SSA) earnings records support its argument. Employer's Brief at 5-6. It never raised this argument to the administrative law judge, however, and thus forfeited it. *See Joseph Forrester Trucking v. Director, OWCP* [*Davis*], F.3d , No. 20-3329, 2021 WL 386555, slip. op. at 4-6 (6th Cir. Feb. 4, 2021); Employer's Post-hearing Brief at 3-4. Moreover, Employer has not explained how Claimant's SSA records support its argument. *Cox v. Director,* 791 F.2d 445, 446-47 (6th Cir. 1986). These records reflect that Claimant worked for Kiah Creek from 1995 to 1997, earning $33,925.00 in 1995, $36,496.08 in 1996, and $18,737.68 in 1997. Director's Exhibit 10. The records then reflect Claimant worked for Branham and Baker in 1997, earning $14,495.28. *Id*. The records are not inconsistent with Kiah Creek changing its name to Branham and Baker in 1997. And they do not establish a transfer of mines, assets, or mining operations from Kiah Creek to Branham and Baker, with the former entity ceasing to exist. 20 C.F.R. §725.492. Because it is supported by substantial evidence, we affirm the administrative law judge's determination that Employer failed to establish another potentially liable operator more recently employed Claimant, and his

finding Kiah Creek aka Branham and Baker is the properly designated responsible operator. 20 C.F.R. §§725.407, 725.494(a)-(e), 725.495(a)(1); Decision and Order at 7.

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the administrative law judge must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consol. Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The administrative law judge found the x-ray and medical opinions establish complicated pneumoconiosis, while the computed tomography (CT) scans do not.[6] 20 C.F.R. §718.304(a), (c); Decision and Order at 29-31. Weighing all the evidence together, he concluded the x-ray and medical opinion evidence outweighed the contrary evidence. *Id*.

Employer argues the administrative law judge erred in weighing the conflicting x-rays. Employer's Brief at 12. Employer's argument has merit.

The administrative law judge weighed seven interpretations of three x-rays taken on October 24, 2016, March 31, 2017, and May 10, 2017. Decision and Order at 29-30; 20 C.F.R. §718.304(a). All the physicians who read these x-rays are dually-qualified as B readers and Board-certified radiologists. *Id*. Dr. DePonte read the October 24, 2016 x-ray as positive for complicated pneumoconiosis, Category A, whereas Drs. Ahmed and Adcock read it as negative for complicated pneumoconiosis. Director's Exhibit 14; Claimant's Exhibit 3, Employer's Exhibit 6. Dr. Kendall read the March 31, 2017 x-ray as positive for complicated pneumoconiosis, Category A. Claimant's Exhibit 1. Dr. DePonte read the May 10, 2017 x-ray as positive for complicated pneumoconiosis, Category A, whereas Drs. Crum and Kendall read it as negative for complicated pneumoconiosis. Claimant's Exhibit 5; Employer's Exhibit 1, 8.

[6] The record contains no autopsy or biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 30.

The administrative law judge found the interpretations of the October 24, 2016 and May 10, 2017 x-rays in equipoise. Decision and Order at 31. He found the March 31, 2017 x-ray positive for complicated pneumoconiosis based on Dr. Kendall's uncontradicted reading. *Id*. Because the interpretations of two x-rays are in equipoise and one x-ray is positive for the disease, he found the x-ray evidence established complicated pneumoconiosis. Decision and Order at 31; 20 C.F.R. §718.304(a).

We agree with Employer's argument that the administrative law judge did not adequately explain his rationale for resolving the conflict in the x-rays. Employer's Brief at 12. Specifically, he did not set forth his basis for finding the interpretations of the October 24, 2016 and May 10, 2017 x-rays in equipoise in light of the fact that a greater number of dually-qualified radiologists read the respective x-rays as negative for the disease compared to the radiologists who read them as positive. Moreover, the reader of the x-ray he credited as establishing complicated pneumoconiosis without contradiction provided a subsequent x-ray reading in which he found no pneumoconiosis. Because the administrative law judge's credibility finding is not adequately explained, it does not comply with the Administrative Procedure Act (APA).[7] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

We therefore vacate the administrative law judge's findings that the x-rays establish complicated pneumoconiosis. 20 C.F.R. §718.304(a). Because the administrative law judge's weighing of the x-ray evidence affected the weight he assigned the medical opinion evidence, we also vacate his finding that the medical opinions establish complicated pneumoconiosis, 20 C.F.R. §718.304(c), and his finding all the relevant evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304. We further vacate his finding that Claimant invoked the Section 411(c)(3) presumption, and the award of benefits.[8]

On remand, the administrative law judge must reconsider whether the x-ray evidence establishes complicated pneumoconiosis and adequately explain his findings as the APA requires. *Wojtowicz*, 12 BLR at 1-165; 20 C.F.R. §718.304(a). Based on that

[7] The Administrative Procedure Act provides 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).

[8] As discussed below, we also are unable to affirm the administrative law judge's alternative finding that Claimant invoked the Section 411(c)(4) presumption by establishing total disability. 20 C.F.R. §718.204(b)(2).

finding, he must then reconsider whether the medical opinions establish complicated pneumoconiosis. 20 C.F.R. §718.304(c). If he finds the x-rays and medical opinions establish complicated pneumoconiosis, he must then weigh all the relevant evidence on the issue of complicated pneumoconiosis. 20 C.F.R. §§718.304; *Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33 (1991). If the administrative law judge finds complicated pneumoconiosis established on remand, he may reinstate the award of benefits.[9]

Invocation of the Section 411(c)(4) Presumption – Total Disability

Employer also challenges the administrative law judge's alternative finding that Claimant invoked the Section 411(c)(4) presumption. 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 and comparable gainful 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 administrative law judge must weigh all relevant supporting evidence against all relevant 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 found Claimant established total disability based on the medical opinions.[10] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 20-21. He found the opinions of Drs. Nader and Go that Claimant is totally disabled better reasoned and supported by the objective testing than the opinions of Drs. Dahhan and Rosenberg that Claimant is not disabled. *Id*. He further found all the relevant evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 21.

[9] Employer does not challenge the administrative law judge's finding that Claimant's complicated pneumoconiosis, if established, arose out of his coal mine employment. 20 C.F.R. §718.203(b). Thus we affirm this finding. *See Skrack*, 6 BLR at 1-711.

[10] The administrative law judge found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 19.

Employer argues the administrative law judge erred in finding the medical opinions established total disability. Employer's Brief at 8-11. Employer's arguments have merit.

Drs. Nader and Go opined Claimant is totally disabled because the October 24, 2016 exercise arterial blood gas study Dr. Nader conducted as part of his evaluation of Claimant produced qualifying values for total disability.[11] Director's Exhibit 14; Claimant's Exhibit 2; Employer's Exhibit 3. Drs. Dahhan and Rosenberg opined Claimant is not totally disabled, in part,[12] because subsequent exercise blood gas testing conducted on March 31, 2017 and May 10, 2017[13] produced non-qualifying values for total disability. Director's Exhibit 22; Employer's Exhibits 1, 4, 5, 10.

All four doctors addressed the conflicting exercise blood gas testing. Dr. Nader explained why the qualifying October 24, 2016 exercise study is a better indicator of disability. Director's Exhibit 14; Employer's Exhibit 3. He noted Claimant exercised on a treadmill for two minutes and fourteen seconds, and reached a maximum heart rate of one-hundred twenty-six beats per minute (BPM) and a workload of 4.6 metabolic equivalents (METs). Director's Exhibit 14 at 5. He indicated he drew Claimant's blood when he reached this heart rate and METs level. *Id*. He testified the higher heart rate indicates Claimant's blood was drawn in exercise conditions that better reflect the exertional requirements of Claimant's usual coal mine employment as a roof bolter, which required him to lift fifty to sixty pounds at any given time during the work day and work under a four foot ceiling. Employer's Exhibit 3 at 46-47, 51-52. Dr. Nader contrasted the maximum heart rate of this study with the maximum heart rate of ninety-two BPM that Claimant achieved while exercising as part of the March 31, 2017 blood gas study. Director's Exhibit 24; Employer's Exhibit 3 at 46-47. Because Claimant's heart rate was

[11] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[12] Drs. Dahhan and Rosenberg also opined Claimant's pulmonary function studies and resting arterial blood gas studies are not qualifying. Director's Exhibit 22; Employer's Exhibits 1, 4, 5, 10.

[13] The March 31, 2017 blood gas study was conducted as part of Dr. Dahhan's examination of Claimant and the May 10, 2017 study as part of Dr. Rosenberg's examination of Claimant. Director's Exhibit 22; Employer's Exhibits 1, 4, 5, 10.

so much lower on the March 31, 2017 study, he concluded its workload was not sufficient to evaluate whether Claimant was hypoxic with exercise.[14] *Id*. at 47.

Dr. Go opined the level of exercise Claimant performed during the March 31, 2017 and May 10, 2017 non-qualifying blood gas studies was "significantly lower" than Dr. Nader's qualifying October 24, 2016 study. Claimant's Exhibit 2 at 7. Based on the recorded heart rates and METs values for the three studies, Dr. Go agreed that Dr. Nader's testing "more closely approximated the level of work [Claimant] had to perform in his mining career – lifting [twenty-five to sixty] pound loads, shoveling and moving about in low coal." *Id*.

Dr. Dahhan acknowledged Claimant experienced exercise-induced hypoxemia as part of Dr. Nader's study, but opined the results were not replicated in the later studies. Director's Exhibit 22 at 2. He addressed the criticisms of the March 31, 2017 study he conducted. Employer's Exhibits 5, 10. He noted the duration of exercise in the October 24, 2016 study (two minutes and fourteen seconds) was comparable to the duration of exercise in the March 31, 2017 study (two minutes). *Id*. He also noted the manner of the blood draw and the manner that Claimant exercised (using a bicycle as opposed to a treadmill) were also comparable for the two studies. Employer's Exhibit 5. Addressing the fact that Claimant reached a peak heart rate of only ninety-two BPM on the March 31, 2017 study compared to one-hundred and twenty-six BPM on the October 24, 2016 study, Dr. Dahhan explained Claimant's cardiac response during exercise was more blunted during the March 31, 2017 study compared to the October 24, 2016 study. *Id*. He opined this limited cardiac response does not establish the March 31, 2017 study is less reliable on the issue of total disability. *Id*. He reiterated his opinion that Claimant is not totally disabled because the exercise-induced hypoxemia evidenced by the October 24, 2016 study was not replicated on the later studies.[15] Employer's Exhibit 5.

Dr. Rosenberg addressed the presence of hypoxemia on the October 24, 2016 study but not on the March 31, 2017 and May 10, 2017 studies. Employer's Exhibit 4. He explained Claimant may have had a temporary obstructive impairment that resulted in

[14] In addition, Dr. Nader noted the October 24, 2016 blood gas study was done with an arterial line so that Claimant's blood was drawn at peak exercise. Director's Exhibit 14 at 5. He noted the technician who conducted the March 31, 2017 study did not specify if Claimant was on oxygen or room air when it was done, or if he drew Claimant's blood during exercise or the recovery period. Director's Exhibit 24 at 2.

[15] In addition, Dr. Dahhan explained Claimant was not on oxygen during the March 31, 2017 study. Employer's Exhibit 5.

reduced gas exchange when Dr. Nader examined him, but this impairment was no longer present in the subsequent examinations.[16] Employer's Exhibit 4 at 15. He opined that Claimant's "target heart rate" to achieve "maximal exertional exercise" is one-hundred thirty-two BPM. Employer's Exhibit 4 at 28. He explained, however, that when he conducts exercise blood gas testing, he does not have individuals reach maximum exercise. Employer's Exhibit 4 at 28. He stated an individual need only do enough exercise to reach a "steady state." *Id*. In his experience, when an individual reaches a steady state, they have done enough exercise so blood gas exchange abnormalities will occur. *Id*. He conceded, however, that Claimant did more exercise on the October 24, 2016 study than the May 10, 2017 study. *Id*. at 33.

In resolving the conflict in the medical opinions, the administrative law judge concluded that Drs. Nader and Go "credibly explain[ed] why Dr. Nader's [October 24, 2016 exercise blood gas study] results are a better reflection of [Claimant's] pulmonary capacity to perform his previous coal mine work." Decision and Order at 21. Because he found the October 24, 2016 exercise study to be a better indicator of whether Claimant can perform his usual coal mine employment, the administrative law judge concluded that the opinions of Drs. Nader and Go are "well-reasoned and supported by objective evidence," and outweigh the opinions of Drs. Dahhan and Rosenberg. *Id*. The administrative law judge also discredited Dr. Rosenberg's opinion because he found the doctor did not address why Claimant is not totally disabled by an obstructive impairment that the doctor acknowledged the pulmonary function testing reflected. *Id*. at 20-21.

We are unable to affirm the administrative law judge's credibility determinations in this case because he failed to render a finding as to what was Claimant's usual coal mine employment or the exertional requirements of his usual coal mine employment. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d. 211, 218-19 (6th Cir. 1996); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). This error is not harmless as an exertional requirements finding is central to his rationale for resolving the conflict in the exercise blood gas study evidence and the medical opinions, as discussed above. Based on this omission, we vacate his finding that

[16] Dr. Rosenberg was not sure how long Claimant exercised during the May 10, 2017 study he conducted, but he estimated it would be two to three minutes on a stationary bicycle based on his prior examinations of miners. Employer's Exhibit 4 at 30, 38. Claimant reached a maximum heart rate of ninety-nine beats per minute on this study. Employer's Exhibit 1 at 27. Dr. Rosenberg did not believe the technician recorded a METs value for this study. Employer's Exhibit 4 at 33.

the opinions of Drs. Nader and Go are more supported by the objective testing than the opinions of Drs. Dahhan and Rosenberg. Decision and Order at 21.

The administrative law judge also erred in discrediting Dr. Rosenberg's opinion. The administrative law judge found Dr. Rosenberg acknowledged Claimant "may have had a degree of airflow obstruction at Dr. Nader's examination, where his FEV1/FVC [on pulmonary function testing] was down somewhat." Decision and Order at 20-21. He found Dr. Rosenberg did not explain why Claimant is not disabled by this obstructive impairment. *Id*. The administrative law judge mischaracterized the doctor's testimony, however, as Dr. Rosenberg indicated any obstructive impairment present at Dr. Nader's examination was no longer present in the subsequent examinations. Employer's Exhibit 3 at 17-18. Thus he opined Claimant did not have a permanent obstructive impairment. *Id*. Because the administrative law judge did not consider Dr. Rosenberg's opinion in its entirety, we vacate his finding that the opinion is inadequately explained on the issue of total disability. *Rowe*, 710 F.2d at 255.

We also agree with Employer that the administrative law judge failed to consider all of the relevant evidence, as he credited the reports of Drs. Nader and Go as more credible and consistent with the objective evidence without adequately explaining why they were more consistent with the evidence and why they were more credible than the explanations Drs. Rosenberg and Dahhan offered. Further, he failed to discuss the other evidence the doctors considered in determining whether Claimant is totally disabled.

Consequently, we vacate the administrative law judge's finding that Claimant established total disability based on the medical opinions, and his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.204(b)(2); Decision and Order at 21.

If the administrative law judge finds on remand that Claimant has not established complicated pneumoconiosis, he should then address whether Claimant established total disability through the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv). In doing so, the administrative law judge must determine the exertional requirements of Claimant's usual coal mine employment. *Cornett*, 227 F.3d at 587. He must then consider the physicians' opinions regarding total disability in light of those requirements and their understanding of those requirements. *Id*. In determining whether the physicians' opinions are reasoned, he must take into account the physicians' qualifications, the explanations given for their findings, the documentation underlying their judgments, and the sophistication and bases for their diagnoses. *See Rowe*, 710 F.2d at 255. If the administrative law judge finds total disability established based on the medical opinions, he must determine whether Claimant is totally disabled taking into account the contrary probative evidence. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

We note Employer does not challenge the administrative law judge's finding that it failed to establish rebuttal of the Section 411(c)(4) presumption, and thus we affirm this rebuttal finding. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 21-28. If he finds on remand that complicated pneumoconiosis is not established but total disability is established, he may reinstate his finding that Claimant invoked the Section 411(c)(4) presumption and therefore the award of benefits. If he finds Claimant has not established complicated pneumoconiosis or total disability, then benefits are precluded. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge