U.S. Department of Labor

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

BRB No. 20-0573 BLA

HUMBOLT B. PRITT, III	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ICG TYGART VALLEY, LLC	)	
	)	
and	)	
	)	
ARCH COAL COMPANY, INCORPORATED	)	DATE ISSUED: 3/15/2022
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Lynda D. Glagola (Lungs at Work), McMurray, Pennsylvania, lay representative, for Claimant.

Paul E. Frampton and Fazal A. Shere (Bowles Rice LLP), Charleston, West Virginia, for Employer and its Carrier.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

ROLFE, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2019-BLA-06146) rendered on a claim filed on November 12, 2015, pursuant to the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-four years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment based on the pulmonary function study evidence, but not the arterial blood gas study or medical opinion evidence.[1] 20 C.F.R. §718.204(b)(2)(i), (ii), (iv). Weighing all the relevant evidence, he found Claimant established total disability. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Furthermore, he determined Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues liability for this claim should be transferred to the Black Lung Disability Trust Fund (Trust Fund) because the district director provided Claimant with two Department of Labor (DOL)-sponsored complete pulmonary evaluations. It also contends the ALJ erred in finding Claimant established total disability

[1] The ALJ also found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii) because there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 21.

[2] 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.

based on the pulmonary function studies and thus invoked the Section 411(c)(4) presumption. Finally, it argues he erred in finding it did not rebut the presumption.[3]

Claimant responds in support of the award of benefits. Claimant also argues the ALJ erred in finding the medical opinion evidence insufficient to establish total disability.[4] The Director, Office of Workers' Compensation Programs (Director), filed a limited response urging rejection of Employer's complete pulmonary evaluation argument.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[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).

Complete Pulmonary Evaluation

Employer contends the district director impermissibly allowed Claimant to undergo two DOL-sponsored pulmonary evaluations. Employer's Brief at 3 n.2. We disagree.

At the request of the DOL, Dr. Hornsby examined Claimant on February 2, 2016, conducted objective testing, and issued a report based on his examination and testing. Director's Exhibit 15. In that report, he stated Claimant's usual coal mine employment was "underground," and Claimant's mild pulmonary impairment, along with other "co-morbid conditions," would prevent him from doing that job. *Id*.

Thereafter the district director twice requested Dr. Hornsby, *inter alia*, review Claimant's Employment History (Form CM-911a) and Description of Coal Mine

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

[4] Although not raised in a cross-appeal, Claimant's argument on the issue of total disability is properly before the Board because it is supportive of the ALJ's decision awarding benefits. 20 C.F.R §802.212(b); *see Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 370 (4th Cir. 1994); *Whiteman v. Boyle Land & Fuel Co.*, 15 BLR 1-11, 1-18 (1991) (en banc).

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

Employment (Form CM-913) and provide a supplemental opinion clarifying whether a pulmonary/respiratory impairment, standing alone, would prevent Claimant from performing his usual coal mine work as a shuttle car operator. Director's Exhibits 17, 19. Upon discovering Dr. Hornsby was unavailable to provide a supplemental opinion, the district director allowed Claimant to select a new DOL-sponsored physician, to review Dr. Hornsby's objective testing and issue a medical opinion. Director's Exhibit 22. Claimant selected Dr. Scattaregia, who diagnosed legal pneumoconiosis and total disability due to pneumoconiosis based on his review of Dr. Hornsby's objective test results. Director's Exhibits 23, 24, 26, 29.

At the hearing, Employer explained to the ALJ that the district director had initially sent Claimant to Dr. Hornsby for an evaluation, but later requested a medical report from Dr. Scattaregia due to Dr. Hornsby being unavailable to provide a supplemental opinion. Hearing Transcript at 7-8. Employer requested the ALJ clarify the evidentiary record that he would rely on in light of the presence of two DOL-sponsored pulmonary evaluation reports. *Id*. Employer conceded that, because Dr. Scattaregia did not conduct new objective testing, it would be "entirely appropriate" to designate Claimant's complete pulmonary evaluation as consisting of Dr. Hornsby's objective testing and Dr. Scattaregia's medical report, but exclude Dr. Hornsby's medical report. *Id.* at 8-9. The ALJ acknowledged Claimant is entitled to the results of only one DOL-sponsored pulmonary evaluation. *Id*. at 9. Agreeing with Employer's proposed solution, he determined he would rely on Dr. Scattaregia's medical report and clarifying opinions, as well as Dr. Hornsby's objective testing, but he would not consider Dr. Hornsby's opinion.[6] *Id.* at 9-10. Employer raised no further objection on this issue. *Id.* at 10.

Employer now argues to the Board that liability should be transferred to the Trust Fund because the district director "had [Claimant] examined twice in contravention of the regulations." Employer's Brief at 3 n.2. Employer's argument is without merit.

The Act requires that "[e]ach miner who files a claim . . . shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406; *see Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-89-90 (1994). The DOL meets its statutory obligation to provide a "complete pulmonary evaluation" under 30 U.S.C. §923(b) "when it pays for an examining physician who (1) performs all of the [required] medical tests . . . and (2) specifically links each conclusion in his or her medical opinion to those medical tests." *See Green v. King James*, 575 F.3d 628, 642 (6th Cir. 2009). The

[6] Consistent with his statement at the hearing, the ALJ did not consider Dr. Hornsby's medical opinion in his Decision and Order.

regulations require further examination and testing if the first evaluation is incomplete or otherwise deficient. *See* 20 C.F.R. §725.406(c).

As noted above, Dr. Hornsby's report did not provide sufficient information for the district director to decide whether Claimant is totally disabled and thus she sought further clarification of this issue. Director's Exhibits 15, 17, 19. Only after learning Dr. Hornsby was unavailable did the district director seek a medical report from Dr. Scattaregia. Director's Exhibit 22-25. Employer acquiesced at the hearing that, because Dr. Scattaregia did not actually conduct new testing, it would be "entirely appropriate" for the ALJ to consider both Dr. Hornsby's testing and Dr. Scattaregia's medical report. Hearing Transcript at 8-9.

In light of the district director's authority to obtain additional information to address the deficiencies in Dr. Hornsby's report, 20 C.F.R. §725.406(c), and Employer's concession at the hearing, we conclude Employer has failed to explain how the district director exceeded her authority in this case, or why liability for benefits should transfer to the Trust Fund. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

Section 411(c)(4) Presumption: Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of 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 did not establish total disability based on the arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or the medical opinions.[7] 20 C.F.R. §718.204(b)(2)(ii)-(iv); Decision and

[7] As no party challenges it, we affirm the ALJ's finding that Claimant did not establish total disability based on the arterial blood gas testing or evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. *See Skrack*, 6 BLR at 1-711; Decision and Order at 20-21.

Order at 20-26. However, he found Claimant established total disability based on the pulmonary function studies. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 19-20, 26.

Pulmonary Function Studies

The ALJ considered one pulmonary function study that Dr. Hornsby conducted on February 2, 2016,[8] finding it qualifying[9] for total disability. Decision and Order at 19-20; Director's Exhibit 15 at 9. Employer argues the ALJ erred because the study does not meet the regulatory values for disability. Employer's Brief at 3-6. We agree.

Two steps establish a qualifying pulmonary function study. First, it must always yield a FEV1 value below a point adjusted for the miner's age, sex, and height. Second, it must additionally yield either a qualifying FVC or MVV value, or an FEV1/FVC ratio of 55 percent or less. 20 C.F.R. §718.204(b)(2)(i). Thus, a study that produces a non-qualifying FEV1 value is always non-qualifying, regardless of the FVC or MVV values, or the FEV1/FVC percentage.

Claimant was sixty-seven years old and seventy-two inches tall when he performed the February 2, 2016 study. Decision and Order at 19; Director's Exhibit 15. A study performed on a male miner of that age and height qualifies if it produces an FEV1 value at or below 2.10 and either an FVC value at or below 2.70, an MVV value at or below 84, or an FEV1/FVC ratio of 55 percent or less. 20 C.F.R. Part 718, Appendix B. Claimant's study produced an FEV1 value of 2.37, an FVC value of 3.84, an MVV value of 59, and an FEV1/FVC ratio of 62 percent.[10] *Id.* Recognizing the MVV value is below the applicable table value listed in Appendix B, the ALJ erroneously found the study qualifying for total disability. *Id.*

While the MVV value qualifies, the FEV1 value is above the applicable value listed in Appendix B for a male of the Miner's age and height of 2.10. 20 C.F.R. §718.204(b)(2)(i); Director's Exhibit 15. Thus, the February 2, 2016 study does not have the requisite qualifying FEV1 value. *Id*. We therefore reverse the ALJ's finding that the study is qualifying. Because the record contains no other qualifying pulmonary function

[8] The record also contains four pulmonary function studies in Claimant's treatment records, none of which are qualifying. Employer's Exhibits 3, 4, 5.

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

[10] No bronchodilator was administered. Director's Exhibit 15.

testing, we also reverse the ALJ's finding that Claimant established total disability based on this evidence.[11] 20 C.F.R. §718.204(b)(2)(i).

We further agree with Employer's argument that the ALJ erred in addressing the validity of the February 2, 2016 study. Employer's Brief at 3, 5-9. Pulmonary function studies are presumed valid in the absence of evidence to the contrary, and the party challenging the validity of a study must affirmatively establish the results are suspect or unreliable.[12] 20 C.F.R. §718.103(c) (emphasis added); *see* Appendix B to 20 C.F.R. Part 718; *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984). Although the February 2, 2016 study is non-qualifying, the issue of whether it is valid is relevant to the ALJ's consideration of the medical opinions, discussed below. 20 C.F.R. §718.204(b)(2)(iv).

The ALJ acknowledged there is a conflict in the record with respect to whether the February 2, 2016 study is valid, noting "Drs. Zaldivar and Tuteur – both of whom are Employer's experts – questioned the validity of this test, [but] the other three experts did not."[13] Decision and Order at 19-20. But he engaged in no further discussion. The ALJ

[11] We decline to reverse the award of benefits, however, because the ALJ must address whether the medical opinions establish total disability, as we discuss below. 20 C.F.R. §718.204(b)(2)(iv).

[12] The regulations specify that "no results of a pulmonary function study shall constitute evidence of the presence or absence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with the requirements of this section and Appendix B to this part." 20 C.F.R. §718.103(c). The regulations further specify that if the MVV is reported, two tracings of the MVV whose values are within 10% of each other shall be sufficient. 20 C.F.R. §718.103(b). Employer contends the study does not meet the requirements of the regulations, and Claimant concedes that the test was not in substantial compliance with the regulations because there is only *one* tracing. Employer's Brief at 5; Claimant's Response Brief at 2-3. The Board has held that pulmonary function studies that do not fully conform to the quality standards at 20 C.F.R. §718.103 are not precluded from consideration on that basis alone. *DeFore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-29 (1988). While missing tracings render a pulmonary function study non-conforming, the study is not necessarily unreliable. *See Crapp v. U.S. Steel Corp.*, 6 BLR 1-476, 1-478-79 (1983).

[13] Drs. Zaldivar and Tuteur both testified at their respective depositions that the MVV results from the February 2, 2016 pulmonary function study are invalid. Employer's Exhibits 6 at 20, 10 at 13, 16-17. Dr. Krefft found the February 2, 2016 pulmonary function study results "usable." Claimant's Exhibit 3. Dr. Sood noted the FEV1 values of the February 2, 2016 study met criteria for acceptability and repeatability. Claimant's Exhibit

erred by failing to render any credibility findings with respect to the conflicting opinions or explain his basis for finding the study valid. His Decision and Order therefore does not satisfy the Administrative Procedure Act (APA).[14] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

As we have reversed the ALJ's finding that the pulmonary function study evidence establishes total disability, 20 C.F.R. §718.204(b)(2)(i), we must vacate his finding the evidence, when weighed together, also establishes total disability. 20 C.F.R. §718.204(b)(2). Because we have vacated the ALJ's finding of total disability, we also vacate his finding Claimant invoked the Section 411(c)(4) presumption, and therefore vacate the award of benefits. 30 U.S.C. §921(c)(4). Thus we must remand this case for further consideration of the issue of total disability.

Medical Opinions

As we vacate the award of benefits, we will address Claimant's argument that the ALJ erred in weighing the medical opinions. 20 C.F.R. §718.204(b)(2)(iv); Claimant's Brief at 3. Before weighing the medical opinions, the ALJ found Claimant's usual coal mine employment was working as a shuttle car operator. Decision and Order at 22. This finding is affirmed as no party challenges it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ then considered the opinions of Drs. Sood, Krefft, Scattaregia, Zaldivar, and Tuteur. Decision and Order at 22-26. He discredited the opinions of Drs. Sood, Krefft, and Scattaregia that Claimant is totally disabled by a respiratory impairment because they failed to identify Claimant's usual coal mine employment or discuss the exertional requirements of that job. *Id.* at 25; Director's Exhibits 24, 26, 29; Claimant's Exhibits 1, 1a, 3, 3a. He also discredited the opinions of Drs. Zaldivar and Tuteur because both

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1a. He also noted that, while he could not independently verify the MVV test, the administering technician and reviewing physician indicated Claimant gave a good effort. *See id.* Dr. Scattaregia did not render an opinion on the validity of the February 2, 2016 pulmonary function study. Director's 24, 26, 29.

[14] 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).

physicians discounted "Claimant's qualifying MVV on his pulmonary function test which they alone of the five experts questioned the validity of" when opining Claimant is not totally disabled. Decision and Order at 25; Employer's Exhibits 1, 2, 6, 10. Thus, he found none of the medical opinions credible, and the medical opinion evidence does not establish total disability. *Id.*

We agree with Claimant that the ALJ erred in discrediting the opinions of Drs. Sood and Krefft for failing to identify the exertional requirements of his usual coal mine employment.[15] Claimant's Brief at 3. In determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of the miner's usual coal mine work with a physician's description of the miner's pulmonary impairment and physical limitations. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000). The ALJ erred in not making a finding regarding the exertional requirements of Claimant's job as a shuttle car operator and then comparing those requirements with the physicians' assessments to determine whether the evidence establishes total respiratory disability. *See Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4; *Cornett*, 227 F.3d at 578; *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d. 211, 218-19 (6th Cir. 1996); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988).

Further, contrary to the ALJ's conclusion, Drs. Sood and Krefft both correctly recognized Claimant's usual coal mine employment was working as a shuttle car operator. Claimant's Exhibits 1, 1a, 3, 3a. They both opined Claimant has a totally disabling respiratory impairment that prevents him from performing that job. *Id.* Dr. Sood opined Claimant cannot perform very heavy and arduous work, and therefore cannot perform his last coal mine employment working as a shuttle car operator. Claimant's Exhibits 1, 1a. Dr. Krefft opined Claimant is totally disabled from returning to his employment as a shuttle car operator, or a job requiring similar effort. Claimant's Exhibits 3, 3a.

In addition, Drs. Sood and Krefft both extensively discussed the exertional requirements of Claimant's shuttle car operator job. Dr. Sood stated:

> As a shuttle car operator, [Claimant] repeatedly ran the shuttle car to the miner, loaded coal, ran back to the feeder, and unloaded coal. He also helped to move the miner, hung the cable and the water line, hung the curtains, rock

[15] Claimant does not challenge the ALJ's finding that Dr. Scattaregia's failure to list Claimant's usual coal mine employment or its exertional requirement renders his opinion not well-reasoned and entitled to little weight. *See* Claimant's Brief at 3. Thus, we affirm this finding as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

> dusted, changed the bits in the miner, shoveled the belt, and checked, cleaned and shoveled the feeder. He had to lift and carry the motor, which weighed 40-50 pounds, stoppings of hollowed rocks that weighed 25-30 pounds, and solid blocks that weighed 60 pounds. He described the work of a shuttle car operator as heavy physical labor."

Claimant's Exhibit 1a at 2. Dr. Krefft stated:

> [W]orking as a shuttle car operator is not a primarily sedentary job and requires substantial time doing moderate to heavy labor when stopping to load coal from the miner in the underground mining environment. [Claimant] would run this load of coal back to the feeder and unload the coal . . . He would repeat this process multiple times a day estimating approximately 8 coal cuts per day which would involve slightly less than half of his more than 10-hour shift being spent out of the shuttle car and often requiring moderate exertion. He would also help to move heavy equipment such as the miner. He would then hang cable and the water line at each cross cut. [Claimant] also had to assist with rock dusting prior to starting another cut of coal. Sometimes, when the feeder was not operating optimally due to a blockage or build-up . . . he would have to shovel the feeder or remove a 40-50 pound motor to help clear out debris."

Claimant's Exhibit 3a at 2.

Because the ALJ's credibility findings with respect to the medical opinions of Drs. Sood and Krefft are inconsistent with applicable law and not supported by substantial evidence, we vacate them. *Addison*, 831 F.3d at 256-57; *Hicks*, 138 F.3d at 533; 20 C.F.R. §718.204(b)(2)(iv).

Moreover, as the ALJ's improper assessment of the pulmonary function study evidence, discussed above, affected the weight he accorded the contrary opinions of Drs. Zaldivar and Tuteur, we also vacate his discrediting of their opinions and remand the case for reconsideration of the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25.

Remand Instructions

On remand, the ALJ must first evaluate the medical opinions addressing the validity of the February 2, 2016 pulmonary function study. *Vivian*, 7 BLR at 1-361. He must then render a finding on the exertional requirements of Claimant's usual coal mine employment working as a shuttle car operator. *Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4;

Cornett, 227 F.3d at 578; *Ward*, 93 F.3d. at 218-19. After doing so, he should evaluate the medical opinions of Drs. Sood, Krefft, Zaldivar, and Tuteur, and determine whether Claimant has established total disability based on the medical opinions. 20 C.F.R. §718.204(b)(2)(iv). He should compare the exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and physical limitations. *Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4; *Cornett*, 227 F.3d at 578; *Ward*, 93 F.3d. at 218-19.

When weighing the medical opinions, the ALJ must address the comparative credentials of the physicians, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). He must also explain his findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165. If Claimant establishes total disability based on the medical opinions, the ALJ should then weigh all of the relevant evidence together to determine whether Claimant has established total disability. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198.

If Claimant establishes total disability, and thereby invokes the Section 411(c)(4) presumption, the ALJ must then determine whether Employer has rebutted the presumption.[16] 20 C.F.R. §718.305. If Claimant is unable to establish total disability, benefits are precluded.[17] 20 C.F.R. Part 718; *see Trent v. Director, OWCP*, 11 BLR 1-26, 27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

[16] Because we have vacated the ALJ's findings that Claimant established total disability and invoked the Section 411(c)(4) presumption, we decline to address, as premature, Employer's argument that the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.

[17] The irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act is not applicable because there is no evidence of complicated pneumoconiosis in the record. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

I concur.

DANIEL T. GRESH
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring:

I concur in the majority opinion reversing the ALJ's finding the pulmonary function study evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(i). Therefore I agree we must vacate the ALJ's finding of total disability, his finding Claimant invoked the

Section 411(c)(4) presumption, and the award of benefits. I also agree the ALJ erred in weighing the medical opinions when finding they are insufficient to meet Claimant's burden of establishing total disability. 20 C.F.R. §718.204(b)(2)(iv). Thus he must reconsider this evidence on remand. However, I would conclude Employer waived its argument that the district director impermissibly allowed Claimant to undergo two DOL-sponsored pulmonary evaluations by conceding to the ALJ that it would be "entirely appropriate" to consider Dr. Scattaregia's medical opinion and Dr. Hornsby's objective testing. Hearing Transcript at 8-9; *see Hamer v. Neighborhood Serv. of Chicago*, 583 U.S. , 138 S. Ct. 13, 17 n.1 (2017); *Island Creek Coal Co. v. Young*, 947 F.3d 399 (6th Cir. 2020); Employer's Brief at 3 n.2. Therefore I would decline to consider this argument.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge