



BRB No. 22-0163 BLA

FINNIE D. COLEMAN)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	DATE ISSUED: 03/13/2023
)	
Self-Insured)	
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 on Remand of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

John R. Sigmund (Penn, Stuart & Eskridge) Bristol, Virginia, for Self-insured Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits on Remand (2018-BLA-05803) rendered on a claim filed on June

30, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Board for a second time.¹

In a Decision and Order Denying Benefits issued on August 14, 2020, the ALJ found Claimant had 25.8 years of qualifying coal mine employment but did not establish he was totally disabled due to a respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2). Thus, the ALJ concluded Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),² or establish entitlement at 20 C.F.R. Part 718, and denied benefits.

On appeal, the Benefits Review Board agreed with the Director, Office of Workers' Compensation Programs (the Director), that the ALJ did not properly weigh the arterial blood gas evidence and vacated the ALJ's finding at 20 C.F.R. §718.204(b)(2)(ii). *Coleman v. Consolidation Coal Co.*, BRB No. 20-0511 BLA, slip op. at 4-5 (Nov. 24, 2021) (unpub.). Because the ALJ's weighing of the blood gas studies affected his consideration of the medical opinions, the Board also vacated his findings at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the record as a whole. *Id.* at 5. The Board thus remanded the case for the ALJ to reconsider whether Claimant invoked the Section 411(c)(4) presumption and established entitlement to benefits.

On January 18, 2022, the ALJ issued a Decision and Order Awarding Benefits on Remand which is the subject of this appeal. He found Claimant established total disability based on the blood gas study evidence and thereby invoked the Section 411(c)(4) presumption. The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's findings that Claimant established total disability and invoked the Section 411(c)(4) presumption. Employer further argues the

¹ We incorporate by reference the relevant procedural history set forth in our prior decision in this case. *Coleman v. Consolidation Coal Co.*, BRB No. 20-0511 BLA (Nov. 24, 2021) (unpub.).

² 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

ALJ erred in finding it failed to rebut the presumption.³ Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The 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.⁴ 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, 362 (1965).

Invocation of the 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 established total disability based on the arterial blood gas studies at 20 C.F.R. §718.204(b)(2)(ii) and in consideration of the evidence as a whole.⁵ *See* 20 C.F.R. §718.204(b)(2); Decision and Order on Remand at 18.

Blood Gas Studies

The ALJ weighed three resting blood gas studies. Decision and Order on Remand at 9. He accurately observed Dr. Green's August 1, 2017 study and Dr. McSharry's

³ We affirm, as unchallenged on appeal, the ALJ's determination that Claimant has 25.8 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

⁴ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 22.

⁵ The ALJ found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iii), (iv). Decision and Order on Remand at 18.

February 26, 2018 study produced qualifying results,⁶ while Dr. Sargent's May 22, 2019 study produced nonqualifying results. *Id.*; Director's Exhibits 19 at 20, 25 at 17; Employer's Exhibit 12 at 22. Further noting it is irrational to credit later evidence on the basis of its recency unless it shows a miner's condition has worsened, the ALJ found each study equally probative to find the preponderance of the studies qualifying. Decision and Order on Remand at 9-10 (citing *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992)). He therefore concluded Claimant established total disability under 20 C.F.R. §718.204(b)(2)(ii). *Id.* at 10.

Having found nothing wrong with any of the studies in his qualitative review, a finding Employer does not challenge in this appeal, the ALJ acted wholly within his discretion in holding the majority of the blood gas studies establish total disability. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014). And because the ALJ performed the required qualitative (and quantitative) analysis of the evidence, we reject Employer's assertion that the ALJ predicated his finding on an impermissible headcount and affirm the ALJ's finding that the blood gas studies establish total disability at 20 C.F.R. §718.204(b)(2)(ii). *See Addison*, 831 F.3d at 256-57; *Keathley*, 773 F.3d at 740; Decision and Order on Remand at 9-10; Employer's Brief at 6.

Medical Opinions and Evidence as a Whole⁷

We also reject Employer's assertion that the opinions of Drs. Sargent and McSharry constitute credible contrary evidence weighing against total disability, as the argument misconstrues the ALJ's findings. Employer's Brief at 5. The ALJ found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv) because each of the three opinions he considered is inadequately reasoned. Decision and Order on Remand at 17. With regard to Drs. Sargent's and McSharry's opinions that Claimant does not have a disabling respiratory or pulmonary impairment, the ALJ found both physicians considered all of Claimant's objective tests but predicated their opinions on Claimant's non-qualifying

⁶ A "qualifying" blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

⁷ The ALJ found Claimant did not establish total disability by pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i) and that the record contains no evidence of cor pulmonale with right-sided congestive heart failure for consideration at 20 C.F.R. §718.204(b)(2)(iii). Decision and Order on Remand at 7-9.

blood gas study, contrary to his finding that the preponderance of the studies is qualifying.⁸ *Id.*; Employer’s Exhibits 12 at 2, 13 at 3. The ALJ rationally discredited their opinions as to the absence of a disabling impairment for this reason. *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997) (the ALJ may discount medical opinions he finds contradict his findings).

Having affirmed the ALJ’s finding that the blood gas studies establish total disability at 20 C.F.R. §718.204(b)(2)(ii), and there being no credible contrary evidence of record, we affirm the ALJ’s finding that Claimant established total disability based on the record as a whole.⁹ *See* 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; *see also* *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984) (non-qualifying pulmonary function tests do not undermine qualifying blood gas evidence because the studies measure different types of impairment); Decision and Order at 18. We thus also affirm the ALJ’s finding that Claimant invoked the Section 411(c)(4) presumption. Decision and Order at 18.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,¹⁰ or that “no

⁸ The ALJ explicitly found Dr. Sargent’s opinion “is not well-reasoned and given no weight,” and that Dr. McSharry’s conclusion is “similarly” flawed. Decision and Order on Remand at 17.

⁹ While the ALJ found the medical opinion evidence did not establish total disability on its own, he further found Drs. Sargent’s and McSharry’s opinions inadequately reasoned on the record as a whole because they relied on the blood gas studies that he found did not support total disability. Decision and Order on Remand at 17 (where the ALJ held that the failure to account for the qualifying blood gas studies rendered their opinions “not well-reasoned” and thus entitled to “no weight” on the record as a whole). Substantial evidence supports his conclusion. *See Lane v. Union Carbide Corp.*, 105 F.2d 166, 174 (4th Cir 1997) (substantial evidence is such evidence that a reasonable mind could accept as adequate to support a conclusion); *Scott v. Mason Coal Co.*, 289 F.3d 263, 270 (4th Cir. 2002) (an opinion that holds no weight cannot provide substantial evidence to support a finding).

¹⁰ “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). The definition includes “any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §718.201(b). “Clinical pneumoconiosis” consists of “those

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. §718.305(d)(1)(i), (ii). The ALJ found Employer rebutted the presumption of clinical pneumoconiosis but failed to rebut the presumption of legal pneumoconiosis and disability causation. Decision and Order on Remand at 21-24. As Employer does not challenge these findings, we affirm the ALJ’s determination that it failed to rebut the presumption by either method. 20 C.F.R. §718.305(d)(1)(i), (ii); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore affirm the award of benefits.

Accordingly, the ALJ’s Decision and Order Awarding Benefits on Remand is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

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).