**U.S. Department of Labor**

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

BRB No. 22-0367 BLA

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| DONALD W. HELMICK | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| MARION COUNTY COAL COMPANY | ) | |
| | ) | |
| and | ) | |
| | ) | |
| MURRAY ENERGY CORPORATION TRUST | ) | DATE ISSUED: 11/06/2023 |
| | ) | |
| Employer/Carrier-Respondents | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

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

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia for Employer and its Carrier.

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

Claimant appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2021-BLA-05680) rendered on a subsequent claim[1] filed on March 13, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901–944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant had established nineteen years of underground coal mine employment but found he did not establish a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] Because Claimant did not establish an essential element of entitlement under 20 C.F.R. Part 718 or establish a change in applicable condition of entitlement, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding the medical opinion evidence does not establish total disability and thus did not invoke the Section 411(c)(4) presumption. He further argues the ALJ erred in crediting Dr. Abrahams's opinion that he does not have legal pneumoconiosis. Employer responds, urging affirmance of the denial

[1] Claimant filed one prior claim in 2001. Director's Exhibit 1. The district director denied the claim for failure to establish any element of entitlement. *Id.* When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Therefore, Claimant had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *See White*, 23 BLR at 1-3.

[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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

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.[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 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.[5] *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying[6] pulmonary function studies or 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 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*

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established nineteen 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.

[4] 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); Hearing Transcript at 12.

[5] The parties do not challenge the ALJ's finding that Claimant's usual coal mine employment was as a shuttle car operator, which required heavy labor; thus, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 4-5.

[6] A "qualifying" pulmonary function study or 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, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

*recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant failed to establish total disability by any method.[7] 20 C.F.R. §718.204(b)(2); Decision and Order at 8–15.

**Medical Opinions**

The ALJ considered the medical opinions of Drs. Jin and Abrahams. Decision and Order at 11–15. Dr. Jin opined that Claimant has a respiratory impairment that is "likely moderate, which probably would affect his ability to perform" his usual coal mine employment. Director's Exhibit 13. Dr. Abrahams opined Claimant has no disability due to coal mine dust exposure. Employer's Exhibit 2. The ALJ found both physicians' opinions are entitled to little weight because Dr. Jin's opinion is equivocal and Dr. Abrahams did not adequately address whether total disability was present. Decision and Order at 14–15. Thus, the ALJ found the medical opinion evidence does not support a finding of total disability. *Id*. at 15.

Claimant argues that the ALJ erred in discrediting Dr. Jin's opinion as equivocal for using the words "likely" and "probably," particularly given the physician's explanation that Claimant "has shortness of breath on exertion and exercise intolerability on exercise test" and his spirometry demonstrated "significantly reduced FVC to 56% predicted." Claimant's Brief at 5–6. Further, Claimant contends that even if the ALJ properly gave Dr. Jin's opinion reduced weight, it still constitutes a preponderance of the evidence as it demonstrates "more likely than not" that Claimant is disabled and is the only opinion that addresses the issue. *Id*. We agree, in part.

Initially, an ALJ is not required to credit an opinion simply because it is uncontradicted by probative evidence; rather she has "broad discretion to determine the weight accorded to each doctor's opinion." *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Further, an ALJ may accord less weight to a medical opinion that is equivocal. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999) (weight to give the testimony of an uncertain witness is a question for the trier of fact); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988) (ALJ permissibly considered the equivocal nature of a physician's opinion). However, the United State Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that "refusal to

[7] We affirm, as unchallenged, the ALJ's determinations that the pulmonary function studies and arterial blood gas studies do not support total disability and there is no evidence of cor pulmonale. 20 C.F.R. §718.204(b)(2)(i)-(iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 9–11.

express a diagnosis in categorical terms is candor, not equivocation." *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006).

Thus, while it is within the purview of the ALJ to evaluate the credibility of each doctor's opinion, here the ALJ has not adequately explained why she found Dr. Jin's opinion equivocal. As Claimant argues, the ALJ did not address the underlying reasoning or explanations provided in support of Dr. Jin's opinion; rather, the ALJ's entire analysis is based solely on the doctor's use of qualifying language. Decision and Order at 14. As the ALJ failed to adequately explain her findings in rejecting Dr. Jin's opinion in light of the applicable law, her opinion does not comply with the Administrative Procedure Act (APA)[8] and remand is required. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Therefore, we vacate the ALJ's finding that the medical opinion evidence does not support total disability.[9] 20 C.F.R. §718.204(b)(2); Decision and Order at 15. Thus, we also vacate the ALJ's finding that total disability is not established. 20 C.F.R. §718.204(b); Decision and Order at 15.

**Remand Instructions**

On remand, the ALJ must reconsider whether Claimant established total disability. 20 C.F.R. §718.204(b)(2). First, she must reconsider Dr. Jin's opinion, taking into consideration the physician's credentials, explanations for their conclusions, the documentation underlying their medical judgment, and the sophistication of, and bases for, their opinions. *See* 20 C.F.R. §718.204(b)(2)(iv); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Wojtowicz*, 12 BLR at 1-165. If the ALJ finds the evidence establishes total disability under 20 C.F.R. §718.204(b)(2)(iv), she must weigh all the relevant evidence together, like and unlike, to determine whether Claimant has established the existence of a

[8] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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).

[9] We affirm, as unchallenged, the ALJ's weighing of Dr. Abrahams's medical opinion on the issue of total disability, according it reduced weight. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14–15.

totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock*, 9 BLR at 198.

If the ALJ finds the evidence establishes total disability, Claimant will have invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4). Then, the ALJ must determine if Employer is able to rebut it.[10] 20 C.F.R. §718.305(d). Alternatively, if Claimant does not establish total disability, the ALJ may reinstate the denial of benefits, as Claimant will have failed to establish a necessary element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

The ALJ must explain the bases for her credibility determinations, findings of fact, and conclusions of law as the APA requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

[10] We decline to address, as premature, Claimant's argument that the ALJ erred in crediting Dr. Abrahams's opinion that Claimant does not have legal pneumoconiosis. Claimant's Brief at 6-7. Benefits are precluded if Claimant does not establish total disability; thus, Dr. Abrahams's opinion on legal pneumoconiosis becomes relevant only if Claimant invokes the Section 411(c)(4) presumption. The ALJ has not yet addressed Dr. Abrahams's opinion in the context of whether it satisfies Employer's burden to rebut the existence of the disease.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge