U.S. Department of Labor

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

BRB Nos. 21-0425 BLA
and 21-0425 BLA-A

MARVIN C. JEFFERS	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
NEW HORIZONS COAL, INCORPORATED	)	
	)	
	)	
and	)	DATE ISSUED: 9/19/2022
	)	
THE HARTFORD	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	
	)	
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 Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Marvin C. Jeffers, Loyall, Kentucky.

David L. Murphy (Murphy Law Offices, PLLC), Louisville, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,[1] and Employer and its Carrier (Employer) cross-appeal Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Denying Benefits (2019-BLA-05468), rendered on a subsequent claim[2] filed on November 13, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established twenty-five years of underground coal mine employment but did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, the ALJ concluded Claimant failed to invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] demonstrate a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), or establish entitlement under 20 C.F.R. Part 718. She therefore denied benefits.[4]

[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision on Claimant's behalf, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed three previous claims. Director's Exhibits 1 at 1586, 1592, 1705. His second claim was withdrawn and is considered not to have been filed. *See* 20 C.F.R. §725.306. Claimant filed his most recent prior claim on January 28, 2010, which ALJ Lystra Harris denied on November 4, 2013, because Claimant failed to establish total disability. Director's Exhibit 1 at 1014-1033. Claimant subsequently requested modification on December 23, 2013, which ALJ Scott Morris denied on September 15, 2016. *Id.* at 417-438.

[3] Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

[4] 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); *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.

On appeal, Claimant generally challenges the ALJ's denial of his claim. Employer responds in support of the denial. On cross appeal, Employer argues the ALJ mischaracterized the exertional requirements of Claimant's last coal mine work and erred in giving little weight to Dr. Sargent's opinion that Claimant was not totally disabled.[5] The Director, Office of Workers' Compensation Programs (the Director), has not filed a response.

In an appeal by an unrepresented claimant, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant's Appeal

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 and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying[7] pulmonary function studies or arterial blood gas studies, evidence of

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§725.309(c)(3). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element to obtain a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 4.

[5] We affirm, as unchallenged, the ALJ's finding that Claimant established twenty-five years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *Shupe v. Director*, OWCP, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 7.

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R.

pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions.[8] 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 recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant failed to establish total disability by any method. 20 C.F.R. §718.204(b)(2); Decision and Order at 18.

Pulmonary Function Studies

When considering pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); *Director, OWCP v. Siwiec*, 894 F.2d 635, 638 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1326 (3d Cir. 1987). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence supporting an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985). Compliance with the quality standards at 20 C.F.R. Part 718, Appendix B "shall be presumed" unless there is "evidence to the contrary." 20 C.F.R. §718.103(c).

Claimant performed four pulmonary function studies dated November 11, 2017, December 4, 2017, April 17, 2018, and May 7, 2019. Director's Exhibits 13, 24, 26; Employer's Exhibit 4. The ALJ noted the studies reported differing heights for Claimant ranging from fifty-nine to sixty-two inches[9] and permissibly averaged the heights to determine Claimant's height is 60.5 inches. *Protopappas v. Director, OWCP*, 6 BLR 1-2221, 1-223 (1983); Decision and Order at 8-9. Using this height,[10] she determined the

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Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] The ALJ found none of the blood gas studies were qualifying and no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 8 n.7, 10-11.

[9] Claimant's height was recorded as 59 inches with the May 7, 2019, pulmonary function study; 60.5 inches with the December 4, 2017 and April 17, 2018 studies; and 62 inches with the November 7, 2017 study. Director's Exhibits 13, 23, 24; Employer's Exhibit 4.

[10] Because Claimant's height falls between the table heights of 60.2 and 60.6 inches listed at 20 C.F.R. Part 718, Appendix B, the ALJ permissibly evaluated the studies using

November 7, 2017 study has qualifying pre-bronchodilator values, and no bronchodilator was administered; the December 4, 2017 and April 17, 2018 studies each have qualifying pre-bronchodilator values but non-qualifying post-bronchodilator values; and the May 7, 2019 study has non-qualifying values before and after administration of a bronchodilator. Decision and Order at 9; Director's Exhibits 13, 24, 26; Employer's Exhibit 4.

The ALJ found all the qualifying studies invalid and concluded the pulmonary function study evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 9-10. We vacate the administrative law judge's conclusion as she failed to adequately explain her findings and did not consider all of the relevant evidence.

The ALJ noted the November 7, 2017 study "do[es] not show that the technician administered three [MVV] trials" and concluded it did not satisfy the quality standards. Decision and Order at 9; *see* 20 C.F.R. §718.103(c); Part 718, Appendix B(2)(iii). However, the November 7, 2017 study was obtained as part of Claimant's treatment at St. Charles Respiratory Clinic. Director's Exhibit 26. The quality standards do not apply to pulmonary function studies conducted as part of a miner's treatment.[11] 20 C.F.R. §§718.101(b), 718.103; *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). Instead, an ALJ must determine if the results are sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000). The ALJ erred in failing to consider if the qualifying November 7, 2017 study is sufficiently reliable to support a finding that Claimant is totally disabled.

The ALJ next found the December 4, 2017 and April 17, 2018 studies invalid based on Dr. Dahhan's explanation that the variation between the two highest MVV values is not within ten percent. Decision and Order at 9-10; *see* 20 C.F.R. §718.103(c); 20 C.F.R. Part

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the table values for the closest greater height of 60.6 inches. *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); Decision and Order at 9.

[11] Although Claimant specifically designated the November 7, 2017 pulmonary function study as affirmative evidence, the proper inquiry in applying the quality standards is whether the study was obtained in conjunction with the claim. 65 Fed. Reg. 79,920, 79,927 (Dec. 20, 2000) (quality standards do not apply to treatment records as "[20 C.F.R.] §718.101 is clear that it applies quality standards only to evidence developed 'in connection with a claim' for black lung benefits").

718, Appendix B; Director's Exhibit 25 at 19-21.[12] The ALJ failed to adequately explain why she gave the December 4, 2017 and April 17, 2018 studies no weight. The regulations at 20 C.F.R. §718.103(c) provide that "[i]n the case of a deceased miner, where no pulmonary function tests are in substantial compliance [with the regulatory standards], non-complying tests may form the basis for a finding [of total disability] if, in the opinion of the adjudication officer, the tests demonstrate technically valid results obtained with good cooperation of the miner."[13]

On the December 4, 2017 study, Dr. Ajjarapu indicated the Miner's cooperation and comprehension were good. Director's Exhibit 13. The technician performing the study also noted "[g]ood effort." *Id*. Further, Dr. Gaziano reviewed the December 4, 2017 study and checked the box indicating "[v]ents are acceptable." Director's Exhibit 17. Similarly, Dr. Dahhan indicated the Miner's cooperation and comprehension were good on the April 17, 2018 study. Director's Exhibit 24. Because the ALJ failed to consider 20 C.F.R. §718.103(c) and determine if the December 4, 2017 and April 17, 2018 studies are in substantial compliance with the quality standards, we vacate her finding that these tests are invalid.

Finally, Claimant's treatment records contain additional pulmonary function studies which the ALJ did not consider. *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); *see* Director's Exhibit 26 (July 28, 2016, study); Employer's Exhibits 8 (four studies dated August 20, 2015, February 16, 2016, July 28, 2016, and October 13, 2016), 9 (three studies dated November 29, 2000, March 14, 2006, and May 21, 2010). Thus, we vacate the ALJ's conclusion that the pulmonary function studies do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 10.

[12] Although the December 4, 2017 study was obtained in conjunction with the Department of Labor's (DOL's) complete pulmonary evaluation of Claimant, the ALJ declined to remand the case to the district director for further evidentiary development because Claimant's death made additional testing impossible. Decision and Order at 10 n. 8, *citing* 30 U.S.C. §923(b); 20 C.F.R. §§718.101(a), 725.406(a), 725.456(e).

[13] The ALJ did not specifically address the validity of Dr. Sargent's non-qualifying May 7, 2019 pulmonary function study but we note that the Miner's effort was classified as "unacceptable" both before and after the administration of bronchodilators. Decision and Order at 9; Employer's Exhibit 4. The technician stated "[p]atient was unable to produce [a]cceptable and [r]eproducible [s]pirometry data, best effort reported." Employer's Exhibit 4.

Medical Opinions

The ALJ considered three medical opinions. Dr. Ajjarapu conducted the Miner's DOL-sponsored complete pulmonary examination and concluded he was totally disabled based on a pulmonary function study showing a "severe pulmonary impairment," a blood gas study showing "moderate hypoxia," a physical exam of his lungs, an electrocardiogram, and a positive x-ray. Director's Exhibit 13. In a supplemental opinion, based on a review of additional evidence,[14] Dr. Ajjarapu noted "Dr. Dahhan's exam also revealed severe pulmonary impairment" and she agreed with Dr. Dahhan that "based on objective testing, . . . this [M]iner doesn't have the pulmonary capacity to do his previous coal mine employment." Director's Exhibit 23.

In his April 17, 2018 report, Dr. Dahhan diagnosed the Miner with a "significantly reversible obstructive ventilatory impairment," based on the pulmonary function studies, that would prevent him from performing his usual coal mine work. Director's Exhibit 24. In his subsequent deposition, Dr. Dahhan testified that the November 7, 2017, December 4, 2017 and April 17, 2018 pulmonary function studies are invalid but nevertheless concluded Claimant "does have pulmonary symptoms and pulmonary impairment." Director's Exhibit 25 at 23-24.

Dr. Sargent diagnosed the Miner with "mild obstructive impairment" based on the pulmonary function studies and mild hypoxemia at rest based on the blood gas studies. He concluded Claimant "has the respiratory capacity to do any job required in the mining of coal that a normal 74-year-old man would be expected to do." Employer's Exhibit 4.

The ALJ discredited all three medical opinions and therefore concluded they did not support a finding of total disability. Decision and Order at 16-18. In evaluating Dr. Ajjarapu's opinion, the ALJ gave it little weight, in part, because it was based on the December 4, 2017 pulmonary function study which she found invalid. *Id*. at 17. Because we have vacated the ALJ's weighing of the pulmonary function study evidence, including the December 4, 2017 study, we must vacate her rejection of Dr. Ajjarapu's opinion. Additionally, because we have vacated her weighing of the April 17, 2018 pulmonary function study, we must vacate her conclusion that Dr. Dahhan based his initial total disability diagnosis on "unreliable" evidence.[15] *Id*. We thus vacate the ALJ's conclusion

[14] Dr. Ajjarapu reviewed Dr. Gaziano's validation of the December 4, 2017 pulmonary function study, the July 28, 2016 and November 7, 2017 pulmonary function studies, and Dr. Dahhan's April 17, 2018 report. Director's Exhibit 23.

[15] In his report, Dr. Dahhan generally identified the results of the pulmonary function study he conducted and concluded it indicates Claimant was totally disabled from

that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id*. at 16-18.

Consequently, we vacate the ALJ's finding that Claimant did not establish a totally disabling respiratory impairment and is unable to invoke the Section 411(c)(4) presumption and therefore vacate her denial of benefits.

Employer's Cross-Appeal

In the interest of judicial economy, we address Employer's arguments on cross-appeal that the ALJ erred in determining the exertional requirements of Claimant's usual coal mine work and erred in discrediting Dr. Sargent's opinion that Claimant was not totally disabled. Employer's Brief at 22-26.

Exertional Requirements

Relying on Claimant's hearing testimony, Employment History form, and Form CM-913 - Description of Coal Mine Work and Other Employment, the ALJ found Claimant's usual coal mine work as a section foreman required him to perform heavy manual labor. Decision and Order at 8; *see* Hearing Transcript at 16-19; Director's Exhibits 6, 7. She acknowledged Claimant's primary duties were supervisory but determined he also performed non-supervisory duties, including setting timbers, rock dusting, hanging dust curtains, and lifting at least fifty pounds. Decision and Order at 7. Further, she found he had to bend over to work in low coal during the day, measuring about forty inches in height. *Id*.

Employer argues the ALJ "mischaracterized [Claimant's] work duties" and "ignore[d]" Claimant's testimony in concluding the exertional requirements of his usual coal mine work was heavy. Employer's Brief at 22. Because Claimant consistently testified that his job duties were primarily supervisory in nature, Employer contends the ALJ's finding should be reversed. We disagree.

Contrary to Employer's assertion, the ALJ found "Claimant's primary job duties were to supervise miners and to ensure that the mine operated in a safe manner." Decision and Order at 7. However, in establishing the exertional requirements of a miner's usual

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performing his coal mine work. Director's Exhibit 24. While Dr. Dahhan testified at his deposition that the MVV values were invalid, he did not invalidate the FEV1 or FVC values, nor did he testify whether he believed Claimant was no longer disabled.

coal mine employment,[16] an ALJ must determine the exertional requirements of the most difficult job the miner performed. *See Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991). She cannot base a finding of a miner's exertional requirements solely on the least demanding aspects of a job.[17] *Id*. As the ALJ permissibly found, the evidence establishes that when working as a foreman, Claimant had to duck-walk or crawl in coal that was approximately forty inches high, run heavy machinery, place coal dust curtains, lift at least fifty pounds, and perform other jobs as needed to fill in for absent crew members.[18] *See Heavilin v. Consolidation Coal Co*., 6 BLR 1-1209, 1-1213 (1984) ("It is for the [ALJ] to determine the nature of [C]laimant's usual coal mine employment."); Decision and Order at 7; Director's Exhibit 7; Hearing Transcript at 16-19. Thus, we affirm the ALJ's determination that Claimant's usual coal mine work required heavy manual labor. *Heavilin*, 6 BLR at 1-1213; Decision and Order at 7-8.

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[16] The Board has defined an individual's usual coal mine work as "the most recent job the miner performed regularly and over a substantial period of time." *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

[17] Employer "does not argue that the [M]iner *never* performed light or medium work." Employer's Brief at 23.

[18] On Form CM-913 - Description of Coal Mine Work and Other Employment, Claimant stated that working as a section foreman from 1966 to 1995, he worked in coal seams forty-two to forty-six inches high at the face of the mines. Director's Exhibit 7. In response to a question asking what type of mining equipment he used, he responded "float – none – oversee all production." *Id*. He also indicated he sat "v[e]ry seldom," had to "duck walk bend/stoop," and lifted "varied" pounds during the day. *Id*. At the hearing, Claimant testified the coal seam was "about 40 to 42, 44 inch" and that working as a foreman, he was "required to take gas testings, air readings, make sure everything is done safe as possible and . . . keep a check on all of your people as close as you can and . . . keep up with breakdowns. About anything that happens, you're responsible for it." Hearing Transcript at 16. In addition, he stated he had to "run a single head bolting machine a little bit," "a scoop a lot" and filled in when they had a "short crew." *Id*. at 17. He indicated that "[t]here's always heavy lifting in the mines" and responded "[i]t's an everyday thing" when asked if he had to lift fifty-pound bags of rock dust daily. *Id*. at 18. Further, he stated he helped "hang curtains in the height of [the] coal seam." *Id*. at 19. On cross-examination, he explained: "Supervising comes first and taking care of [the men] and the section and then helping them in any way I could, that came extra." *Id*. at 29. So he noted that rock dusting, hanging curtains, and running a scoop "was not an everyday occurrence." *Id*. at 29-30.

Dr. Sargent

Employer also challenges the ALJ's rejection of Dr. Sargent's opinion that Claimant was not totally disabled, asserting Dr. Sargent was in "a superior position" because he was the only physician "to review all relevant pulmonary data then in existence" and because he examined Claimant over a year after Dr. Ajjarapu's exam. Employer's Brief at 24-26. It further contends Dr. Sargent's opinion was not conclusory, as the ALJ found, but rather reasoned, documented and supported by substantial evidence. *Id*.

We initially reject Employer's assertion that the ALJ is required to give more weight to a physician who reviewed additional evidence or who more recently examined a miner. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); Employer's Brief at 25. However, there is merit to Employer's contention that the ALJ erred in rejecting Dr. Sargent's opinion as conclusory because she did not consider the totality of his explanations. Employer's Brief at 24-26. Although the ALJ correctly observed that Dr. Sargent did not specifically mention that Drs. Ajjarapu's and Dahhan's pulmonary function studies were qualifying,[19] he did acknowledge that those studies showed a severe impairment while his more recent study only showed a mild impairment. Employer's Exhibit 4; *see* Decision and Order at 17. Dr. Sargent explained that Claimant's improved respiratory function "indicates likely improved bronchodilator therapy for his asthma or decreased exposure to secondhand smoke since his wife has stopped smoking." Employer's Exhibit 4. Because the ALJ misstated that Dr. Sargent "did not even address Claimant's prior pulmonary function tests at all," we vacate her determination to give his opinion less weight on this basis. Decision and Order at 17; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).[20]

[19] The ALJ stated that although Dr. Sargent reviewed Drs. Ajjarapu's and Dahhan's reports, he did not discuss "how he reconciled these purportedly qualifying [pulmonary function] tests with his opinion that Claimant was not totally disabled." Decision and Order at 17.

[20] 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).

Remand Instructions

On remand, the ALJ must reconsider the validity of the pulmonary function study evidence. She must render findings as to whether Claimant's treatment studies are sufficiently reliable and as to whether the remaining studies are in substantial compliance with the regulatory quality standards, explaining how she resolves any conflicts in the evidence. *See* 20 C.F.R. §§718.101(b), 718.103(c).[21]

She must then reweigh the medical opinions on total disability, comparing the exertional requirements of Claimant's usual coal mine work with the physicians' descriptions of his pulmonary impairment and physical limitations. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine work); see 20 C.F.R. §718.204(b)(2)(iv). Specifically, the ALJ must consider whether Dr. Sargent's opinion that Claimant was not totally disabled is undermined by his reliance on post-bronchodilator pulmonary function study values, rather than pre-bronchodilator values.[22] *See* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (post-bronchodilator measurements "[do] not provide an adequate assessment of the miner's disability"). 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 Banks*, 690 F.3d at 489; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). If Claimant establishes total disability at 20 C.F.R. §718.204(b)(2)(i), or (iv) or both, the ALJ must then weigh all of the relevant evidence together to determine if Claimant has a totally

[21] The ALJ failed to adequately explain why the DOL's December 4, 2017 pulmonary function study is invalid. Although Claimant is deceased and cannot perform another pulmonary function study, the regulation at 20 C.F.R. §725.456(e) contemplates the development of "such additional evidence as is required" to remedy the defect. Thus, the ALJ should consider whether it is appropriate to remand this case to the district director in order for him to determine what is necessary for the DOL to fulfill its obligation to provide Claimant with a complete pulmonary evaluation.

[22] In addition to stating Claimant's improved respiratory function is "likely" due to improved bronchodilator therapy, Dr. Sargent further based his opinion on Claimant's "post bronchodilator FEV1 [being] normal and his post bronchodilator forced vital capacity [being] at most minimally diminished" on pulmonary function testing. Employer's Exhibit 4. "In summary," he again concluded Claimant's "post-bronchodilator lung function is normal" and he "has the respiratory capacity" to perform coal mine work. *Id*.

disabling respiratory or pulmonary impairment. *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, he will have established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. Thereafter, the ALJ must determine whether Employer has rebutted the presumption. 20 C.F.R. §§ 718.305, 718.309. If Claimant is unable to establish total disability, benefits are precluded. 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). In rendering her conclusions on remand, the ALJ must comply with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the ALJ's Decision and Order Denying 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.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge