U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0494 BLA

BOBBY R. BRUMMETT	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ITMANN/CONSOLIDATION COAL COMPANY, CONSOL ENERGY, INCORPORATED	)	DATE ISSUED: 08/30/2016
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Pamela J. Lakes, Administrative Law Judge, United States Department of Labor.

Bobby R. Brummett, Bramwell, West Virginia, *pro se*.

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order Denying Benefits (2013-BLA-05270) of Administrative Law Pamela J. Lakes rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim[2] filed on February 17, 2011.

The administrative law judge credited claimant with thirty-one years of underground coal mine employment[3] and initially found that the new evidence failed to establish the existence of pneumoconiosis, pursuant to 20 C.F.R. §718.202(a) and, therefore, found that claimant failed to establish a change in the applicable condition of entitlement, pursuant to 20 C.F.R. §725.309.[4] The administrative law judge also considered whether the existence of a totally disabling respiratory impairment was

[1] Cindy Viers, a benefits counselor with Stone Mountain Health Services of Oakwood, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Viers is not representing claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed three prior claims for benefits. Claimant's first claim, filed on June 8, 1987 was denied on October 7, 1987 because claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant's second claim, filed on April 11, 2001, but later withdrawn, is considered not to have been filed. 20 C.F.R. §725.306(b). Claimant's third claim, filed on August 11, 2004, was denied on December 13, 2007 for failure to establish the existence of pneumoconiosis. Director's Exhibit 3. A request for modification was denied on July 8, 2008, and that denial became final. Claimant took no further action until he filed the current claim, his fourth. *See* Decision and Order at 2.

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

[4] Relevant to this claim, where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge 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. §725.309(c)(3). Claimant's prior claim was denied because he failed to establish the existence of pneumoconiosis. Director's Exhibit 3. Thus, in order to obtain review of the merits of his claim, claimant had to submit new evidence establishing the existence of pneumoconiosis. 20 C.F.R. §725.309(c)(3), (4).

established, noting that if claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4),[5] 30 U.S.C. §921(c)(4), claimant could establish a change in the applicable condition of entitlement through application of the presumption. The administrative law judge found, however, that when all of the evidence of record was considered, old and new, claimant was unable to establish total pulmonary or respiratory disability under 20 C.F.R. §718.204(b)(2) and, therefore, was unable to invoke the rebuttable presumption at Section 411(c)(4), or establish entitlement to benefits without the aid of the presumption. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance.[6] The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to vacate the administrative law judge's denial of benefits. Specifically, the Director argues that the administrative law judge erred in her consideration of the blood gas study and medical opinion evidence relevant to the existence of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv).[7]

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v.*

[5] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[6] In its response brief, employer asserts that, if the denial of benefits is vacated and remanded for further consideration, the Board should instruct the administrative law judge "to reconsider the admissibility of Employer's Exhibit 5 (Dr. Tarver's rebuttal reading of the June 20, 2008 chest x-ray) and Employer's Exhibit 11 (Dr. Castle's November 17, 2014 supplemental report.)." Employer's Brief at 10-11. As employer did not file a cross-appeal, and as these arguments are not offered in support of the decision below, we decline to address them. *See King v. Tennessee Consolidation Coal Co.*, 6 BLR 1-87, 1-91 (1983).

[7] The administrative law judge also found that, as none of the pulmonary function studies produced qualifying values, and the record contains no evidence of cor pulmonale with right-sided congestive heart failure, claimant did not establish total disability, pursuant to 20 C.F.R. §718.204(b)(2)(i), (iii). Decision and Order at 8-9.

Director, OWCP, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law.[8] 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).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

The Director asserts that the administrative law judge erred in finding that the blood gas study evidence does not support a finding of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii) and, therefore, erred in finding that claimant failed to invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4). The administrative law judge considered four new blood gas studies conducted on October 12, 2011, January 12, 2012, July 24, 2012, and January 23, 2013.[9] Decision and Order at 8. The October 12, 2011 blood gas study produced qualifying values at rest, but was non-qualifying with exercise.[10] Decision and Order at 8; Director's Exhibit 15. Of the remaining three blood gas studies, all performed at rest only, the January 12, 2012 and January 23, 2013 studies produced qualifying results,

[8] Because claimant's coal mine employment was in Virginia and West Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Decision and Order at 2, 5; Hearing Tr. at 20.

[9] The administrative law judge also considered the blood gas studies from claimant's prior denied claims, but permissibly concluded that the more recent blood gas studies were of greater probative value as more indicative of claimant's current condition. *See Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); *Workman v. E. Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004) (en banc); Decision and Order at 8-9.

[10] A "qualifying" blood gas study yields results that are equal to or less than the values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study produces results that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

while the July 24, 2012 study produced non-qualifying results. Decision and Order at 8; Director's Exhibits 14, 31; Claimant's Exhibit 7.

Weighing this evidence, the administrative law judge discredited the January 12, 2012 and January 23, 2013 blood gas studies, finding that they "were taken during hospitalizations and the results from those tests are not accompanied by any information as to the reason for the hospitalization or the validity of the results in assessing overall blood gases." Decision and Order at 8; Director's Exhibits 14, 31. Limiting her consideration to the October 12, 2011 and July 24, 2012 blood gas studies, the administrative law judge determined that "the arterial blood gases are in equipoise" and therefore do not support a finding of total disability under 20 C.F.R. §718.204(b)(2)(ii).

The Director argues that the administrative law judge erred in declining to credit the January 12, 2012 and January 23, 2013 blood gas study results and, therefore, erred in finding that the blood gas study evidence does not support total disability. Director's Response at 2. The Director acknowledges that Appendix C to Part 718 provides that blood gas tests "must not be performed during or soon after an acute respiratory or cardiac illness." Director's Response at 1-2. The Director asserts, however, that while the January 12, 2012 and January 23, 2013 tests were performed at Bluefield Regional Medical Center and Bluefield Regional Hospital, respectively, there is no basis in the record to conclude that these blood gas studies were performed during or soon after hospitalization for an acute illness. Director's Response at 2.

The Director's argument has merit. The report of the January 12, 2012 blood gas test indicates that it was performed in the respiratory therapy department of the Bluefield Regional Medical Center. However, the spaces for entering the patient's room and bed information are left blank. *See* Director's Exhibit 14 at 8. Similarly, while the report of the January 23, 2013 test indicates that it was performed at Bluefield Regional Hospital, it also indicates that the patient's status was "O/P / Lab."[11] Claimant's Exhibit 7. Further, as the Director asserts, both Drs. Castle and Farney reviewed the results of the January 12, 2012 and January 23, 2013 blood gas studies and neither physician questioned the tests on the basis that they were performed during or soon after a period of acute respiratory or cardiac illness.[12] Director's Response at 2. Nor are there any

[11] The Director, Office of Workers' Compensation Programs (the Director), acknowledges that the January 23, 2013 blood gas report reflects an "admission date," of January 23, 2013, but asserts that this "may indicate nothing more than the date on which the test was performed." Director's Response at 2 n.1.

[12] As the Director asserts, while Dr. Farney stated that "blood gasses obtained when someone's admitted to a hospital" would not accurately reflect the person's lung

documents in the record to indicate such. Rather, as the Director points out, the record contains a physician's assistant note, dated March 26, 2013, reflecting that claimant denied having any lung infection "so far that year," which would include the time frame of the January 23, 2013 test. Director's Response at 2; Claimant's Exhibit 9. Additionally, the record contains the report of an x-ray performed at "Stone [Mountain] Oakwood" on January 10, 2012, which was only two days before the January 12, 2012 blood gas test at Bluefield Regional Medical Center.[13] Director's Exhibit 14.

In concluding that the January 12, 2012 and January 23, 2013 qualifying blood gas study results are not reliable, the administrative law judge did not address this evidence, which could support a conclusion that the tests were performed on an outpatient basis, rather than during, or soon after, a period of hospitalization for acute respiratory or cardiac illness. Consequently, the administrative law judge's analysis of the blood gas study evidence does not comport with the requirement of the Administrative Procedure Act (APA), that every adjudicatory decision must be accompanied by a statement of "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); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). We therefore vacate the administrative law judge's finding that the blood gas study evidence does not support total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii). On remand the administrative law judge should reconsider her conclusion that the July 12, 2012 and January 23, 2013 qualifying blood gas studies are unreliable, and reweigh the blood gas study evidence accordingly.

We next address the Director's argument that the administrative law judge erred in her evaluation of the medical opinion evidence relevant to the existence of total disability, at 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the opinions of Drs. Rasmussen, Castle, and Farney, submitted with the current claim,[14]

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function, Dr. Farney did not specifically refer to the January 12, 2012 or January 23, 2013 blood gas testing. Employer's Exhibit 9 at 32.

[13] The Director also asserts that claimant submitted the results of both blood gas studies as affirmative evidence, and not as medical treatment records. Director's Response at 2. However, the evidentiary designation of the blood gas studies is not determinative as to whether they were performed during a period of hospitalization.

[14] The administrative law judge also considered the medical opinions from claimant's prior denied claims, but permissibly concluded that the more recent medical evidence was of greater probative value as more indicative of claimant's current

noting that while the physicians agreed that claimant is disabled as a "whole man," they disagreed as to whether that disability was respiratory and/or pulmonary in nature. Decision and Order at 9-10. Dr. Rasmussen noted that claimant, who was eighty-three years old at the time of his examination and a lifelong non-smoker, last worked as a mainline motorman, a position requiring considerable heavy manual labor. Based on the results of his October 12, 2011 physical examination and objective testing, Dr. Rasmussen opined that claimant "does not retain the pulmonary capacity to perform his regular coal mine employment" based on a "moderate loss of lung function as reflected by his gas exchange impairment," or hypoxemia, demonstrated by his blood gas studies. Decision and Order at 9-10; Director's Exhibit 15.

In contrast, Dr. Castle, who examined claimant on July 24, 2012, performed objective testing and reviewed record evidence, opined that claimant does not have "intrinsic lung disease" or a disabling respiratory impairment from any cause. Employer's Exhibits 5 at 9; 10 at 24, 28. Dr. Castle opined that, while his own objective testing reflected a normal oxygenation level for a man claimant's age at the barometric pressure at which the testing was performed, claimant's blood gas studies over time revealed a variable gas exchange impairment, in the form of variable hypoxemia. Employer's Exhibits 5 at 3, 10; 10 at 18-19, 22, 24. Dr. Castle stated, however, that this was due to lower lung zone atelectasis due to poor inspiration.[15] Employer's Exhibit 5 at 9. Moreover, Dr. Castle stated that, while the blood gas testing of record reflected variable oxygenation, even the qualifying blood gas results were actually normal when adjusted for claimant's age and the altitude and barometric pressure at which the tests were performed. Employer's Exhibit 10 at 18-24, 27-28. Dr. Castle concluded that claimant is totally disabled because of his advanced years and other medical problems, including cardiac disease and diabetes, but retains the respiratory capacity to perform his previous coal mine employment. Decision and Order at 10; Employer's Exhibits 5; 10 at 24.

Dr. Farney, who reviewed the evidence of record, also opined that claimant is not totally disabled from a respiratory standpoint. Employer's Exhibits 4, 9. Dr. Farney initially stated that some of claimant's blood gas studies demonstrated hypoxemia, but most were normal when adjusted for age and elevation. Dr. Farney added that any

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condition. *See Parsons*, 23 BLR at 1-35; *Workman*, 23 BLR at 1-27; Decision and Order at 8-9.at 9-10.

[15] In contrast to his medical report, Dr. Castle testified that claimant's variable oxygenation is attributable to claimant's obesity and cardiac disease, and not to atelectasis. Employers Exhibit 10 at 27-28.

hypoxemia is caused by obesity, and is not due to any "primary" pulmonary disease. Employer's Exhibits 1, 2 at 23. Like Dr. Castle, during his deposition Dr. Farney stated that claimant's blood gas studies, overall, did not demonstrate hypoxemia, as even the qualifying blood gas study results are actually normal, considering claimant's age and the elevation at which the studies were performed. Employer's Exhibit 9 at 28, 30-31. Moreover, Dr. Farney opined that, while claimant could not perform his usual coal mine work due to his age, his "normal" lung function studies indicate that he has no pulmonary impairment and, therefore, is not disabled from a pulmonary or respiratory standpoint. Employer's Exhibit 9 at 30-32.

The administrative law judge found that the medical opinions "weigh slightly in favor of a finding of no disability solely from a pulmonary or respiratory basis, in view of the detailed explanations provided by Drs. Castle and Farney and their ability to review a more complete record than that of Dr. Rasmussen, whose conclusions were based upon a single examination." Decision and Order at 10. The administrative law judge, therefore, found that the medical opinion evidence did not establish total disability, pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Considering all of the evidence relevant to total disability, *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc), the administrative law judge found that, while claimant's age precludes his usual coal mine job as a motorman requiring heavy labor, the evidence is "equivocal" on the issue of whether he is totally disabled from a pulmonary or respiratory standpoint alone. Decision and Order at 11. The administrative law judge noted that there is no evidence of obstructive lung disease, as reflected by claimant's uniformly non-qualifying pulmonary function studies, and that the "significance of the variable arterial blood gases is unclear, particularly in view of [claimant's] use of oxygen."[16] *Id.* The administrative law judge also stated that because "none of the physicians have adequately addressed all of the evidence, and the impact of heart disease and obesity (which were mentioned as a possible cause of the varying ABG's) is unclear," she was unable "to separate out the issue of pulmonary or respiratory impairment from the other disabling conditions." *Id.* The administrative law judge ultimately concluded, however, that in light of her findings that the blood gas studies are "in equipoise," and that the medical opinions establish that claimant can perform his

[16] Contrary to the administrative law judge's statement, the record does not reflect that claimant was on oxygen at the time of the October 12, 2011, January 12, 2012, July 24, 2012, or January 23, 2013 blood gas testing. Rather, claimant testified that he began using oxygen approximately six months prior to the September 25, 2014 hearing date. Hearing Tr. at 28.

usual coal mine work from a pulmonary or respiratory standpoint, claimant failed to meet his burden of proof to establish that he is totally disabled. *Id.*

The Director asserts that, in evaluating the opinions of Drs. Castle and Farney, the administrative law judge erred in combining their opinions as to the existence of a respiratory impairment, with their opinions as to the cause of that impairment. Specifically, the Director states that the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether a totally disabling respiratory or pulmonary impairment is, or was, present, not whether a respiratory or pulmonary impairment is due to an intrinsic, or extrinsic, disease process. Thus, the Director asserts, while Drs. Castle and Farney did not ascribe claimant's impairment to an "intrinsic" or "primary" pulmonary disease process, the administrative law judge should have nonetheless considered whether they established the *presence* of an impairment, pursuant to 20 C.F.R. §718.204(b)(2)(iv), regardless of cause.

Contrary to the Director's contentions, the administrative law judge properly recognized that "there is no requirement that the cause of the impairment be due to an 'intrinsic' condition," so that "if heart disease or obesity causes a respiratory impairment, it can nevertheless qualify as a totally disabling respiratory impairment. The etiology of the impairment is addressed under the disability causation element." Decision and Order at 7.

We agree, however, that the administrative law judge's finding, that the medical opinions "weigh slightly in favor of a finding of no disability from a pulmonary or respiratory basis," cannot be affirmed.[17] Decision and Order at 10. The administrative law judge stated that she credited the opinions of Drs. Castle and Farney in light of the detailed explanations they provided, and their ability to review a more complete record than Dr. Rasmussen. *Id.* However, the administrative law judge did not explain this conclusion, particularly in light of her additional findings that "[n]one of the physicians have adequately addressed all of the evidence" and that the record evidence is "insufficient" to allow her to "separate out" the issue of pulmonary or respiratory impairment from claimant's other disabling conditions. Consequently, the administrative law judge's finding does not comport with the APA, 5 U.S.C. §557(c)(3)(A), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or

[17] We further agree with the Director that, having declined to admit Dr. Castle's November 17, 2014 supplemental opinion into evidence, Decision and Order at 4, the administrative law judge erred in considering this opinion together with the other medical opinions of record. Decision and Order at 10; Director's Response at 3.

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); *see Wojtowicz*, 12 BLR at 1-165.

Further, we note that Drs. Rasmussen, Castle, and Farney based their conclusions regarding the existence of a totally disabling respiratory impairment on their interpretations of the blood gas study results. Given that the medical opinions are contradictory as to the presence of a totally disabling respiratory impairment, the administrative law judge's reconsideration of the blood gas studies, on remand, could materially affect her consideration of the medical opinions. *See Sea "B" Mining Co. v. Addison*, F.3d , No. 14-2324, 2016 WL 4056396, at *8 (4th Cir. July 29, 2016). For the foregoing reasons, we must also vacate the administrative law judge's finding that the medical opinions do not establish the existence of a totally disabling respiratory impairment.

On remand, the administrative law judge should reconsider the credibility of the medical opinions in light of her reweighing of the blood gas studies, and taking into consideration the physicians' conclusions as to what the blood gas studies show.[18] *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 n.9, 21 BLR 2-323, 2-335 n.9 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172, 21 BLR 2-34, 2-44 (4th Cir. 1997). Further, in considering the quality of the physicians' reasoning, the administrative law judge should consider the Director's argument that the opinions of

[18] Drs. Castle and Farney opined that the qualifying blood gas study results were actually normal when "corrected" or "recalculated" for claimant's age and for the elevation and barometric pressure at which the studies were conducted. Employer's Exhibits 4 at 20; 5 at 10; 9 at 21, 28, 30; 10 at 18-21, 24, 27. As Dr. Castle acknowledged, however, the Department of Labor (DOL) has not specifically adopted this approach. Employer's Exhibit 10 at 19; *see* 20 C.F.R. Part 718, Appendix C. Rather, in response to comments it received before Appendix C was promulgated, the DOL acknowledged that altitude affects arterial blood gas values, but explained that there is not a "straight-forward linear lowering of arterial blood oxygen tension as the oxygen pressure in the atmosphere decreases with altitude." 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980). Consequently, the DOL adopted a sliding scale that designated three levels of altitude. *Id*. The DOL also changed the tables of Appendix C to establish a level of arterial oxygen tension below which a miner can be considered disabled, regardless of age. *Id.* Therefore, the values set forth in Appendix C were determined by the DOL, after consideration of elevation and the advanced age of many miners.

Drs. Castle and Farney reflect internal inconsistencies that could undermine the credibility of their opinions.[19] Director's Response at 2-3.

As we have vacated the administrative law judge's findings that the blood gas studies and medical opinions do not support a finding of total disability, we also vacate her finding that all of the medical evidence weighed together does not establish total disability, pursuant to 20 C.F.R. §718.204(b)(2), and we vacate the denial of benefits. After reconsidering, on remand, whether the blood gas study and medical opinion evidence establishes total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii) and (iv), the administrative law judge must weigh all the relevant evidence together, both like and unlike, to determine whether claimant has established the existence of a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b). *See* 20 C.F.R. §718.204(b)(2); *Fields*, 10 BLR at 1-21; *Shedlock*, 9 BLR at 1-198.

If the administrative law judge determines that claimant has established total disability, pursuant to 20 C.F.R. §718.204(b)(2), and has, therefore, invoked the Section 411(c)(4) presumption, claimant will have established a change in the applicable condition of entitlement in this subsequent claim, pursuant to 20 C.F.R §725.309(d). The administrative law judge must then determine whether employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d)(1)(i), (ii).

[19] Specifically, the Director asserts that while Dr. Castle stated that claimant does not have "any lung disease at all," and is not totally disabled "from a purely pulmonary standpoint," he also attributed the variability in claimant's blood gas testing to the "atelectasis in the lower lung zones." Employer's Exhibits 5 at 10; 10 at 16, 22, 24; Director's Response at 2. Further, Dr. Castle initially stated that claimant's blood gas results do not reflect "chronic and persistent hypoxemia" and later stated that they would be wrongly interpreted as reflecting *any* hypoxemia. Employer's Exhibit 5 at 10; 10 at 18-19. Similarly, as the Director notes, while Dr. Farney initially stated that some of claimant's blood gas studies reflected hypoxemia, he subsequently testified that claimant does not have hypoxemia. Director's Response at 3 and n.3; Employer's Exhibits 4 at 20-21; 9 at 32.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge