U.S. Department of Labor

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

BRB No. 17-0251 BLA

LEONARD H. ALLEN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UMI, LLC	)	
	)	
and	)	
	)	
ROCKWOOD CASUALTY INSURANCE COMPANY	)	DATE ISSUED: 02/20/2018
	)	
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 Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Yonts, Sherman & Driskill, PSC), Greenville, Kentucky, for claimant.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for employer/carrier.

Michelle S. Gerdano (Kate S. O'Scannlain, Solicitor of Labor; Maia S. Fisher, 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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2015-BLA-05342) of Administrative Law Judge Colleen A. Geraghty, rendered on a subsequent claim[1] filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Applying Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),[2] the administrative law judge credited claimant with thirty-six years of coal mine employment,[3] either in underground mines or in conditions substantially similar to those in an underground mine. The administrative law judge found that the new evidence did not establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore found that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) or establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). Accordingly, the administrative law judge denied benefits.

[1] Claimant's initial claim for benefits, filed on June 19, 2009, was denied by the district director on February 16, 2010, because claimant did not establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. Claimant took no further action until he filed this subsequent claim on July 31, 2013. Director's Exhibit 3.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[3] Claimant was last employed in the coal mining industry in Indiana. Director's Exhibit 4. Accordingly, the Board will apply the law of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

On appeal, claimant argues that the administrative law judge erred in finding that the new evidence did not establish total disability and, therefore, erred in finding that claimant did not invoke the Section 411(c)(4) presumption. Claimant further asserts that the administrative law judge erred in failing to address whether the new evidence established the existence of pneumoconiosis. Additionally, claimant contends that the Director, Office of Worker's Compensation Programs (the Director), failed to provide him with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate his claim.[4] Employer/carrier (employer), responds in support of the administrative law judge's denial of benefits. The Director has filed a limited response, contending that he met his obligation to provide claimant with a complete pulmonary evaluation as required by Section 413(b) of the Act, 30 U.S.C. §923(b). Claimant has filed a reply, reiterating his contentions.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated 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 entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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 did not establish that he suffered from a totally disabling respiratory or pulmonary impairment.

[4] Claimant raised the same argument in a Motion to Remand he filed with the Board on April 28, 2017. By Order dated June 28, 2017, the Board noted that it will address claimant's Motion to Remand in its Decision and Order.

Director's Exhibit 1. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence[5] establishing that he is totally disabled. 20 C.F.R. §725.309(c)(3), (4).

A miner is totally disabled if the miner has a respiratory or pulmonary impairment which, standing alone, prevents the miner from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). A miner may establish total disability using any of four types of evidence: pulmonary function study evidence, arterial blood gas study evidence, evidence of cor pulmonale with right-sided congestive heart failure, and medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i)-(iv). Claimant argues that the administrative law judge erred in finding that the new pulmonary function study evidence, blood gas study evidence, and medical opinion evidence did not establish total disability.[6]

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered nine new pulmonary function studies, dated May 19, 2010, September 24, 2012, September 16, 2013, September 17, 2013, December 31, 2013, May 1, 2014, August 1, 2014, June 4, 2015, and October 20, 2015. Decision and Order at 13; Director's Exhibits 15, 17, 18; Claimant's Exhibits 2, 5; Employer's Exhibits 1, 25; Before determining whether the studies were qualifying[7] for total disability, the administrative law judge

[5] The district director's Proposed Decision and Order denying the prior claim became final on March 18, 2010. *See* 20 C.F.R. §725.419(d); Director's Exhibit 1. Therefore, we reject claimant's argument that the administrative law judge erred in considering the May 19, 2010 and September 24, 2012 pulmonary function studies and the September 7, 2012 blood gas study as new evidence under 20 C.F.R. §725.309. Those studies were developed after the previous denial became final and were submitted in connection with this claim. *See* 20 C.F.R. §725.309(c)(4). Claimant cites no authority for his argument that only evidence developed after the July 31, 2013 filing date of his subsequent claim constitutes "new evidence" within the meaning of 20 C.F.R. §725.309(c)(4). Claimant's Brief at 14-15.

[6] The administrative law judge found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure under 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 31. This finding is affirmed as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[7] A "qualifying" pulmonary function study or 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, Appendices B and C. A non-qualifying study exceeds these values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

noted a discrepancy in the measurements of claimant's height, which ranged from seventy-one to seventy-two inches.[8] Decision and Order at 13, 30. The administrative law judge resolved the evidentiary conflict by averaging the various heights recorded on the pulmonary function studies, and found that claimant's correct height was 71.3 inches. Decision and Order at 30.

Based on a 71.3 inch height, and claimant's age, the administrative law judge found that only two pulmonary function studies, those conducted on September 16, 2013 and October 20, 2015, were qualifying for total disability. Decision and Order at 30-31. The administrative law judge, however, found that both of these studies were invalid. Specifically, she credited Dr. Chavda's opinion that the September 16, 2013 pulmonary function study was invalid due to "hesitation in inspiration," and the opinions of Drs. Castle and Jarboe that the October 20, 2015 pulmonary function study was invalid due to submaximal effort.[9] *Id*. Finding that "there are no valid, qualifying pulmonary function [studies]," the administrative law judge determined that the new pulmonary function study evidence did not establish total disability. *Id*.

Claimant contends that the administrative law judge erred in finding the October 20, 2015 pulmonary function study to be invalid.[10] Claimant's Brief at 17. Specifically, claimant asserts that "Dr. Chavda defined this [study] as a qualifying valid [study]" and

[8] Claimant's height was recorded as 71 inches on five pulmonary function studies, 71.5 inches on one pulmonary function study, and 72 inches on three pulmonary function studies. Director's Exhibits 15, 17, 18; Claimant's Exhibits 2, 5; Employer's Exhibits 1, 25.

[9] Dr. Chavda administered the September 16, 2013 pulmonary function study, and reported that it was invalid due to "significant hesitation in inspiration." Director's Exhibit 17 at 9. Dr. Castle invalidated the October 20, 2015 pulmonary function study that was administered by Dr. Chavda because the flow volume loops and volume time curves showed less than maximal effort and the volume time curves showed obstruction of the testing instrument mouthpiece. Employer's Exhibit 28. Dr. Jarboe opined that this study was invalid because the flow volume loops were inconsistent and because it was "obvious that [claimant] did not give maximum effort" based on the maximum flow. Employer's Exhibit 1B at 34. Moreover, Dr. Jarboe stated that the time-volume curves indicated that claimant prematurely ended the exhalation. *Id*.

[10] Claimant does not challenge the administrative law judge's finding that the September 16, 2013 pulmonary function study is invalid. Therefore, this finding is affirmed. *See Skrack*, 6 BLR at 1-711; Decision and Order at 30-31.

the technician who conducted the study stated that it was "acceptable and repeatable . . . ." *Id*. Contrary to claimant's argument, the record reflects that Dr. Chavda did not validate the October 20, 2015 pulmonary function study. Director's Exhibit 17; Claimant's Exhibits 5, 6. Furthermore, to the extent claimant argues that the administrative law judge erred in declining to rely upon the technician's comments that the study was acceptable, claimant's argument lacks merit. The administrative law judge permissibly credited the invalidation reports by Drs. Castle and Jarboe over the comments of the technician who conducted the October 20, 2015 study. *See Peabody Coal Co. v. Director, OWCP* [*Brinkley*], 972 F.2d 880, 885, 16 BLR 2-129, 2-135 (7th Cir. 1992). We therefore affirm the administrative law judge's finding that the October 20, 2015 pulmonary function study was invalid.

Claimant asserts that the administrative law judge erred in finding that the September 17, 2013 and May 1, 2014 pulmonary function studies were non-qualifying. Claimant's Brief at 15, 18-19, 20. Contrary to claimant's argument, the administrative law judge correctly found that neither study was qualifying for total disability, based on claimant's height of 71.3 inches,[11] claimant's age, and the corresponding values found in the table at 20 C.F.R. Part 718, Appendix B.[12] 20 C.F.R. §718.204(b)(2)(i)(A)-(C); Director's Exhibits 17, 18. Therefore, we affirm, as supported by substantial evidence, the administrative law judge's finding that the new pulmonary function study evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(i).

[11] Claimant asserts that "[p]art of the problem" with the administrative law judge's consideration of the pulmonary function study evidence "may be due to . . . her conclusions averaging the height based upon the nine" pulmonary function studies. Claimant's Brief at 20. Contrary to claimant's argument, the administrative law judge rationally found that claimant's actual height was 71.3 inches, because it represented the average of the conflicting heights in the record. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 30.

[12] The administrative law judge correctly found that the September 17, 2013 pulmonary function study was non-qualifying because it produced an FEV1 value of 2.18, which exceeded the applicable FEV1 value of 2.02 found in the table at 20 C.F.R. Part 718, Appendix B. Decision and Order at 30-31; *see* 20 C.F.R. §718.204(b)(2)(i)(A). Moreover, although the May 1, 2014 study produced a qualifying FEV1 value, it did not produce qualifying FVC or FEV1/FVC values, and did not contain any MVV values. Director's Exhibit 18. Specifically, it produced an FVC value of 2.83, which exceeded the applicable FVC value of 2.60 found in the table at 20 C.F.R. Part 718, Appendix B. *Id*.; *see* 20 C.F.R. §718.204(b)(2)(i)(B). It produced an FEV1/FVC ratio of 71, which was greater than the required 55. *See* 20 C.F.R. §718.204(b)(2)(i)(C).

Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered four new arterial blood gas studies, dated September 7, 2012, September 17, 2013, May 1, 2014, and June 4, 2015. Decision and Order at 14; Director's Exhibits 14, 17, 18; Employer's Exhibit 1. The administrative law judge correctly found that none of the studies were qualifying. Decision and Order at 31. Claimant's sole argument is that the September 7, 2012 blood gas study is not new evidence. Claimant's Brief at 15. As previously discussed, we reject that argument, *supra*, n.5. Therefore, we affirm the administrative law judge's finding that the blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge weighed the new medical opinions of Drs. Chavda and Baker that claimant is totally disabled and the contrary opinion of Dr. Jarboe that claimant is not totally disabled.[13] The administrative law judge accorded no weight to Dr. Chavda's opinion because she found that Dr. Chavda did not have an accurate understanding of the exertional requirements of claimant's usual coal mine employment as a bulldozer operator. Decision and Order at 31-33. The administrative law judge also found that Dr. Chavda "relied on a misinterpretation of the test results" that formed the basis for his opinion, and "did not explain the significance of the numerous valid tests performed after his examination" of claimant. *Id*. at 33.

The administrative law judge assigned no weight to Dr. Baker's opinion because she found that it was insufficiently explained, and because Dr. Baker did not address "later, non-qualifying [FEV1] results" when rendering his opinion. Decision and Order at 32-33. In contrast, the administrative law judge credited Dr. Jarboe's opinion that claimant is not totally disabled because she found that it was well-reasoned and supported by the objective evidence. *Id*. at 33. Therefore, the administrative law judge found that

[13] The administrative law judge also briefly discussed, but discounted, Dr. Selby's opinion that claimant is not totally disabled. Decision and Order at 32. Claimant argues that the administrative law judge erred because Dr. Selby's medical opinion supports a finding of total disability. Claimant's Reply Brief at 8; Decision and Order at 32. Contrary to claimant's argument, Dr. Selby specifically opined that claimant does not suffer from a totally disabling respiratory or pulmonary impairment. Director's Exhibit 18 at 12. Although he indicated that claimant has coronary artery disease that "could" be disabling, he concluded that there "is no solid proof that [claimant] is rendered totally disabled from doing his usual coal mine work." *Id*. at 13. Therefore, we see no error in the administrative law judge's determination that Dr. Selby's opinion does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv).

the preponderance of the medical opinion evidence did not establish total disability. *Id*. at 34.

Claimant argues that the administrative law judge erred in discrediting the opinions of Drs. Chavda and Baker. Claimant's Brief at 16-19; Claimant's Reply Brief at 10-16. We disagree. Dr. Chavda indicated that claimant's most recent coal mine employment required him to climb onto a bulldozer with fifty pounds of fuel a "couple of times" a day and shovel tracks to keep them clean. Director's Exhibit 17 at 50. Based on that understanding of claimant's job duties, Dr. Chavda stated that claimant's FEV1 and MVV values on his September 17, 2013 pulmonary function study were "significantly low enough" to prevent claimant from performing his most recent coal mine employment.[14] *Id*. at 10.

However, the administrative law judge noted that both claimant, and his former supervisor, Gary Scales, testified that claimant was not required to climb on the bulldozer with fifty pounds of fuel in the last year of his coal mine employment. Decision and Order at 31-33; *see* Director's Exhibits 24 at 35-36; 23 at 22-23. Based on the testimony of claimant and Mr. Scales, the administrative law judge found that, "for at least the last year of [claimant's] employment, his dozer was fueled with a coupling device on the side of the dozer. At most, [claimant] would be required to connect the fuel line to the coupling device twice during a shift . . . and return the hose to its station."[15] Decision and Order at 31-32; *see* Director's Exhibit 24 at 15-17. Contrary to claimant's argument, the administrative law judge permissibly found that Dr. Chavda's opinion was not persuasive

[14] Dr. Chavda also reviewed the May 1, 2014 pulmonary function study and indicated that it evidenced moderate obstructive and restrictive ventilatory impairments that would prevent claimant from performing the same job duties. Director's Exhibit 17 at 1.

[15] The administrative law judge additionally found that Mr. Scales's testimony "suggest[ed] that . . . [c]laimant's description of the rigors of his job may have been exaggerated." Decision and Order at 33 n.10. Specifically, the administrative law judge noted Mr. Scales's testimony that the operators did not shovel tracks on the bulldozers. *Id*. Apart from noting that Mr. Scales's testimony differed from claimant's on some aspects of the job duties, and asserting that Mr. Scales's testimony is "not credible," Claimant's Brief at 9, claimant does not allege any specific error in the administrative law judge's finding as to the exertional requirements of claimant's job as a bulldozer operator. *See* 20 C.F.R. §802.211(c). The assertion that Mr. Scales's testimony is not credible essentially is a request that the Board reweigh the evidence, which it is not authorized to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

because Dr. Chavda "did not have an accurate understanding" of the exertional requirements of claimant's most recent coal mine employment as a bulldozer operator when opining that claimant is totally disabled.[16] Decision and Order at 31-33; *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22, 23 BLR 2-250, 2-258-60 (7th Cir. 2005).

Dr. Baker concluded that claimant's pulmonary function studies evidenced a moderate obstructive ventilatory defect, with a mild restrictive defect. Claimant's Exhibit 2. Although Dr. Baker acknowledged that claimant's August 1, 2014 pulmonary function study was non-qualifying based on its FVC and FEV1/FVC values, he noted that its FEV1 value was qualifying for total disability. *Id*. Dr. Baker concluded that claimant is totally disabled, explaining that most pulmonary specialists believe that the FEV1 value is the best indicator for the ability to perform work. *Id*. The administrative law judge permissibly discounted Dr. Baker's opinion because she found that Dr. Baker provided no support for his reasoning that the FEV1 value is considered the best indicator for the ability to perform work, or explain why claimant's reduced FEV1 value would prevent him from performing the duties of his usual coal mine employment. Decision and Order at 32; *see Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007); *Smith v. Director, OWCP*, 843 F.2d 1053, 1057, 11 BLR 2-125, 2-130 (7th Cir. 1988).

Further, the administrative law judge found that Dr. Castle invalidated the FEV1 value for the August 1, 2014 study that Dr. Baker relied upon, and she noted that the remaining valid studies did not produce qualifying FEV1 values. Decision and Order at 32. The administrative law judge permissibly rejected Dr. Baker's opinion based on her finding that Dr. Baker did not "consider the later, non-qualifying [FEV1] results" when rendering his opinion. *Id*.; *see Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Smith*, 843 F.2d at 1057, 11 BLR at 2-130. Because it is supported by substantial evidence,[17] we affirm

[16] Because the administrative law judge provided a valid reason for discounting Dr. Chavda's medical opinion, we need not address claimant's remaining arguments challenging the administrative law judge's weighing of the opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n. 4 (1983).

[17] The administrative law judge additionally considered claimant's medical treatment records, and determined that they did not support a finding of total disability. Decision and Order at 24-29, 33. Claimant argues that the treatment notes support a finding of total disability because they include diagnoses of shortness of breath, chronic obstructive pulmonary disease, and emphysema. Claimant's Reply Brief at 4-8. Contrary to claimant's argument, the administrative law judge permissibly found that claimant's treatment records were insufficient to establish that claimant could not

the administrative law judge's finding that claimant failed to establish total disability by a preponderance of the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv),[18] and her finding that all the relevant evidence, when weighed together, did not establish total disability at 20 C.F.R. §718.204(b)(2).

Because claimant failed to establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's findings that claimant failed to invoke the Section 411(c)(4) presumption and failed to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c).[19]

We now address claimant's argument that the Director did not provide claimant with a complete pulmonary evaluation. 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*, 18 BLR 1-84 (1994).

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perform his usual coal mine employment, because they did "not include any assessment of . . . [c]laimant's respiratory capabilities." Decision and Order at 33; *see Killman v. Director, OWCP*, 415 F.3d 716, 722, 23 BLR 2-250, 2-260 (7th Cir. 2005); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990).

[18] Claimant challenges the administrative law judge's decision to credit Dr. Jarboe's opinion that claimant is not totally disabled. Claimant's Brief at 20-23. We need not address these arguments. As the administrative law judge's findings and credibility determinations demonstrate that claimant failed to carry his burden of proof to establish total disability, error, if any, by the administrative law judge in weighing Dr. Jarboe's opinion would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[19] We reject claimant's argument that the administrative law judge erred in not considering whether the new evidence established the existence of pneumoconiosis. Claimant's Brief at 16. The applicable conditions of entitlement "are limited to those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). In claimant's prior claim, claimant established the existence of pneumoconiosis but failed to establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. Therefore, total disability was the applicable condition of entitlement claimant needed to establish with new evidence in his current claim. *See* 20 C.F.R. §725.309(c)(3),(4).

A complete pulmonary evaluation includes a "report of physical examination, a pulmonary function study, a chest radiograph, and, unless medically contraindicated, a blood gas study." 20 C.F.R. §725.406(a). When an objective test conducted as part of the complete pulmonary evaluation is not administered or reported in substantial compliance with the provisions of 20 C.F.R. Part 718, the district director "shall schedule the miner for further examination and testing." 20 C.F.R. §725.406(c). Further, "[w]here the deficiencies in the report are the result of a lack of effort on the part of the miner, the miner will be afforded one additional opportunity to produce a satisfactory result." *Id.*

Dr. Chavda conducted the Department of Labor (DOL)-sponsored pulmonary evaluation and, as part of that evaluation, administered the September 16, 2013 pulmonary function study. As discussed *supra*, Dr. Chavda reported that the study was invalid due to "significant hesitation in inspiration" on the part of claimant. Decision and Order at 30-31; Director's Exhibit 17 at 9. Therefore, Dr. Chavda conducted a second pulmonary function study on September 17, 2013. Director's Exhibit 17 at 10. Dr. Gaziano reviewed the second study and opined that it was valid. Director's Exhibit 35 at 35. The administrative law judge did not find this study to be invalid, and she found that it was non-qualifying for total disability. Decision and Order at 30-31.

Claimant argues that, because the administrative law judge determined that the record contains no valid, qualifying pulmonary function study, the evaluation DOL provided to claimant did not give him the opportunity to substantiate his claim. Claimant's Brief at 14, 23. We reject this argument. The regulations do not require DOL to provide claimant with a pulmonary function study which produces qualifying values. *See* 20 C.F.R. §725.406(a); *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 641, 24 BLR 2-199, 2-221 (6th Cir. 2009)("DOL's duty to supply a 'complete pulmonary evaluation' does not amount to a duty to meet the claimant's burden of proof for him."). Although the first pulmonary function study conducted by Dr. Chavda on September 16, 2013 was invalid based on claimant's lack of effort, the Director afforded claimant an "additional opportunity to produce a satisfactory result," 20 C.F.R. §725.406(c), by providing him with the September 17, 2013, valid pulmonary function study. Therefore, the Director met his obligation to provide claimant with a complete pulmonary evaluation. We therefore deny claimant's Motion to Remand this case to the district director for further testing.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge