**U.S. Department of Labor**

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

BRB No. 19-0066 BLA

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| LINDA SIRIA<br>(o/b/o GEORGE W. SIRIA, deceased)<br><br>Claimant-Petitioner<br><br>v.<br><br>ISLAND CREEK COAL COMPANY<br><br>and<br><br>OLD REPUBLIC INSURANCE COMPANY<br><br>Employer/Carrier-<br>Respondents<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | DATE ISSUED: 02/07/2020<br><br>DECISION and ORDER |

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

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for respondent/carrier.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits (2017-BLA-06004) of Administrative Law Judge Colleen A. Geraghty rendered on a subsequent claim filed on July 22, 2016, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge found claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption that the miner was totally disabled due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3). She credited the miner with twenty-three years of underground coal mine employment but determined he was not totally disabled. 20 C.F.R. §718.204(b)(2). Thus, she found claimant did not invoke the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis[2] and did not establish a change in the applicable condition of entitlement. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends the administrative law judge erred in finding the miner did not have complicated pneumoconiosis and that he was not totally disabled.[3] Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief. Claimant filed a reply brief, reiterating her arguments.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Denying Benefits if it is rational, supported

[1] Claimant is the widow of the miner, who died on November 26, 2017, while his case was pending with the Office of Administrative Law Judges. She is pursuing the miner's claim on his behalf.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that the miner was totally disabled due to pneumoconiosis if she establishes he had 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) (2012); 20 C.F.R. §718.305.

[3] Claimant contends the administrative law judge erred in determining that the miner had twenty-three years rather than twenty-six years of coal mine employment. Claimant's Petition for Review and Brief at 20-22. We need not consider this argument as the administrative law judge found claimant established at least fifteen years of qualifying coal mine employment, necessary to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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 Associates*, Inc., 380 U.S. 359 (1965).

**Complicated Pneumoconiosis**

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation at 20 C.F.R. §718.304 establish an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The administrative law judge must weigh together the evidence at subsections (a), (b), and (c) before determining whether claimant has invoked the irrebuttable presumption. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The only evidence supportive of claimant's burden of proof is Dr. Crum's interpretation of the August 31, 2106 x-ray as positive for complicated pneumoconiosis. Director's Exhibit 15. As the administrative law judge noted, after Dr. Crum read the August 31, 2016 x-ray as positive for complicated pneumoconiosis, he reviewed a November 10, 2016 CT scan. Claimant's Exhibit 7. He identified an opacity in the right upper lobe on the CT scan in the same location as the large opacity he found on the x-ray. *Id*. He indicated that the opacity "measure[d] 8 to 9 [millimeters] which just falls short of being classified as a large opacity." *Id*. Dr. Crum stated that "the x-ray as well as the CT scan show indisputable evidence of pneumoconiosis with associated coalescence, the profusion is a high [profusion] again noted as category 2/3." Claimant's Exhibit 6.

Contrary to claimant's contention, the administrative law judge permissibly considered Dr. Crum's November 10, 2016 statement concerning the August 31, 2016 x-ray as a revision of his opinion regarding whether the miner had a large opacity for complicated pneumoconiosis.[5] She weighed Dr. Crum's finding with the remaining x-ray

[4] Because the record indicates that the miner last worked in the coal mine industry in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. Director's Exhibits 6, 7; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] With respect to the August 31, 2016 x-ray, Dr. Crum stated: "The examination [of the August 31, 2016 x-ray] was reviewed again and correlated with CT scan dated

interpretations and the medical opinions, none of which found complicated pneumoconiosis. Consequently, she permissibly found that the radiographic evidence does not establish the miner had complicated pneumoconiosis.[6] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). We therefore affirm the administrative law judge's determination that claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304; s*ee Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33.

**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). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge 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).

**Pulmonary Function Studies**

The administrative law judge considered four pulmonary function studies.[7] Dr. Taylor's August 13, 2015 study was non-qualifying[8] for total disability. Director's Exhibit

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[November 10, 2016…. The probable large opacity within the right upper lobe however just is under the 1 cm cut off as noted on the CT scan. The x-ray as well as CT show indisputable evidence of pneumoconiosis with associated coalescence, the profusion is a high perfusion again noted as category 2/3." Under "Impression" he stated: "Findings consistent with pneumoconiosis with associated coalescence." Claimant's Exhibit 6-1.

[6] Dr. Meyer, a Board-certified radiologist and B reader, read the August 31, 2016 x-ray as negative for complicated pneumoconiosis. Director's Exhibit 19.

[7] The administrative law judge noted that the record from the miner's prior claims included pulmonary function studies but she gave them no probative weight because they were "performed, at a minimum, over two decades ago." Decision and Order at 10 n.7.

[8] A "non-qualifying" pulmonary function study yields values that exceed the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "qualifying" study produces values that are equal to or less than those values. 20 C.F.R. §718.204(b)(2)(i).

16. The administrative law judge also determined this study was invalid because it did not provide three tracings. Dr. Chavda's August 31, 2016 study had qualifying[9] pre-bronchodilator values and non-qualifying post-bronchodilator values. Director's Exhibit 15. Dr. Selby's November 10, 2016 study was non-qualifying before and after administration of a bronchodilator. Director's Exhibit 23. Dr. Chavda's September 20, 2017 study was qualifying before and after administration of a bronchodilator. Claimant's Exhibit 9.

The administrative law judge gave minimal weight to the qualifying September 20, 2017 study based on Dr. Chavda's opinion that the miner suffered from an acute respiratory illness at the time the study was performed. Decision and Order at 15; *see* 20 C.F.R. Part 718, App. B (2)(i) (the quality standards for the administration and interpretation of pulmonary function studies provides that "[t]ests shall not be performed during or soon after an acute respiratory illness."). Claimant asserts the administrative law judge erred in considering whether the miner had an acute respiratory illness because the quality standards do not apply to objective tests that are obtained as part of the miner's treatment. 20 C.F.R. §718.101(b). Claimant's Petition for Review and Brief at 26. Contrary to claimant's contention, the administrative law judge must determine whether a study is sufficiently reliable to support a finding of total disability, even when the quality standards do not strictly apply. *See J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008); 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

The administrative law judge found Dr. Chavda's qualifying September 20, 2017 study technically valid. Decision and Order at 14. Dr. Chavda testified, however, that the study showed a significant reduction in the miner's FEV1 and FVC values in a one year period, from August 13, 2016 to September 20, 2017. Employer's Exhibit 6 at 11. He explained that an x-ray obtained on the same day showed the miner had fluid in the lungs caused by pneumonia or atelectasis (a collapsed lung). *Id*. a10-11. Dr. Chavda opined the September 20, 2017 study was not a baseline representation of the miner's lung function because fluid in the lungs can lower FVC values. *Id*. at 12, 21-22.

The administrative law judge gave "significant weight" to Dr. Chavda's opinion as he was the physician who ordered and reviewed the [September 20, 2017 study] and x-ray, and he examined the [m]iner at the time of the [study]." Decision and Order at 16. She

[9] Dr. Castle opined the study was invalid due to poor effort. Employer's Exhibit 3. The administrative law judge found the contrary opinions of Drs. Chavda, Gaziano, and Krefft outweighed Dr. Castle's opinion that the study showed good effort. Decision and Order at 12-13.

also noted Dr. Krefft acknowledged that fluid in the lungs will lower FVC values and the miner's respiratory impairment may have been overestimated. *Id*. Although Dr. Krefft indicated the x-ray findings would not account for all of the miner's decreased lung function, the administrative law judge permissibly concluded that the study was inherently unreliable without knowing what portion of the testing was caused by the miner's acute respiratory condition. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012) (the administrative law judge's function is to weigh the evidence, draw appropriate inferences, and determine credibility); Decision and Order at 15. Thus, we affirm the administrative law judge's crediting of Dr. Chavda's opinion and her finding that the September 20, 2017 study is entitled to minimal weight. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

The administrative law judge next found the qualifying August 31, 2016 study and the non-qualifying November 16, 2016 study were both valid and equally probative regarding the miner's respiratory condition since they were administered only three months apart. Decision and Order at 15. We see no error in her finding that the studies were in equipoise and that claimant did not satisfy her burden of proof.[10] S*ee Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *Rowe*, 710 F.2d at 255. Thus, we affirm the administrative law judge's finding that claimant did not establish total disability based on the pulmonary function study evidence.[11] 20 C.F.R. §718.204(b)(2)(i).

[10] Claimant contends that the administrative law judge erred in giving minimal weight to the August 13, 2015 study because it did not provide tracings. Decision and Order at 10; *see* Claimant's Petition for Review and Brief at 23-24; Claimant's Reply Brief at 6. We need not address this contention, as the administrative law judge properly found the August 13, 2015 study non-qualifying overall and therefore it does not assist claimant in establishing total disability. 20 C.F.R. §718.204(b)(2)(i). We also reject claimant's assertion that the administrative law judge erred in not determining the credibility of the pulmonary function studies based on a comparison of the FEV1 values. Claimant's Petition for Review and Brief at 23-34. Claimant is unable to establish total disability based solely on a qualifying FEV1 value. 20 C.F.R. §718.204(b)(2)(i).

[11] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant did not establish total disability based on the blood gas studies. 20 C.F.R. §718.204(b)(2)(ii); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

**Cor Pulmonale with Right-Sided Congestive Heart Failure**

Claimant relies on Dr. Krefft's opinion that "[b]ased on the aggregate data available, it would be surprising if [the miner] did not have cor pulmonale, given his longstanding diagnosis of [chronic obstructive pulmonary disease (COPD)] coal workers' pneumoconiosis, abnormal lung function, and chest x-ray findings of fluid in the lungs that is likely related to right strain from chronic lung disease." *Id*. She further opined that the miner's abnormal diffusion capacity "likely reflects cor pulmonale" from progressive COPD. *Id*. at 3.

Initially, we note that while Dr. Krefft diagnosed cor pulmonale, she did not specifically diagnose "right-sided congestive heart failure." 20 C.F.R. §718.204(b)(2)(iii); *Newell v. Freeman United Mining Co.*, 13 BLR 1-37, 1-39 (1989) (holding that "a medical opinion diagnosing cor pulmonale but not right[-]sided congestive heart failure is insufficient to demonstrate total disability" under the regulation), *rev'd on other grounds*, 933 F.2d 510 (7th Cir. 1991). However, to the extent Dr. Krefft's diagnosis of cor pulmonale with "chronic right heart strain" may be construed as a finding the miner had right-sided congestive heart failure, we see no error in the administrative law judge's determination that her opinion does not satisfy claimant's burden of proof. *See Rowe*, 710 F.2d at 255.

Contrary to claimant's contention, the administrative law judge permissibly found Dr. Krefft's opinion unpersuasive because, unlike Dr. Selby, she "did not refer to specific examination findings" or "EKG and echocardiogram results" to support her conclusions. Decision and Order at 17; *see Napier*, 301 F.3d at 713-714; *Crisp*, 866 F.2d at 185. Dr. Selby opined that the miner's EKGs and echocardiocardiograms did not show right-sided congestive heart failure. Employer's Exhibit 4. As the administrative law judge noted, Dr. Selby explained that if the miner had heart disease caused by a respiratory condition, he expected to see "things like right bundle [branch] block or right ventricular, right ventricular hypertrophy, some different findings that you can see on EKG showing that the right side of the heart, which pumps blood to the lungs, is abnormal." *Id*. at 14-15. Dr. Selby indicated that an EKG taken at Muhlenberg Community Hospital in 2016 showed no signs of right-sided congestive heart failure. *Id*. at 27-28. He further explained that on physical examination the miner did not have an increased S2P heart sound to indicate his pulmonary artery was under stress. *Id*. at 15. The administrative law judge noted that "echocardiograms from Dr. Sreekumar's office did not show any of [the] findings identified by Dr. Selby." Decision and Order at 17 n.17.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight. *Big Branch Res., Inc. v. Ogle*,

737 F.3d 1063, 1072-7 (6th Cir. 2013). The Board may not reweigh the evidence or substitute its own inferences on appeal. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Although the miner suffered from a heart condition, claimant does not identify any specific evidence in the record to support Dr. Krefft's assertion that the "aggregate data" most likely establishes that the miner had "right heart strain from chronic lung disease." Claimant's Exhibit 11 at 2. We therefore affirm the administrative law judge's finding that claimant did not prove the miner had cor pulmonale with right-sided congestive heart failure and is unable to establish total disability under this subsection. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 17.

**Medical Opinions**

Drs. Chavda and Krefft opined that the miner was totally disabled from his usual coal mine employment based on the qualifying August 31, 2016 pulmonary function study. Director's Exhibit 15; Claimant's Exhibit 3; Employer's Exhibit 6 at 17-18. Dr. Chavda opined that the November 10, 2016 non-qualifying study was not representative of the miner's respiratory capacity because patients with respiratory diseases can have good and bad days and a twelve percent increase in the FEV1 value was "physiologically possible." Director's Exhibit 28 at 24. The administrative law judge permissibly rejected this rationale because the pre-bronchodilator FEV1 values showed a variation of twenty-one percent[12] and she was not persuaded that "a [twenty-one percent] improvement [between the studies] can be explained by mere day-to-day variations." Decision and Order at 27; *see Banks*, 690 F.3d 477, 489; *Rowe*, 710 F.2d at 255. She also permissibly rejected Dr. Krefft's opinion that the November 10, 2016 non-qualifying study was an outlier since the non-qualifying values were consistent with the earlier, non-qualifying August 13, 2015 study.[13] Decision and Order at 28.

[12] The administrative law judge noted that the twelve percent improvement Dr. Chavda referenced occurred between the August 31, 2016 post-bronchodilator results and the November 10, 2016 pre-bronchodilator results. Decision and Order at 27.

[13] The administrative law judge noted Dr. Krefft opined the November 10, 2016 study was inconsistent with the miner's worsening symptoms of shortness of breath and exercise intolerance. Decision and Order at 28. However, because Dr. Krefft "acknowledged his symptoms could be related to non-pulmonary causes, including his heart disease" the administrative law judge permissibly found her opinion unconvincing that the miner's symptoms discount the study's findings. *Id.; see Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

In addition, Drs. Chavda and Krefft opined that the miner was totally disabled because the FEV1 on the November 10, 2016 study was under two liters. The administrative law judge permissibly rejected this rationale as neither physician cited "to any studies or medical data to support their findings that with [an] FEV1 under 2 liters, the [m]iner would not be able to perform his last coal mine employment, nor did they explain how they determined that 2 liters would be the appropriate cut off for disability." Decision and Order at 28; *see Napier*, 301 F.3d at 713-714; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d 251, 255.

The administrative law judge also did not err in rejecting Dr. Chavda's opinion that the miner was totally disabled based on his reduced diffusion capacity (DLCO) on the August 13, 2106 and November 10, 2016 studies. Director's Exhibit 28. The administrative law judge noted correctly that Dr. Chavda is the only physician to find the miner was totally disabled based on the DLCO evidence. Decision and Order at 29. She permissibly found Dr. Chavda's opinion unpersuasive since he "did not provide any explanation to account for the significant discrepancy between the [miner's] recorded DLCO and his exceptionally normal arterial blood gas study results, which the other three medical experts in this matter opined should be relatively consistent."[14] *Id.* at 30; *see Crisp*, 866 F.2d at 185. The administrative law judge also noted correctly that Dr. Chavda agreed the DLCO may not be as reliable as the blood gas studies in assessing the miner's respiratory impairment. Decision and Order at 30; Director's Exhibit 28 at 49.

Claimant's arguments regarding Drs. Chavda's and Krefft's opinions on total disability constitute a request that the Board reweigh the evidence which we are not empowered to do.[15] *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because substantial evidence supports the administrative law judge's credibility

[14] Dr. Krefft opined that the DLCO is reduced out of proportion to the "super normal" PO2 values on the miner's blood gas studies. Claimant's Exhibit 3 at 7. Dr. Selby similarly opined the miner's blood gas studies were "super normal" and "extremely inconsistent" with the DLCO values, calling into question the accuracy of the DLCO results. Dr. Castle also indicated the miner's DLCO was inconsistent with the blood gas studies' results. Employer's Exhibit 3 at 27.

[15] Claimant contends that the administrative law judge erred in finding the miner's usual coal mine work required "medium" and not heavy work. Claimant's Petition for Review and Brief at 35. We need not address this argument because the administrative law judge found the opinions of Drs. Chavda and Krefft not adequately reasoned and her credibility determinations did not rely on her findings regarding the exertional requirements of the miner's coal mine employment.

determinations, we affirm her finding that claimant did not establish total disability based on the medical opinion evidence.[16] Decision and Order at 30.

Considering all of the relevant evidence together, the administrative law judge permissibly determined the miner was not totally disabled by a respiratory or pulmonary impairment.[17] *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); Decision and Order at 30. Thus, we affirm the administrative law judge's finding that claimant did not invoke the Section 411(c)(4) presumption. Decision and Order at 8, 30. Further, because claimant did not establish total disability, benefits are precluded under Part 718.[18] *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-127 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

[16] Having affirmed the administrative law judge's discrediting of claimant's physicians, we need not address claimant's arguments regarding employer's experts. *Larioni*, 6 BLR at 1-1278.

[17] We reject claimant's assertion the administrative law judge did not consider the miner's treatment records and claimant's testimony in determining whether she established total disability. The administrative law judge outlined the medical treatment records and claimant's testimony. Decision and Order at 4, 26-27. She permissibly determined that the medical evidence, as a whole, did not satisfy claimant's burden to establish total disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); Decision and Order at 30.

[18] Contrary to claimant's contention, the administrative law judge was not required to consider whether the miner had pneumoconiosis since she found that claimant did not establish total disability. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-127 (1987).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge