U.S. Department of Labor

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

BRB No. 18-0593 BLA

GRACIE L. PROCTOR (o/b/o the Estate of DOYLE W. PROCTOR)	)	
Claimant-Petitioner	)	
v.	)	
SUNRISE COAL, INCORPORATED	)	
and	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	DATE ISSUED: 11/25/2019
Employer/Carrier-Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeals of the Order on Employer's Motion for Clarification and Reconsideration of Jason A. Golden, and the Decision and Order Denying Benefits and the Order Denying Claimant's Motion for Reconsideration of Larry A. Temin, Administrative Law Judges, United States Department of Labor.

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

William A. Lyons (Lewis and Lewis Law Office), Hazard, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant[1] appeals the Order on Employer's Motion for Clarification and Reconsideration (2013-BLA-05998) of Administrative Law Judge Jason A. Golden, and the Decision and Order Denying Benefits and the Order Denying Claimant's Motion for Reconsideration (2013-BLA-05998) of Administrative Law Judge Larry A. Temin on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Procedural History

The miner filed a claim for benefits on August 10, 2012. After the district director denied the claim, the miner requested that the case be forwarded to the Office of Administrative Law Judges (OALJ) for a hearing. Judge Temin conducted the hearing on November 5, 2015. After the miner died, claimant filed a claim for survivor's benefits and Judge Temin remanded the miner's claim to the district director for consolidation with the survivor's claim.

After the district director awarded benefits in the survivor's claim, he consolidated it with the miner's claim and forwarded both claims to the OALJ. Director's Exhibit 57. On October 26, 2017, claimant filed a discovery request, which included interrogatories, requests for production of documents, and requests for admissions in both claims. The claims were assigned to Judge Golden on April 3, 2018.

On May 14, 2018, claimant filed a Motion for Summary Decision seeking to have certain facts deemed admitted. Claimant noted that employer had not filed a response to her discovery request within thirty days. In an Order Granting, In Part, and Denying, In Part, Claimant's Motion for Summary Decision dated May 30, 2018, Judge Golden noted employer had not responded to the motion and therefore granted summary decision in claimant's favor on several issues that would have established entitlement to benefits.[2] On

[1] The miner died on December 19, 2015, while his claim was pending before the Office of Administrative Law Judges. Director's Exhibit 43. Claimant, the miner's widow, is pursuing this claim on behalf of his estate. Decision and Order at 3.

[2] Claimant had the following issues resolved in her favor: the miner had 38 years of coal mine employment, including at least 15 years underground or in substantially similar conditions; he had clinical and legal pneumoconiosis; his pneumoconiosis arose out of coal mine employment; he had a totally disabling respiratory impairment at the time of his

June 1, 2018, after Judge Golden issued his Order, employer responded to claimant's Motion for Summary Decision and claimant's request for admissions, denying each one.

On June 8, 2018, employer sought reconsideration of Judge Golden's Order granting claimant's request for admissions. In an Order on Employer's Motion for Clarification and Reconsideration dated June 22, 2018, Judge Golden permitted employer to withdraw its admissions in the miner's claim. Therefore, he reassigned the miner's claim to Judge Temin.[3]

In a Decision and Order Denying Benefits dated August 2, 2018, Judge Temin credited the miner with thirty-eight years of underground coal mine employment.[4] Because Judge Temin found claimant did not establish complicated pneumoconiosis, he found she could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3). Because Judge Temin further found claimant failed to establish that the miner was totally disabled, Judge Temin found she did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[5] 30 U.S.C. §921(c)(4) (2012), or establish entitlement to benefits under 20 C.F.R. Part 718. Judge Temin therefore denied benefits, and he subsequently denied claimant's motion for reconsideration.

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death; his total respiratory disability was caused by pneumoconiosis, and his death was caused by pneumoconiosis. *See* May 30, 2018 Order at 3-5.

[3] Judge Golden later issued orders permitting employer to also withdraw its admissions in the survivor's claim, and reassigning the survivor's claim to Judge Temin. On August 16, 2018, Judge Temin noted that the parties had agreed to a decision based on the record in the survivor's claim. That claim (2017-BLA-06278) is not currently before the Board.

[4] The miner's most recent coal mine employment occurred in Kentucky. Hearing Transcript at 20-21. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis where the evidence establishes 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); *see* 20 C.F.R. §718.305.

On appeal, claimant contends Judge Golden erred in permitting employer to withdraw its admissions. Claimant also argues Judge Temin erred in finding the evidence did not establish complicated pneumoconiosis. Claimant further contends he erred in finding that the evidence did not establish total disability and therefore erred in not invoking the Section 411(c)(4) presumption. Employer responds in support of Judge Golden's decision to allow it to withdraw its admissions. Employer further responds in support of Judge Temin's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. In a reply brief, claimant reiterates her previous contentions.

The Board's scope of review is defined by statute. We must affirm the decision and orders of the administrative law judges if they are 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, 362 (1965). The Board reviews an administrative law judge's procedural rulings for abuse of discretion. *McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016).

Withdrawal of Admissions

Claimant argues Judge Golden erred in permitting employer to withdraw its admissions. Claimant's Brief at 41-42. The Rules of Practice and Procedure for Administrative Hearings before the OALJ state:

> A matter admitted under this section is conclusively established unless the judge, on motion, permits the admission to be withdrawn or amended. The judge may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the judge is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.

29 C.F.R. §18.63(b).

In applying 29 C.F.R. §18.63(b), Judge Golden noted that Judge Temin had already held a hearing in the miner's claim and the parties had submitted post-hearing briefs. Order on Employer's Motion for Clarification and Reconsideration (June 22, 2018) at 5. Under these circumstances, he determined that permitting employer to withdraw its admissions "certainly [would] promote the presentation of the merits of the [m]iner's claim." *Id.* Moreover, he found claimant did not demonstrate that she would be prejudiced by the withdrawal of the admissions. *Id.* Therefore, Judge Golden permitted employer to withdraw its admissions. *Id.* at 6.

Claimant does not challenge Judge Golden's determination that the withdrawal of the admissions promotes the presentation of the merits of the miner's claim. As for the second prong of the test, Judge Golden acted within his discretion in finding that claimant did not demonstrate that she suffered any prejudice as a result of the withdrawal of the admissions. Claimant has not alleged, for example, that she was disadvantaged by a sudden need to obtain evidence based upon employer's withdrawal of its admissions. *See Kerry Steel, Inc. v. Paragon Indus., Inc.*, 106 F.3d 147, 154 (6th Cir. 1997). Indeed, as Judge Golden accurately noted, the adjudication of the miner's claim had already progressed significantly by the time Judge Golden accepted the admissions. Under the facts of this case, we hold that Judge Golden did not abuse his discretion in allowing employer to withdraw its admissions. *See* 20 C.F.R. §725.455(c); *McClanahan*, 25 BLR at 1-175.

The Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 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).

Judge Temin (hereinafter, the administrative law judge) considered nine interpretations of three x-rays, all rendered by physicians dually qualified as B readers and Board-certified radiologists. Dr. Myers interpreted a September 7, 2012 x-ray as positive for a Category B large opacity. Director's Exhibit 11. Dr. Smith, however, interpreted the x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 5. Dr. Ahmed also interpreted the film. Although he found no large opacities of pneumoconiosis on the x-ray, he commented that a large opacity in the left lower lung "could be lung cancer." Claimant's Exhibit 6. Because a majority of the physicians interpreted the September 7, 2012 x-ray as negative for complicated pneumoconiosis, the administrative law judge found it negative for the disease. Decision and Order at 18-19.

Dr. Meyer interpreted a March 19, 2013 x-ray as negative for complicated pneumoconiosis. Employer's Exhibits 3, 4. Although Dr. Ahmed noted that a mass in the lower chest could not be excluded, he also interpreted the x-ray negative for complicated pneumoconiosis. Claimant's Exhibit 6. Because both interpretations of the x-ray are

negative for complicated pneumoconiosis, the administrative law judge found it negative for the disease. Decision and Order at 19.

Drs. Crum and DePonte interpreted the March 25, 2015 x-ray as positive for complicated pneumoconiosis. Dr. Crum identified a Category A large opacity in the left lung base while Dr. DePonte identified a Category A large opacity in the left lower lung zone. Claimant's Exhibits 4, 7. Dr. DePonte commented that the 4 cm. opacity in the left lower lung zone "may represent a large opacity of coal worker's pneumoconiosis as these can occur in atypical locations but could also represent round atelectasis." Claimant's Exhibit 7. Dr. Meyer read the x-ray as negative for complicated pneumoconiosis, observing that a left lower lobe mass was "suspicious for malignancy or round atelectasis." Employer's Exhibit 15. Because a majority of the physicians interpreted the March 25, 2015 x-ray as positive for complicated pneumoconiosis, the administrative law judge found it positive for the disease. Decision and Order at 19-20.

Although the administrative law judge acknowledged that the most recent x-ray was positive for complicated pneumoconiosis, he explained that under the facts of this case, the progressive nature of pneumoconiosis did not dictate that it be accorded the greatest weight. Decision and Order at 20. As the administrative law judge accurately noted, a large mass was identified on each of the three x-rays, including the earliest x-ray taken on September 7, 2012, and thus did not evidence a progression of the disease but rather a difference in medical opinions as to whether the opacity was pneumoconiosis. *Id.* He therefore accorded each of the x-rays equal weight. *Id*. Because two of the three x-rays were negative for complicated pneumoconiosis, the administrative law judge found the x-rays did not establish complicated pneumoconiosis. *Id.*

Claimant argues that the administrative law judge erred in finding the x-ray evidence did not support a finding of complicated pneumoconiosis. Claimant's Brief at 13-15. Claimant specifically contends that the administrative law judge erred in not according the greatest weight to the most recent x-ray. We disagree. The administrative law judge properly considered the quantity, quality, and recency of the x-rays, as well as the credentials of the physicians. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-300 (2003); Decision and Order at 20. The administrative law judge provided a sound basis for not according the greatest weight to the most recent x-ray, noting the large mass in the miner's left lower lobe was identified on all the x-rays. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-rays do not establish complicated pneumoconiosis. *See* 20 C.F.R. §718.304(a); *Melnick*, 16 BLR at 1-37.

The administrative law judge next considered the autopsy evidence. Dr. McCay, the autopsy prosector, identified a large mass in the miner's lower left lobe measuring 7 x 6 x 5 centimeters. Claimant's Exhibit 10. Based on microscopic examination, Dr. McCay identified the mass as a poorly differentiated squamous non-small cell carcinoma. *Id*. Dr. Caffrey reviewed the autopsy slides. He similarly noted a non-small cell carcinoma in the lower left lobe and opined that the miner did not have complicated pneumoconiosis. Employer's Exhibit 18.

The administrative law judge noted that Drs. McCay and Caffrey, two Board-certified pathologists, each identified the large mass in the miner's lower left lung as a non-small cell carcinoma. Decision and Order at 21. He further accurately noted that neither pathologist opined that the miner had "massive lesions" or progressive massive fibrosis. *Id.* Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the autopsy evidence did not establish complicated pneumoconiosis. 20 C.F.R. §718.304(b).

The administrative law judge next addressed whether claimant could establish complicated pneumoconiosis by "other means." 20 C.F.R. §718.304(c). The administrative law judge found the CT scan evidence did not establish complicated pneumoconiosis. Decision and Order at 21-22. Because this finding is not challenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The administrative law judge also considered the medical opinions. Dr. Selby did not diagnose complicated pneumoconiosis but suspected an enlarging mass in the miner's left lower lobe was bronchogenic carcinoma.[6] Employer's Exhibit 17. Conversely, Drs. Chavda and Sahetya opined that the miner had complicated pneumoconiosis. Claimant's Exhibit 8. The administrative law judge credited Dr. Selby's opinion that the miner did not have complicated pneumoconiosis over the contrary opinions of Drs. Chavda and Sahetya because he found it better supported by the x-ray and CT scan evidence. Decision and Order at 24.

Claimant contends that the administrative law judge erred in finding the opinions of Drs. Chavda and Sahetya insufficient to establish complicated pneumoconiosis.[7]

[6] The administrative law judge also considered Dr. Repsher's opinion. He noted that Dr. Repsher did not specifically address the existence of complicated pneumoconiosis, but opined that there was no evidence of medical pneumoconiosis. Decision and Order at 24; Director's Exhibit 15.

[7] Claimant contends the administrative law judge erred in not finding good cause to admit Dr. Sahetya's October 27, 2016 supplemental medical report. Claimant sought to

Claimant's Brief at 17-20. We disagree. The administrative law judge permissibly accorded less weight to their opinions because he found them unsupported by the preponderance of the x-ray and CT scan evidence. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Moreover, the administrative law judge, in weighing all the evidence together, reasonably accorded the greatest weight to the autopsy evidence as the most reliable evidence regarding the existence of complicated pneumoconiosis. *See Gray*, 176 F.3d at 387; *Terlip v. Director, OWCP*, 8 BLR 1-363, 1-364 (1985); *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985); Decision and Order at 24. Specifically, the administrative law judge found that even though the x-rays and CT scans revealed a large mass in the miner's lower left lung, the overall weight of the evidence, including the autopsy evidence, showed the miner had non-small cell carcinoma and not complicated pneumoconiosis. Order Denying Claimant's Motion for Reconsideration at 2. We therefore affirm the administrative law judge's determination that the evidence did not establish complicated pneumoconiosis and that claimant was therefore not entitled to the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304.

The Section 411(c)(4) Presumption

Claimant also argues that the administrative law judge erred in finding the miner did not have a totally disabling respiratory or pulmonary impairment. A miner was totally

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admit this evidence after the administrative law judge issued his decision denying benefits. Claimant argued that she did not expect the administrative law judge to issue a decision in the miner's claim while the survivor's claim was pending. In denying claimant's request, the administrative law judge noted that the hearing was held on November 5, 2015, and that the parties had submitted post-hearing evidence and post-hearing briefs by June 2016. Order Denying Claimant's Motion for Reconsideration at 2. The administrative law judge thus found that claimant had sufficient time to submit Dr. Sahetya's report prior to the issuance of his Decision and Order Denying Benefits on August 2, 2018, and that claimant had not established good cause for the report to be admitted. *Id*. It is claimant's burden to convince the administrative law judge that good cause exists for the admission of untimely evidence. *See Dempsey v. Sewell Coal Co*., 23 BLR 1-47, 1-62 (2004) (en banc). On review, we hold that the administrative law judge did not abuse his discretion in finding claimant failed to establish good cause for the admission of Dr. Sahetya's October 27, 2016 report. Moreover, the Board cannot consider this report on appeal, because we cannot consider new or additional evidence outside the record. 20 C.F.R. §802.301(a), (b); *Berka v. N. Am. Coal Corp.*, 8 BLR 1-183, 1-184 (1985).

disabled if he had a respiratory or pulmonary impairment which, standing alone, prevented him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability using any of four types of evidence: pulmonary function studies, arterial blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, and medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the 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). Claimant specifically contends the administrative law judge erred in weighing the medical opinion evidence under 20 C.F.R. §718.204(b)(2)(iv).[8]

Total disability may be established if a physician, exercising "reasoned medical judgment" based on medically acceptable diagnostic techniques, concludes that the miner's respiratory or pulmonary condition prevented him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. Repsher, Selby, Sahetya, and Chavda.

In a report dated April 11, 2013, Dr. Repsher stated that he would not expect the miner, at the age of 76, "to engage in coal mining employment." Director's Exhibit 15 at 10. During a deposition on February 18, 2014, Dr. Selby opined that the miner's pulmonary function study results fell within the normal range for lung function and therefore opined that the miner did not have a pulmonary disability. Employer's Exhibit 6 at 17, 19. Dr. Sahetya, the miner's treating physician, completed a questionnaire on October 6, 2014, on which she opined that the miner had a severe impairment that rendered him totally disabled based on pulmonary function test results indicating a reduced diffusing capacity (24% of predicted) and a reduced lung volume inspiratory capacity (34% of predicted). Claimant's Exhibit 1 at 1. On October 20, 2015, Dr. Chavda also completed a questionnaire and similarly opined that the miner was totally disabled due to a severe pulmonary impairment based on the miner's pulmonary function test results showing a "progressive decline" in lung function from 2012 to 2015. Claimant's Exhibit 8 at 2. Dr. Chavda explained the miner's objective test results would preclude him from performing

[8] The administrative law judge found the pulmonary function studies and arterial blood gas studies did not establish total disability. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 25-26. These findings are affirmed as unchallenged on appeal. *Skrack*, 6 BLR at 1-711. Moreover, because there is no evidence of cor pulmonale with right-sided congestive heart failure in the record, claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

his coal mine duties, i.e., "heavy lifting and dragging . . . equipment" and "chang[ing] tires on [a] regular basis" *Id.* at 3.

The administrative law judge determined Dr. Sahetya's reliance on diffusion study results was insufficient to establish the existence of a totally disabling respiratory impairment because it is not a standard the Department of Labor uses to determine disability. Decision and Order at 27. The administrative law judge also found that Dr. Sahetya's opinion was not supported by the pulmonary function and arterial blood gas study results of record, all of which produced non-qualifying values.[9] *Id.* He noted Dr. Sahetya "did not discuss the extertional requirements of [the miner's] last coal mining job and did not explain how the [m]iner's reduced diffusion capacity left him unable to perform such work."[10] *Id.* The administrative law judge therefore found Dr. Sahetya's opinion not well-reasoned. *Id.*

The administrative law judge found Dr. Chavda displayed an adequate understanding of the exertional requirements of the miner's last coal mine employment and based his opinion that the miner was totally disabled on his review of the miner's 2015 pulmonary function study results. Decision and Order at 26. He found Dr. Chavda's opinion well-reasoned. *Id.* The administrative law judge, however, credited the opinions of Drs. Repsher and Selby over that of Dr. Chavda because they were more in accord with the overall weight of the medical evidence. *Id.* at 28. He therefore found the medical opinions did not establish total disability. *Id.*

Claimant contends that the administrative law judge erred in his consideration of the opinions of Drs. Sahetya and Chavda. Claimant's Brief at 29-36; Claimant's Reply Brief at 14-17. We agree. While the administrative law judge found Dr. Sahetya's reliance on diffusion study results not sufficient to establish the existence of a totally disabling respiratory impairment, the applicable regulation provides that a physician may base a reasoned medical judgment upon "medically acceptable clinical and laboratory diagnostic techniques . . . ." 20 C.F.R. §718.204(b)(2)(iv); *see also Walker v. Director, OWCP*, 927 F.2d 181, 184-85 (4th Cir. 1991) (holding that an administrative law judge erred in discrediting a physician's diagnosis of total disability based on a diffusion capacity test

[9] 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 those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[10] The administrative law judge found the miner's usual coal mine work as an underground mechanic required heavy labor. Decision and Order at 26 n. 47.

merely because that test was not listed in the regulations). Thus, the administrative law judge erred to the extent he discredited Dr. Sahetya's disability assessment because diffusing studies are not listed in the regulations.

The administrative law judge also erred in according less weight to Dr. Sahetya's opinion because she did not explain how the miner's reduced diffusing capacity left him unable to perform his usual coal mine work. An administrative law judge may draw an inference of total disability from a physician's report as to the extent of a miner's impairment. *See Cornett v. Benham Coal Co.*, 227 F.3d 569, 578 (6th Cir. 2000); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990), *citing Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985) ("It is not essential for a physician to state specifically that an individual is totally impaired . . . ."). Even a mild pulmonary impairment may be totally disabling, depending on the exertional requirements of a miner's usual coal mine employment. *Cornett*, 277 F.3d at 578. In this case, Dr. Sahetya found that the miner's reduced diffusing capacity and reduced lung volume inspiratory capacity resulted in a severe pulmonary impairment. Claimant's Exhibit 1 at 1. The administrative law judge erred in not comparing Dr. Sahetya's pulmonary assessment with the exertional requirements of the miner's usual coal mine employment in order to assess whether the miner was totally disabled.

We also agree with claimant the administrative law judge erred to the extent he discredited the opinions of Drs. Sahetya and Chavda because the pulmonary function and blood gas studies are non-qualifying. Claimant's Brief at 31. Total disability can be established with reasoned medical opinions, even "where total disability cannot be shown [by the objective studies identified] under paragraphs (b)(2)(i), (ii), or (iii), of this section . . . ." 20 C.F.R. §718.204(b)(2)(iv). Thus, a doctor can offer a reasoned medical opinion diagnosing total disability even though the underlying objective studies are non-qualifying. *See Cornett*, 227 F.3d at 587. Therefore we vacate the administrative law judge's finding that the medical opinions did not establish total disability. 20 C.F.R. §718.204(b)(2)(iv).

On remand, the administrative law judge must consider the documentation and reasoning underlying the medical opinions, and explain whether the medical opinions, when considered in light of the exertional requirements of the miner's usual coal mine employment, establish a totally disabling respiratory impairment. *See Cornett*, 227 F.3d at 578; *Rowe*, 710 F.2d at 255. He must set forth his findings in detail, including the underlying rationale for his decision, as required by the Administrative Procedure Act. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Should the administrative law judge find that the medical opinions establish total disability, he must weigh all the relevant evidence together, both like and unlike, to determine whether claimant has established the existence of a totally disabling respiratory impairment. 20 C.F.R. §718.204(b); *Shedlock*, 9 BLR at 1-198.

If the administrative law judge finds the evidence establishes total disability, claimant is entitled to invoke the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis.[11] 30 U.S.C. §921(c)(4) (2012). If claimant invokes the presumption, the burden of proof shifts to employer to establish that the miner has neither legal nor clinical pneumoconiosis, 20 C.F.R. §718.305(d)(1)(i), or that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). However, if the administrative law judge finds the evidence does not establish that the miner was totally disabled on remand, he must deny benefits. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

[11] The administrative law judge found claimant established the miner had thirty-eight years of underground coal mine employment. Decision and Order at 4.

Accordingly, Judge Golden's Order on Employer's Motion for Clarification and Reconsideration is affirmed. Judge Temin's Decision and Order Denying Benefits and Order Denying Claimant's Motion for Reconsideration are affirmed in part and vacated in part, and the case is remanded 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