

U.S. Department of Labor

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



BRB No. 23-0274 BLA

JUSTIN EVDELL JOHNSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ICG KNOTT COUNTY, LLC	)	
	)	
and	)	DATE ISSUED: 08/15/2024
	)	
ARCH COAL INCORPORATED	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe, Williams & Reynolds), Norton, Virginia, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Awarding Benefits on Remand (2015-BLA-05534) rendered on a subsequent claim filed on November 18, 2013, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.<sup>1</sup>

In his initial August 28, 2018 Decision and Order Awarding Benefits, the ALJ credited Claimant with thirty-one years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act<sup>2</sup> and that Employer did not rebut the presumption. 30 U.S.C. §921(c)(4) (2018). Accordingly, the ALJ awarded benefits.

Employer appealed, and the Board affirmed the ALJ's finding that Claimant established thirty-one years of underground coal mine employment. *Johnson v. ICG Knott Cnty. LLC*, BRB No. 18-0577 BLA, slip op. at 3 n.5 (Oct. 31, 2019) (unpub.). However, the Board vacated his finding that Claimant established total disability and therefore invoked the Section 411(c)(4) presumption. *Id.* at 6-7. Thus, the Board remanded the case for further consideration of whether Claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2) and invoked the Section 411(c)(4) presumption, and, if so, whether Employer rebutted the presumption pursuant to 20 C.F.R. §718.305(d)(1).<sup>3</sup> *Id.* at 6-8.

On remand, the ALJ again found Claimant has a totally disabling respiratory or pulmonary impairment and therefore invoked the Section 411(c)(4) presumption. He also readopted his prior determination that Employer failed to rebut the presumption and therefore awarded benefits.

---

<sup>1</sup> We incorporate by reference the relevant procedural history set forth in our prior decision in this case. *Johnson v. ICG Knott Cnty. LLC*, BRB No. 18-0577 BLA, slip op. at 1 (Oct. 31, 2019) (unpub.).

<sup>2</sup> Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

<sup>3</sup> The Board declined to address Employer's challenge to the ALJ's finding it failed to rebut the presumption, as Employer could challenge that finding if the ALJ found the presumption invoked on remand. *Johnson*, BRB No. 18-0577 BLA, slip op. at 8 n.16.

On appeal Employer argues the ALJ erred in finding Claimant established total disability and therefore erred in invoking the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response. In a reply brief, Employer reiterates its previous contentions.

The Board's scope of review is defined by statute. We must affirm the ALJ's decision if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>4</sup> 33 U.S.C. §921(b)(2), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on 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 ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

In his initial Decision and Order, the ALJ determined Claimant established total disability based on the pulmonary function study evidence, medical opinion evidence, and the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 17-20. The Board vacated the finding that the pulmonary function study evidence establishes total disability and, as that finding may have influenced the ALJ's weighing of the medical opinion evidence, vacated his finding that the medical opinion evidence established total disability.<sup>5</sup> *Johnson*, BRB No. 18-0577 BLA, slip op. at 6-7. On remand, the ALJ again found Claimant established total disability based on the pulmonary function studies, and thus readopted his prior determination that the medical opinion evidence and the evidence

---

<sup>4</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

<sup>5</sup> The Board affirmed the ALJ's determination that Claimant's usual coal mine employment as a section foreman required heavy labor. *Johnson*, BRB No. 18-0577 BLA, slip op. at 8.

as a whole established total disability.<sup>6</sup> 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order on Remand at 6-7.

The ALJ considered six pulmonary function studies dated April 22, 2014, August 4, 2014, October 23, 2014,<sup>7</sup> August 10, 2015, September 18, 2015, and November 5, 2015.<sup>8</sup> Decision and Order on Remand at 4-6; Director's Exhibits 11 at 20; 15 at 9; Claimant's Exhibits 1 at 5; 2 at 66, 70, 71. The April 22, 2014 study produced qualifying values<sup>9</sup> before the administration of a bronchodilator and non-qualifying values after the use of a bronchodilator. Director's Exhibit 11 at 20. The August 4, 2014 study produced qualifying values before and after the administration of a bronchodilator. Director's Exhibit 15 at 9. The October 23, 2014 and August 10, 2015 studies produced qualifying values and no bronchodilator was administered. Claimant's Exhibit 2 at 70-71. The September 18, 2015 study produced non-qualifying results before and after the administration of a bronchodilator. Claimant's Exhibit 1 at 5. The November 5, 2015 study produced qualifying values and no bronchodilator was administered. Claimant's Exhibit 2 at 67.

The ALJ found each study to be reliable for establishing total disability. Decision and Order on Remand at 6. He further accorded greater weight to the pre-bronchodilator values over the post-bronchodilator values as a better indicator of total disability.<sup>10</sup>

---

<sup>6</sup> The ALJ determined that the arterial blood gas studies do not establish a totally disabling impairment and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order on Remand at 4; Decision and Order at 20.

<sup>7</sup> The pulmonary function studies dated October 23, 2014, August 10, 2015, and November 5, 2015, were taken in the course of Claimant's treatment with Dr. Alam. Claimant's Exhibit 2 at 66, 70, 71.

<sup>8</sup> Because the studies reported different heights, the ALJ permissibly averaged them to find Claimant is 71.5 inches tall and used the closest greater table height at Appendix B of 20 C.F.R. Part 718 of 71.7 inches in determining whether each study is qualifying. See *Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); *K.J.M. [Meade] v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order on Remand at 5 n.17.

<sup>9</sup> A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

<sup>10</sup> We affirm, as unchallenged on appeal, the ALJ's crediting of the pre-bronchodilator results over the post-bronchodilator results, and therefore affirm his finding

Consequently, as five of the six studies demonstrated qualifying values, the ALJ found a preponderance of the pulmonary function studies establish total disability at 20 C.F.R. §718.204(b)(2)(i). *Id.*

Employer argues the ALJ did not adequately explain how he found the October 23, 2014, August 10, 2015, and November 5, 2015 studies to be reliable when none of the tests meet the quality standards for reliability and reproducibility and contain only one tracing. Employer's Brief at 3, 7-12; Employer's Reply Brief at 1-2. We disagree.

The regulatory quality standards at 20 C.F.R. §718.103(b) and Appendix B to 20 C.F.R. Part 718 do not apply to pulmonary function studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101, 718.103; *see J.V.S. [Stowers] v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). Rather, the ALJ must be persuaded a study is "reliable" for "it to form the basis for a finding of fact on an entitlement issue." 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

In this case, Dr. Alam acted as Claimant's treating physician from October 23, 2014, to May 5, 2016. Claimant's Exhibit 2. During this treatment he conducted three pulmonary function studies which he opined demonstrated severe obstruction; consequently, he diagnosed Claimant with chronic obstructive pulmonary disease, for which he prescribed medications to treat the symptoms of the disease. *Id.* The ALJ acknowledged that the studies each included only one trial. Decision and Order on Remand at 6; Claimant's Exhibit 2. However, as Dr. Alam noted that Claimant put forth good effort and cooperation on each of the tests and the physician relied upon them in providing medical treatment for Claimant, the ALJ permissibly found the October 23, 2014, August 10, 2015, and November 5, 2015 studies to be sufficiently reliable for establishing total disability. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072 (6th Cir. 2013); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999) (if a reviewing tribunal can understand

---

that the April 22, 2014 pulmonary function study supports a finding of total disability. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see also* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (The Department of Labor has cautioned against reliance on post-bronchodilator results in determining total disability, stating "the use of a bronchodilator does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis."); Decision and Order on Remand at 6.

what the ALJ did and why he did it, the ALJ has complied with his duty of explanation); *Stowers*, 24 BLR at 1-92.

We further reject Employer's argument that the ALJ ignored the non-qualifying values produced by the September 18, 2015 study. Employer's Brief at 7, 10, 12. Rather, the ALJ acknowledged the non-qualifying study but permissibly found the preponderance of the studies established total disability as the studies dated April 22, 2014, August 4, 2014, October 23, 2014, August 10, 2015, and November 5, 2015 all produced qualifying values. *See Ogle*, 737 F.3d at 1072; *Banks*, 690 F.3d at 482-83; Decision and Order on Remand at 6; Director's Exhibits 11 at 20; 15 at 9; Claimant's Exhibits 1 at 5; 2 at 66, 70, 71.

The Board is not empowered to reweigh the evidence or substitute its inferences for those of the ALJ. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's determination that the preponderance of the pulmonary function evidence supports a finding that Claimant is totally disabled from his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(i); Decision and Order on Remand at 6-7; Decision and Order at 22. As Employer raises no other challenges to the ALJ's weighing of the evidence, we further affirm the ALJ's finding that Claimant established total disability based upon the medical opinion evidence and when considering the record as a whole. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2); Decision and Order on Remand at 6-7; Decision and Order at 22. Thus, we affirm the ALJ's finding that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.305, 725.309; Decision and Order on Remand at 6-7. Further, because Employer does not challenge the ALJ's finding that it failed to rebut the presumption, we affirm it. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1); Decision and Order on Remand at 6-7; Decision and Order at 31-32.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits on Remand.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge