U.S. Department of Labor

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

BRB Nos. 23-0299 BLA
23-0299 BLA-A

CONNIE SHREWSBURY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ITMANN/CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 08/22/2024
	)	
Employer-Respondent Cross-Petitioner	)	
	)	
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 Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Connie Shrewsbury, Rock, West Virginia.

Joseph D. Halbert and Jason H. Halbert (Shelton, Branham, & Halbert PLLC), Lexington, Kentucky, for Employer.

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

Claimant appeals, without representation,[1] and Employer cross-appeals, Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Denying Benefits (2019-BLA-05747) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim[2] filed on January 22, 2018.

The ALJ credited Claimant with 15.13 years of underground coal mine employment but found he did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). She further found Claimant did not establish complicated pneumoconiosis and thus 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); *see* 20 C.F.R. §§718.304, or establish a change in an applicable condition of entitlement.[4] 20 C.F.R. §725.309(c). She therefore denied benefits.

[1] On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the administrative law judge's (ALJ's) decision, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 12 BLR 1-99 (1995) (Order).

[2] On May 19, 2010, the district director denied Claimant's prior claim, filed on November 6, 2009, because he failed to establish total disability. Decision and Order at 2; Director's Exhibit 1.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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) (2018); *see* 20 C.F.R. §718.305.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she 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); *see 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). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element to obtain review of the merits of his current claim. *Id*.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. On cross-appeal, Employer argues the ALJ erred in failing to consider one of its designated x-ray interpretations on the issue of complicated pneumoconiosis.[5] The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers 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. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the computed tomography (CT) scan evidence supports a finding of complicated pneumoconiosis, the x-ray and medical opinion evidence does not support a finding of complicated pneumoconiosis, and Claimant's treatment records do not address

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 15.13 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

the existence of the disease.[7] Decision and Order at 17-19. Weighing all the evidence together, she concluded the x-ray and medical opinion evidence outweighed the CT scan evidence. *Id*. at 19. She thus found Claimant did not establish the existence of complicated pneumoconiosis. *Id*.

20 C.F.R. §718.304(a) – X-rays

The ALJ considered three interpretations of two x-rays dated March 5, 2018, and August 22, 2018, and two x-rays dated February 6, 2012, and January 7, 2018, included in Claimant's treatment records. Decision and Order at 17. Dr. DePonte, who is dually-qualified as a Board-certified radiologist and B reader, read the March 5, 2018 x-ray as positive for complicated pneumoconiosis, with a category A large opacity.[8] Director's Exhibit 11 at 23. Dr. Fino, a B reader, read the August 22, 2018 x-ray as positive for complicated pneumoconiosis, with a category A large opacity, while Dr. Tarver, a dually-qualified radiologist, read the x-ray as negative for the disease. Claimant's Exhibit 1; Director's Exhibit 22. Dr. Groten read the February 6, 2012 treatment record x-ray, and Dr. Antoun read the January 7, 2018 treatment record x-ray. Director's Exhibit 20 at 5; Employer's Exhibit 1 at 1. The ALJ accurately noted that neither Dr. Groten nor Dr. Antoun specifically addressed the presence or absence of pneumoconiosis. Decision and Order at 17.

The ALJ found the March 5, 2018 x-ray positive for complicated pneumoconiosis based on Dr. DePonte's interpretation. Decision and Order at 17. She also found the readings of the August 22, 2018 x-ray to be in equipoise because an equal number of physicians "highly qualified for interpreting x-rays" read the x-ray as positive and negative for complicated pneumoconiosis. *Id*. However, she found the preponderance of the x-ray evidence does not establish complicated pneumoconiosis because "the interpretations of the only two x-rays that were read as positive for pneumoconiosis are equally balanced, with one being positive for complicated pneumoconiosis and one being negative." *Id*. She further found Claimant's treatment record x-rays support her finding that the preponderance of the x-ray evidence does not support a finding of complicated pneumoconiosis because they do not mention the disease. *Id., citing Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-219 (1984).

[7] The ALJ found there is no biopsy evidence in the record. 20 C.F.R. §718.304(b); Decision and Order at 17.

[8] Dr. Gaziano read the March 5, 2018 x-ray for quality purposes only. Director's Exhibit 16.

To the extent the ALJ found the March 5, 2018 x-ray positive for complicated pneumoconiosis and the readings of the August 22, 2018 x-ray to be in equipoise (and therefore neither support nor refute the existence of the disease), we are unable to discern how she found the preponderance of the x-ray evidence does not establish the existence of complicated pneumoconiosis. In the absence of finding any x-ray to be negative for complicated pneumoconiosis, the ALJ's finding that Dr. DePonte's reading of the March 5, 2018 x-ray is positive for complicated pneumoconiosis supports a finding that Claimant satisfied his burden of establishing the existence of the disease. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

However, we agree with Employer's argument on cross-appeal that the ALJ erred in failing to consider Dr. Tarver's reading of the March 5, 2018 x-ray, and therefore are unable to affirm her finding that the x-ray is positive for complicated pneumoconiosis. Employer's Brief at 5-6. Employer correctly notes that it designated Dr. Tarver's reading of the March 5, 2018 x-ray as rebuttal evidence against the x-ray conducted as part of Claimant's Department of Labor (DOL)-sponsored complete pulmonary evaluation. Employer's Evidence Summary Form at 3; *see also* 20 C.F.R. §725.414(a)(3)(ii). Consequently, the ALJ erred in failing to consider Dr. Tarver's reading of the x-ray when determining whether Claimant established the existence of complicated pneumoconiosis. *See McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand). We therefore vacate the ALJ's finding that the x-ray evidence does not establish complicated pneumoconiosis and remand the case for further consideration. 20 C.F.R. §718.304(a); Decision and Order at 17.

20 C.F.R. §718.304(c) – Other Evidence

The ALJ also considered whether Claimant's treatment records, the medical opinions, or the CT scans support a finding of complicated pneumoconiosis. Decision and Order at 17-19.

Treatment Records

The ALJ accurately noted that Claimant's treatment records do not address whether he has complicated pneumoconiosis. Decision and Order at 19. We therefore affirm, as supported by substantial evidence, her finding that Claimant's treatment records do not support a finding of complicated pneumoconiosis. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 19.

Medical Opinions

The ALJ considered the medical opinions of Drs. Ajjarapu and Zaldivar. Decision and Order at 18. Dr. Zaldivar opined Claimant does not have complicated pneumoconiosis,

noting that there "is no evidence of [the disease] by CT scan" and opining that "[w]hat has been called complicated pneumoconiosis is pleural thickening." Employer's Exhibit 2 at 5. In her initial report, Dr. Ajjarapu opined Claimant has complicated pneumoconiosis based upon Dr. DePonte's reading of the March 5, 2018 x-ray as positive for the disease. Director's Exhibit 11 at 3. When asked whether Claimant has complicated pneumoconiosis in her supplemental report, she responded that "[b]ased on Dr. DePonte's reading, one chest x-ray was read as positive for complicated pneumoconiosis." Director's Exhibit 24. She also opined Claimant has simple clinical pneumoconiosis based on the preponderance of the chest x-ray interpretations. *Id*.

The ALJ concluded Dr. Ajjarapu's "final opinion . . . is that Claimant suffers from simple pneumoconiosis, but not complicated pneumoconiosis[,]" because she did not provide a "clear" opinion or "directly answer the question" of whether he has complicated pneumoconiosis "in the affirmative or negative," but instead simply identified a single positive x-ray reading. Decision and Order at 18. Thus, the ALJ found that no medical opinion supports a finding of complicated pneumoconiosis. *Id*. In addition, she stated that even if she were to consider Dr. Ajjarapu's opinion as a diagnosis of complicated pneumoconiosis, she would find the medical opinion evidence to be in equipoise, and ultimately assign greater weight to the opinion of Dr. Zaldivar "based on his high and more relevant credentials." *Id*.

As the ALJ determined, Dr. Ajjarapu initially identified complicated pneumoconiosis based on Dr. DePonte's x-ray reading. Director's Exhibit 11 at 3. However, in her supplemental report, when asked to reevaluate and explain her opinion considering negative x-ray evidence previously not available to her, Dr. Ajjarapu merely stated "one chest x-ray was read [by Dr. DePonte] as positive for complicated pneumoconiosis." Director's Exhibit 24 at 1. As it is supported by substantial evidence, we affirm the ALJ's finding Dr. Ajjarapu's opinion is not "clear" or "direct[]" as to whether Claimant has complicated pneumoconiosis. Decision and Order at 18; *see Compton*, 211 F.3d at 207-08; *see also Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989) (mere restatement of an x-ray reading is not a reasoned medical opinion); 20 C.F.R. §725.414(a); Director's Exhibits 11 at 3, 6-7; 24 at 1.

However, we cannot affirm the ALJ's crediting of Dr. Zaldivar's opinion, as she did not render a finding as to whether Dr. Zaldivar's opinion is reasoned and documented. Nor did she consider Dr. Zaldivar's explanations for his opinion, the documentation underlying his judgment, or the sophistication of and basis for his ultimate conclusion. Thus, the ALJ erred in failing to make necessary factual findings and credibility determinations. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998). Additionally, to the extent the ALJ credited Dr. Zaldivar's opinion based on his "high and more relevant credentials," we are unable to discern the basis for her finding as she did not explain what

aspects of Dr. Zaldivar's credentials are more relevant than Dr. Ajjarapu's credentials. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 18.

CT Scans

The ALJ next considered six interpretations of three CT scans dated August 14, 2017, May 19, 2015, and February 20, 2017. Decision and Order at 19. Dr. Tarver noted the August 14, 2017 CT scan shows "[m]ultiple small 2mm nodules scattered throughout the lungs, worse in the upper lobes[,]" and "multiple large opacities in the upper lobes, measuring up to 2cm, consistent with [progressive massive fibrosis]." Claimant's Exhibit 2 at 2. In his final impression, he concluded the CT scans are "consistent with complicated coal workers' pneumoconiosis." *Id*. He also stated that chest CT scans are more sensitive than chest x-rays for the detection and characterization of pulmonary parenchymal abnormalities, and are useful for "documenting the presence of complicated [coal workers' pneumoconiosis] when not well demonstrated on routine chest [x-rays]." *Id*. at 3.

The five remaining CT scan interpretations are contained in Claimant's treatment records. Employer's Exhibit 1 at 2-6. Drs. Antoun and Shahan each interpreted the May 19, 2015 CT scan, Dr. Antoun and an unidentified medical provider each interpreted the February 20, 2017 CT scan, and an unidentified medical provider interpreted the August 14, 2017 CT scan. *Id*.

The ALJ initially found Dr. Tarver's opinion on the utility of chest CT scans for documenting the presence of complicated pneumoconiosis established they are "medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits." Decision and Order at 19, *quoting* 20 C.F.R. §718.107(b). She next found the May 19, 2015 and February 20, 2017 CT scans negative for complicated pneumoconiosis because "[n]one of these interpretations diagnose conditions that would yield results similar to those described if diagnosed by x-ray, autopsy, or biopsy." Decision and Order at 19, *citing* 20 C.F.R. §718.304(c). Further, she found the August 14, 2017 CT scan positive for complicated pneumoconiosis based on Dr. Tarver's interpretation, noting that the doctor "is highly qualified for interpreting CT scans." Decision and Order at 19.

Because the ALJ permissibly found the CT scan interpretation of Dr. Tarver, a dually-qualified physician and the only interpreting physician whose qualifications are of record, entitled to the greatest weight, we see no error in her determination that the CT scan evidence supports a finding of complicated pneumoconiosis. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992). We thus affirm it.

The ALJ found Claimant did not establish complicated pneumoconiosis based on her weighing of all the "other evidence" together under 20 C.F.R. §718.304(c). Decision

and Order at 19. She found Dr. Tarver's interpretation of the August 14, 2017 CT scan "outweighed by Dr. Zaldivar's well-reasoned explanation, based on his consideration of a wide variety of Claimant's medical records, that what Dr. Tarver identified as complicated pneumoconiosis is not complicated pneumoconiosis." Decision and Order at 19. This is error, however, as we are unable to discern why the ALJ found Dr. Zaldivar's opinion outweighed Dr. Tarver's interpretation of the August 14, 2017 CT scan, particularly given that she did not critically analyze Dr. Zaldivar's opinion and determine whether it is reasoned and documented. *See Addison*, 831 F.3d at 252-53; *Wojtowicz*, 12 BLR at 1-165.

Dr. Zaldivar stated there is "no evidence of complicated pneumoconiosis by CT scan." Employer's Exhibit 2 at 5. He further stated that "[w]hat has been called complicated pneumoconiosis is pleural thickening." *Id*. The ALJ, however, did not determine whether he offered a reasoned, supported explanation for his conclusion. Nor did she consider whether his statement that there is "no evidence of complicated pneumoconiosis by CT scan" undermines his opinion, in light of her crediting of Dr. Tarver's positive interpretation of the August 14, 2017 CT scan as revealing "multiple large opacities in the upper lobes, measuring up to 2cm." *See* Claimant's Exhibit 2 at 2. Finally, the ALJ did not consider or explain how the physicians' radiological qualifications support her conclusion, given that Dr. Tarver is dually-qualified as a Board-certified radiologist and B reader while Dr. Zaldivar is only a B reader and Board-certified in pulmonary disease and internal medicine.

Because we are unable to discern the basis for the ALJ's conclusion, we vacate her finding that the "other evidence" considered under 20 C.F.R. §718.304(c) does not establish complicated pneumoconiosis. *See Addison*, 831 F.3d at 252-53; *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 19.

20 C.F.R. §718.304 – Weighing Together All of the Evidence

Because we have vacated the ALJ's weighing of the x-rays, medical opinions, and CT scans, we further vacate her summary conclusion that Claimant did not invoke the Section 411(c)(3) presumption based upon all of the relevant evidence regarding complicated pneumoconiosis considered as a whole. Decision and Order at 19; 20 C.F.R. §718.304.

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). 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 qualifying

pulmonary function studies or arterial blood gas studies,[9] 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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). The ALJ found Claimant failed to establish total disability by any method.[10] 20 C.F.R. §718.204(b)(2); Decision and Order at 20-22.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated March 5, 2018, and August 22, 2018. Decision and Order at 20. The March 5, 2018 study produced qualifying results before and after the administration of a bronchodilator, while the August 22, 2018 study produced non-qualifying values without the administration of a bronchodilator. Director's Exhibits 11 at 13; 21 at 3.

The ALJ permissibly found the pre-bronchodilator results entitled to greater weight than the post-bronchodilator results because they are more probative of Claimant's condition without the aid of medication. Decision and Order at 20, *citing* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). She then found the results of the pulmonary function studies in equipoise overall based on the conflicting results of the March 5, 2018 and August 22, 2018 pre-bronchodilator tests. *Id*. As it is supported by substantial evidence, we affirm the ALJ's finding that the pulmonary function study evidence is equally balanced and thus does not establish total disability. *See* 20 C.F.R. §718.204(b)(2)(i); *Compton*, 211 F.3d at 207-08; Decision and Order at 20.

Arterial Blood Gas Studies

The ALJ next considered two arterial blood gas studies dated March 5, 2018, and August 22, 2018. Decision and Order at 20. She accurately noted that neither study produced qualifying results. *Id.*; Director's Exhibits 11 at 9; 21 at 10. As it is supported by substantial evidence, we affirm the ALJ's finding that the arterial blood gas study

[9] A "qualifying" pulmonary function study or arterial blood gas study yields results that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[10] The ALJ found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 20.

evidence does not establish total disability. *See* 20 C.F.R. §718.204(b)(2)(ii); *Compton*, 211 F.3d at 207-08; Decision and Order at 20.

Medical Opinions

Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's usual coal mine work. Decision and Order at 15, 20. She noted "Claimant routinely described his coal mine work as working as a roof bolter and working in low coal." *Id*. at 15. She also noted Claimant explained that bending bolts "took a lot of pressure" and carrying the "heavy" bolts "was hard work," especially "when crawling." *Id*. Further, she noted Claimant described the additional "dead work" that he performed as "hard labor" because it "involved carrying [five-gallon] buckets of mud and hydraulic fuel," and "bags of rock dust that [weighed] between [forty] and [sixty] pounds." *Id*. She thus found Claimant's usual coal mine work required "routine heavy exertion." *Id*. at 15, 20. As this finding is unchallenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ next considered the medical opinions of Drs. Ajjarapu and Zaldivar. Decision and Order at 20-22. Dr. Zaldivar diagnosed Claimant with asthma, but opined he is not disabled because his pulmonary function and blood gas studies demonstrate no significant impairment. Employer's Exhibit 2 at 5. He acknowledged that Claimant's initial pulmonary function study produced "dismally low results" but opined they were possibly due to an asthma attack given the improvement in results seen in the later testing. *Id*. at 4-5.

In her initial report, Dr. Ajjarapu diagnosed Claimant with chronic bronchitis and opined he is totally disabled due to a pulmonary impairment and moderate exercise hypoxemia based on his pulmonary function and arterial blood gas studies. Director's Exhibit 11 at 7. In her supplemental report, she acknowledged that more recent pulmonary function and arterial blood gas studies did not demonstrate impairment. She opined they nonetheless demonstrate "disabling pulmonary disease" as the testing still revealed moderately severe resting hypoxemia. She also opined that had Dr. Fino "adequately perform[ed]" exercise arterial blood gas testing rather than "less accurate" pulse oximetry testing, it too would have demonstrated disabling hypoxemia. Director's Exhibit 24 at 2. After noting that Claimant worked as a roof bolter, she stated:

> For him to perform his previous job, he not only has to have a good pulmonary capacity, he also must have other systems working well together. He had coronary artery tent (sic) placement, bladder cancer, left eye injury and collectively with moderately severe hypoxia, I would say he would not be able to perform his previous coal mine employment.

Director's Exhibit 24 at 2. Finally, she opined "true underlying severe pulmonary impairment cannot be denied" and Claimant "is totally and completely disabled due to coal dust exposure and he cannot perform his previous coal mine employment." *Id.*

The ALJ found Dr. Zaldivar's opinion entitled to great weight because he accurately noted Claimant's previous coal mine work required heavy labor and his opinion is supported by the pulmonary function and arterial blood gas studies of record. Decision and Order at 21. Conversely, she found Dr. Ajjarapu's opinion not reasoned and documented, and entitled to little weight, on three grounds: first, she did not display a clear understanding of the exertional requirements of Claimant's coal mine work; second, "her disability opinion is based on multiple systems, and not limited to Claimant's respiratory and pulmonary systems;" and third, "the results of the objective tests she considered do not support a conclusion that Claimant is totally disabled." *Id.* While we see no error in the ALJ's consideration of Dr. Zaldivar's opinion, her consideration of Dr. Ajjarapu's opinion is not supported by substantial evidence.

First, the ALJ erred in discrediting Dr. Ajjarapu's opinion for inadequately describing the exertional requirements of Claimant's usual coal mine work. A medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of total disability, including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion"); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may find total disability by comparing physician's impairment rating and any physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work). Dr. Ajjarapu identified Claimant's hypoxemia as a moderately severe impairment, noted his previous job as a roof bolter required "good pulmonary capacity," and ultimately opined that Claimant "has disabling pulmonary disease." Director's Exhibit 24 at 2. Thus, although Dr. Ajjarapu did not directly state that Claimant's previous job required heavy exertion, she provided sufficient information for the ALJ to assess whether her opinion supports or refutes a finding of total disability.

Second, while Dr. Ajjarapu opined Claimant is totally disabled due to the impact of several non-respiratory impairments "collectively" with his hypoxemia, she also separately stated he has "disabling pulmonary disease" in the form of hypoxemia which she stated was not undermined by Dr. Zaldivar's testing given his failure to perform an exercise arterial blood gas study. Director's Exhibit 24 at 2. She also stated that she believes

Claimant is "totally and completely disabled due to coal dust exposure" and identified his chronic bronchitis as constituting legal pneumoconiosis, i.e., a "chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *See* 20 C.F.R. §718.201(a)(2); Director's Exhibit 24 at 2. Thus, contrary to the ALJ's finding, Dr. Ajjarapu's opinion constitutes an opinion that Claimant has a totally disabling respiratory or pulmonary impairment, standing alone. *See* 20 C.F.R. §718.204(a)(1). Thus, if credited, it could support Claimant's burden of proof.

Finally, the ALJ erred in discrediting Dr. Ajjarapu's opinion because "the results of the objective tests she considered do not support a conclusion that Claimant is totally disabled." Decision and Order at 21. Even if total disability cannot be established by qualifying pulmonary function or arterial blood gas studies, it "may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents" him from performing his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv); *Scott*, 60 F.3d at 1442; *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). Dr. Ajjarapu opined Claimant is totally disabled "even though he doesn't meet [DOL] criteria." Director's Exhibit 24 at 2. The ALJ thus erred in discrediting Dr. Ajjarapu's opinion based on Claimant's non-qualifying testing without otherwise considering the merits of her opinion that Claimant is nonetheless disabled.

Thus, we vacate the ALJ's finding that the medical opinion evidence does not support a finding of total disability and remand the case for further consideration. 20 C.F.R. §718.204(b)(2)(iv). We further vacate her findings that Claimant did not establish total disability based on the evidence as a whole, 20 C.F.R. §718.204(b)(2), and did not invoke the Section 411(c)(4) presumption or establish a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c); Decision and Order at 21-22.

Remand Instructions

On remand, the ALJ must reconsider whether the chest x-ray evidence, including Dr. Tarver's reading of the March 5, 2018 x-ray, supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a). She must then reconsider the medical opinions and CT scans and determine whether they support or refute a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c). Further, she must weigh all relevant evidence of complicated pneumoconiosis together, interrelating the evidence from each category and resolving any conflicts. *See Cox*, 602 F.3d at 293; *Melnick*, 16 BLR at 1-33. In doing so,

she must adequately explain the bases for her conclusions as the Administrative Procedure Act requires.[11] *See Wojtowicz*, 12 BLR at 1-165.

If the ALJ finds Claimant has met his burden to establish complicated pneumoconiosis, he will have invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304. The ALJ must then consider whether Claimant's complicated pneumoconiosis arose out of his coal mine employment, applying the relevant rebuttable presumption. 20 C.F.R. §718.203(b). If the ALJ finds Claimant has invoked the Section 411(c)(3) presumption and established that his complicated pneumoconiosis arose out of his coal mine employment, then he has established entitlement to benefits.

If the ALJ finds that Claimant is unable to invoke the irrebuttable presumption, she must reconsider whether the medical opinion evidence establishes a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2)(iv). In addition, she must weigh all the evidence on total disability together as a whole to determine whether Claimant has established total disability. 20 C.F.R. §718.204(b); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

Because Claimant established 15.13 years of underground coal mine employment, if the ALJ finds he has established a totally disabling respiratory of pulmonary impairment, he will have invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis and the ALJ must then consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1). If Claimant fails to establish total disability affirmatively or by operation of the Section 411(c)(3) presumption, the ALJ may reinstate the denial of benefits as Claimant will have failed to establish an essential element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

[11] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge