U.S. Department of Labor

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

BRB No. 2020-0477 BLA

RODNEY E. MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL LLC	)	
	)	
and	)	
	)	
PEABODY ENERGY CORPORATION	)	DATE ISSUED: 02/16/2023
	)	
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 of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Kathleen H. Kim (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

BOGGS and ROLFE, Administrative Appeals Judges:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2017-BLA-05827) rendered on a miner's claim filed on August 5, 2015,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Eastern Associated Coal LLC (Eastern) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. She credited Claimant with seventeen years of underground coal mine employment based on the parties' stipulation and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the district director, the Department of Labor (DOL) official who initially processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[3] It

[1] The ALJ stated that this claim was filed on September 28, 2015, and that it is a subsequent claim. Decision and Order at 2-3. The record shows this claim was filed on August 5, 2015. Director's Exhibit 2. On his claim for benefits form, Claimant indicated that neither he nor anyone else on his behalf filed a prior claim pursuant to the Black Lung Benefits Act, and there is no other indication in the record that this is a subsequent claim. *Id.*

[2] Section 411(c)(4) 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.

[3] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment

also asserts the duties the district director performs create an inherent conflict of interest that violates its due process. It further argues the ALJ erred in finding Peabody Energy is the liable carrier. On the merits, Employer argues the ALJ erred in finding Claimant invoked the Section 411(c)(4) presumption and in finding it did not rebut the presumption. Claimant has not filed a response. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's constitutional challenges and affirm the ALJ's determination that Employer is liable for benefits.[4]

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[5] 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).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and was self-insured by Peabody Energy on the last day Eastern employed Claimant; thus, we affirm these findings. 20 C.F.R. §§725.494(e), 725.495, 726.203(a); *see Skrack*, 6 BLR at 711; Decision and Order at 7. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (the Trust Fund).

Patriot was initially a Peabody Energy subsidiary. Director's Exhibit 32 at 8. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its other subsidiaries, including Eastern, to Patriot. *Id*. at 4-

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> of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established seventeen years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4; Hearing Transcript at 23.

[5] 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 3.

58. That same year, Patriot became an independent company. *Id*. On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. Director's Exhibit 34 at 15-16. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Eastern, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 37. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners who were last employed by Eastern when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 19.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated as the self-insured carrier in this claim, and thus the Trust Fund is responsible for the payment of benefits:[6] (1) the district director is an inferior officer not properly appointed under the Appointments Clause;[7] (2) the regulatory scheme, whereby the district director must determine the liability of a responsible operator and its carrier when at the same time the DOL administers the Trust Fund, creates a conflict of interest that violates its due process right to a fair hearing; (3) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (4) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (5) the DOL released Peabody Energy from liability; (6) the Director is equitably estopped from imposing liability on Peabody Energy; and (7) the DOL violated its due process rights by not maintaining adequate records with respect to

[6] Employer argues the time limitation for its submission of liability evidence at 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act (Longshore Act) and the APA, 5 U.S.C. §556(d), because it divests the ALJ of authority under those Acts to receive evidence and adjudicate issues de novo. Employer's Brief at 61-62 (unpaginated). We reject this argument. As the Director correctly argues, 30 U.S.C. §932(a) incorporated the provisions of the Longshore Act and the APA into the Black Lung Benefits Act "except as otherwise provided . . . by regulations of the Secretary." 30 U.S.C. §932(a). Thus, even if we were to accept Employer's interpretation of the regulation, the Secretary of Labor has "the authority to adopt regulations that differ from the APA and the Longshore Act." Director's Brief at 32, *citing Nat'l Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001), *rev'd in part on other grounds*, *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002).

[7] Employer first contested the district director's appointment in its post-hearing brief to the ALJ. Employer's Corrected Post-Hearing Brief at 1-4.

Patriot's bond and failing to monitor Patriot's financial health.[8] Employer's Brief at 28-68 (unpaginated). It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. *Id.*

The Board has previously considered and rejected these arguments in *Bailey*, BRB No. 20-0094 BLA, slip op. at 3-19; *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289,1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Eastern and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.[9]

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

[8] Employer also states it wants to "preserve" its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 55-60 (unpaginated). It neither asks the Board to address this issue nor sets forth any argument that would permit our review. *See Cox*, 791 F.2d at 446-47; 20 C.F.R. §802.211(b). Further, Employer states it intends to "preserve" its "ability to challenge" Black Lung Benefits Act (BLBA) Bulletin No. 16-01 as an invalid rule. Employer's Brief at 60-61 (unpaginated). Generally, Employer argues Bulletin No. 16-01 contradicts liability rules under the Act, was issued without notice and comment, and violates the Administrative Procedure Act, and the DOL has acted arbitrarily and capriciously by not following its own self-insurance regulations. *Id*. Apart from one sentence summarizing its arguments, Employer has not set forth sufficient detail to permit the Board to consider the merits of these issues. *See* 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

[9] Based on this holding, we need not address Employer's assertion that "[a]nticipated [r]eliance on 725.495(a)(2)(i) and 725.493(b)(2) is misplaced." Employer's Brief at 53-55 (unpaginated). These regulations concern the responsible operator designation between a subsidiary company and a parent company if the subsidiary is insolvent or otherwise unable to pay. But as Employer conceded, Eastern is the correct responsible operator and Peabody Energy and the Trust Fund are financially capable of paying benefits. *Id*.

qualifying pulmonary function studies, qualifying arterial blood gas studies,[10] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions.[11] 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).

Employer challenges the ALJ's findings that Claimant established total disability based on the arterial blood gas studies, the medical opinions, and the weight of the evidence as a whole. 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 27, 35-38.

Blood Gas Studies

The ALJ considered the results of five resting arterial blood gas studies.[12] Decision and Order at 27. Dr. Silman's September 1, 2015 study produced qualifying values. Director's Exhibit 11 at 20. Dr. Zaldivar's September 28, 2016 study produced non-qualifying values. Director's Exhibit 20 at 19. Dr. Green's December 1, 2017 and December 14, 2017 studies produced qualifying values. Claimant's Exhibits 2 at 12 (unpaginated), 4 at 13 (unpaginated). Dr. Rosenberg's March 12, 2018 study produced non-qualifying values. Employer's Exhibit 12 at 24 (unpaginated). The ALJ found Claimant established total disability based on a preponderance of the most recent studies at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 27.

When weighing arterial blood gas studies developed by any party, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.105(c); 20 C.F.R. Part 718, Appendix C; *see*

[10] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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).

[11] The ALJ determined Claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i), (iii). She found all of the pulmonary function studies were non-qualifying and no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 24-27. She also found Claimant did not establish complicated pneumoconiosis and thus was unable to invoke the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). 20 C.F.R. §718.304; Decision and Order at 23, 39 n.35, 52.

[12] There are no exercise studies.

Keener v. Peerless Eagle Coal Co., 23 BLR 1-229, 1-237 (2007) (en banc); *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b).

Employer contends the ALJ erred in rejecting the opinions of Drs. Rosenberg and Zaldivar that the studies conducted on December 1, 2017 and December 14, 2017 at Norton Community Hospital are not valid based on their allegations that the blood samples were not properly iced. Employer's Brief at 7-8 (unpaginated). We disagree.

The ALJ summarized Drs. Zaldivar's and Rosenberg's medical reports and testimonies with respect to the impact of icing blood samples after collection. Decision and Order at 30-38. Dr. Zaldivar alleged the qualifying studies obtained from Norton Community Hospital were unreliable because the facility does not typically ice samples which is against standard protocol for handling blood samples that are going to be analyzed because it lowers the results. Employer's Exhibit 15 at 16-21, 59-67. Dr. Rosenberg similarly explained that an individual's PO2 drops over time in blood samples that are not placed on ice and therefore he questioned whether non-icing could have impacted Claimant's blood gas measurements. Employer's Exhibit 13 at 24-25.

The ALJ accurately found that while Dr. Silman indicated the September 1, 2015 study he obtained at Norton Community Hospital was not iced, there is no evidence establishing that either the December 1, 2017 or December 14, 2017 studies Employer seeks to discredit were not iced. Decision and Order at 36. Further, even assuming neither of the qualifying 2017 studies were iced, the ALJ accurately noted that the quality standards do not establish a timeframe between when a blood sample is drawn and when it must be analyzed. 20 C.F.R. §718.105; Decision and Order at 36. We therefore see no error in the ALJ's conclusion that Employer failed to show why either study is invalid by identifying how they fail to satisfy the quality standards.

Additionally, the ALJ permissibly found Dr. Zaldivar's opinion unpersuasive because the medical article upon which he relies to support his opinion fails to identify a definitive timeframe for analyzing or icing blood samples other than "merely stat[ing]" that blood samples should be placed on ice and tested as soon as possible after being drawn. Decision and Order at 36; *see* Employer's Exhibit 15. Thus, she permissibly found neither Dr. Zaldivar's nor Dr. Rosenberg's opinion with respect to icing blood samples was well-reasoned or well-documented in light of the regulations and the evidence of record. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 36-38. Because the ALJ acted within her discretion, we affirm her determination to give little weight to Drs. Zaldivar's and Rosenberg's opinions regarding

the impact of icing blood samples.[13] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08, 211 (4th Cir. 2000) (it is the province of the ALJ to evaluate physician's opinions); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) ("The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable.") (citation omitted).

We agree, however, with Employer's contention that the ALJ erred in failing to address its argument raised in its post-hearing brief that the December 1, 2017 and December 14, 2017 blood gas study reports, on their face, do not comply with the quality standards.[14] *See* 20 C.F.R. §718.105; Employer's Brief at 7-8, 10 (unpaginated); Employer's Post-Hearing Brief at 31. Employer specifically pointed out to the ALJ that neither of the blood gas reports were signed by the physicians who supervised the studies,[15] they do not include Claimant's pulse rate at the time the blood was drawn, and they do not indicate whether the equipment was calibrated.[16] *See* 20 C.F.R. §718.105(c)(5), (8), (10); Employer's Post Hearing Brief at 31; Employer's Brief at 7-8 (unpaginated).

[13] The ALJ found that each of the studies conducted at Norton Community Hospital were run within a 10-minute window and she considered this reasonable in view of an article by the American Association for Respiratory Care, which recommends that un-iced blood samples be analyzed within 10-15 minutes and that iced blood samples be analyzed within an hour. Decision and Order at 36 n.33. While Employer is correct the ALJ did not give prior notice of her intent to rely on the article and thus did not strictly follow procedures to take official notice of these guidelines with respect to icing blood gas samples, we consider the ALJ's error harmless as she provided valid alternate reasons for discrediting the opinions of Employer's experts on this issue. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[14] In Employer's post-hearing brief, it erroneously references two studies that are not of record (dated October 19, 2017 and November 16, 2017) in addition to the December 1, 2017 and December 14, 2017 blood gas studies Dr. Green obtained. Employer's Post Hearing Brief at 31.

[15] We note that while the December 1, 2017 and December 14, 2017 blood gas studies do not include signatory lines for the supervising physician, they were submitted in conjunction with Dr. Green's respectively dated reports, which are signed and discuss the studies. Claimant's Exhibits 2, 4.

[16] A blood gas study report submitted in connection with a claim shall specify, *inter alia*, the "[n]ame and signature of physician supervising the study," the "[p]ulse rate at the

As the ALJ did not address Employer's arguments regarding whether the blood gas study evidence complies with the quality standards, we vacate her determination that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(ii).[17] Decision and Order at 27.

Medical Opinion Evidence

The ALJ considered four medical opinions. Decision and Order at 28-38. Drs. Silman[18] and Green[19] opined that Claimant is totally disabled while Drs. Zaldivar[20] and

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time the blood sample was drawn," and "[w]hether equipment was calibrated before and after each test." 20 C.F.R. §718.105(c)(5), (8), (10).

[17] Our dissenting colleague argues remand is not necessary as Employer failed to explain of how the missing information it identified affects the studies' reliability or renders them not in substantial compliance with the quality standards or provide any medical evidence on which the ALJ could have based such a determination. *See infra* at 13-14. However, it is the ALJ's responsibility in her role as trier of fact to make these determinations and because she failed to address Employer's timely raised arguments, we must remand for additional consideration. *Looney*, 678 F.3d at 316-17; Employer's Brief at 7-8, 10 (unpaginated); Employer's Post-Hearing Brief at 31.

[18] Dr. Silman conducted the DOL's complete pulmonary evaluation of Claimant on September 1, 2015, and obtained non-qualifying pulmonary function study results and qualifying blood gas study results. Director's Exhibit 11. He noted Claimant last worked as a continuous miner operator and was required to lift over 100 pounds. *Id.* at 3. He concluded Claimant is totally disabled based on the objective testing he conducted. *Id.* at 5.

[19] Dr. Green examined Claimant on December 1, 2017 and December 14, 2017, and obtained non-qualifying pulmonary function study results and qualifying blood gas study results. Claimant's Exhibits 2, 4. He noted Claimant worked as an electrician and continuous miner operator and was required to lift over 100 pounds. Claimant's Exhibit 2 at 2 (unpaginated). He opined Claimant has "significant resting hypoxemia" based on the December 1, 2017 and December 14, 2017 blood gas studies and opined Claimant is totally disabled from returning to his last coal mine employment due to its exertional requirements and the dangers of additional exposure to coal dust. Claimant's Exhibits 2 at 4 (unpaginated), 4 at 5 (unpaginated).

[20] Dr. Zaldivar examined Claimant on September 28, 2016, and reviewed the reports of Drs. Silman, Green, and Rosenberg and Claimant's objective testing. Director's Exhibit

Rosenberg[21] opined he is not disabled. Director's Exhibits 11, 16, 20; Employer's Exhibits 12, 13, 15, 19; Claimant's Exhibits 2, 4. The ALJ discredited the opinions of Drs. Zaldivar and Rosenberg, in part, because they concluded the December 1, 2017 and December 14, 2017 blood gas studies were invalid and thus did not consider them in concluding Claimant was not totally disabled. Decision and Order at 36-38. She credited Drs. Silman's and Green's opinions as reasoned and documented and supported by the qualifying blood gas study evidence, their physical examinations of Claimant, and their understanding of the exertional requirements of Claimant's last coal mine employment. *Id.* at 35-37.

Because the ALJ's erroneous weighing of the blood gas studies influenced her credibility determinations regarding the medical opinions, we vacate them. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 36-38. Thus, we vacate the ALJ's finding that Claimant established total disability based on the medical opinion evidence, 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole. Decision and Order at 38. We therefore also vacate the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption and established benefits.[22] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b).

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability based on the blood gas studies, determine whether the studies are in compliance with the quality standards, and provide an adequate rationale for how she resolves the conflicting evidence. 20 C.F.R. §718.204(b)(2)(ii). She must also reweigh the medical opinions taking into consideration her finding regarding the blood gas studies and other objective evidence. In weighing the medical opinions, she must consider the qualifications of the respective physicians, the explanations for their opinions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998). Additionally, the ALJ

20; Employer's Exhibit 19. Dr. Zaldivar opined Claimant is not disabled based on the non-qualifying objective testing he conducted. Director's Exhibit 20 at 6.

[21] Dr. Rosenberg examined Claimant on March 12, 2018, and reviewed the reports of Drs. Silman, Green, and Zaldivar and Claimant's objective testing. Employer's Exhibits 12, 13, 14. Dr. Rosenberg opined that Claimant was not disabled based on his and Dr. Zaldivar's objective testing. Employer's Exhibits 12 at 5, 14 at 1-2.

[22] Because we have vacated the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, we decline to address, as premature, Employer's challenges to the ALJ's rebuttal findings.

should address Employer's argument about the physicians' understanding of the exertional requirements of Claimant's last coal mine work.[23] Employer's Brief at 17-18 (unpaginated). If the ALJ determines total disability has been demonstrated by the blood gas studies or medical opinions, or both, she must consider the evidence as a whole and reach a determination as to whether Claimant is totally disabled. *See* 20 C.F.R. §718.204(b)(2); *Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988).

If Claimant establishes total disability on remand, he will invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018). The ALJ must then determine whether Employer can rebut the presumption by establishing Claimant has neither legal[24] nor clinical pneumoconiosis, or "no part of [his] 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)(i), (ii). In reaching her credibility determinations on remand, the ALJ must set forth her findings in detail and explain her rationale in accordance with the

[23] Employer contends Drs. Silman and Green misunderstood the physical requirements of Claimant's usual coal mine work, as they believed Claimant regularly lifted up to one hundred pounds. Employer's Brief at 17-18 (unpaginated). Employer states this is contrary to Claimant's testimony that Employer would not permit employees to lift anything over fifty pounds by themselves and that as an electrician, the heaviest thing he lifted was a toolbox that weighed approximately twenty to thirty pounds. Hearing Transcript at 26; Director's Exhibit 43 at 10. The ALJ accurately noted that Claimant also testified that when servicing equipment, the motors weighed "anywhere from 250 to 500 pound[s] apiece" "[a]nd if you had a jack, it could probably go up to 100 to 200 pound[s] apiece." Hearing Transcript at 27. In weighing the medical opinions, the ALJ must resolve inconsistencies, if any, in Claimant's testimony and determine whether all of the physicians had an accurate understanding of the exertional requirements of Claimant's usual coal mine work when forming their opinions. *See Walker v. Director, OWCP*, 927 F.2d 181, 184 (4th Cir. 1991); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997).

[24] We agree with Employer that the ALJ erred in applying the wrong standard to disprove legal pneumoconiosis to the extent she required them to "rule out" the possibility that coal mine employment was one of the causes of Claimant's impairment. Decision and Order at 50, 52; Employer's Brief at 26 (unpaginated). The ALJ should apply the proper legal standard if rebuttal is reached on remand. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Administrative Procedure Act.[25] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from the majority's decision to remand the claim for the ALJ to reconsider the validity of the qualifying December 1, 2017 and December 14, 2017 blood gas studies. To constitute probative evidence of total disability, the Black Lung Act regulations require blood gas studies to "substantially comply" with various quality standards, including "specifying" at least ten data points relating to when and how they were conducted. 20 C.F.R. §§718.101(b), 718.105(c)(1)-(10).

While Employer argued to the ALJ that the studies are missing two of the ten data points,[26] it offered no explanation of how the missing information affects the studies'

[25] The Administrative Procedure Act provides every adjudicatory decision must 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).

[26] Employer argued the studies fail to include information regarding Claimant's "[p]ulse rate at the time the blood sample was drawn" and "[w]hether [the] equipment was calibrated before and after each test." 20 C.F.R. §718.105(c)(8), (10). As the majority notes, Employer also argued that the studies were missing a third piece of information regarding the "[n]ame and signature of physician supervising the stud[ies]," but this

reliability or renders them out of substantial compliance with the quality standards, nor did it provide any medical evidence on which the ALJ could have made such a determination. *See* 20 C.F.R. §718.105(c); Corrected Post-Hearing Brief of Employer at 31. Instead, Employer submitted the medical opinion of Dr. Zaldivar who, when asked whether there was "anything" that may have affected the validity of the studies, concluded that the blood samples were not properly "iced." Employer's Exhibit 15 at 16. It also submitted the opinion of Dr. Rosenberg who likewise raised concerns about an improper lack of icing. Employer's Exhibits 13 at 16; 14.

On this record, a finding of invalidity would require the ALJ to speculate on the medical significance of two missing data points, despite no medical evidence in the record to support such a finding. *Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-22-24 (1993) ("[I]nterpretation of medical data is a matter for medical experts, rather than the administrative law judge."). When given the opportunity, neither of Employer's medical experts identified the data as a reason to question the probative value of the studies – and the only reasons they identified were soundly rejected by the ALJ as unsubstantiated and unsupported. *See supra* at 7-8; Decision and Order at 36-38. Moreover, the physician who ordered the testing, Dr. Green, specifically relied on the studies to diagnose significant, disabling hypoxemia. Claimant's Exhibits 2, 4.

As the ALJ permissibly found the December 1, 2017 and December 14, 2017 blood gas studies valid, discredited the opinions of the physicians who argued otherwise, and credited Dr. Green's reliance thereon, the Board must affirm her finding that Claimant is totally disabled. *See Looney*, 678 F.3d at 310; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997) (an ALJ has the discretion to weigh the evidence and draw inferences therefrom).

Thus, I would hold Claimant successfully invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and the burden is on Employer to rebut it. 30 U.S.C. §921(c)(4); 20 C.F.R. 718.305(d). I otherwise concur.

GREG J. BUZZARD
Administrative Appeals Judge

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contention is demonstrably incorrect given that the studies were ordered by Dr. Green and attached to his signed medical reports in which he discussed the results of the studies. 20 C.F.R. §718.105(c)(5); Claimant's Exhibits 2; 4.