U.S. Department of Labor

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

BRB Nos. 23-0467 BLA
and 23-0468 BLA

BERNIDITA P. VIALPANDO (Widow of and on behalf of ERNEST G. VIALPANDO)	)	
Claimant-Respondent	)	
v.	)	
CHEVRON MINING, INCORPORATED	)	DATE ISSUED: 07/17/2024
Self-Insured Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decisions and Orders Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decisions and Orders Awarding Benefits (2019-BLA-06207 and 2020-BLA-06088) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim[1] filed on May 1, 2018, and a survivor's claim filed on August 10, 2020.[2]

The ALJ accepted the parties' stipulation of thirty-one years of qualifying coal mine employment and found the Miner had a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] He further found Employer failed to rebut the presumption and awarded benefits in the miner's claim.[4] Because the Miner was entitled to benefits at the time of his death, the ALJ also determined Claimant is automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[5]

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[1] The Miner filed and withdrew three prior claims. Miner's Claim (MC) Director's Exhibits 1-3. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306(b).

[2] Claimant is the widow of the Miner, who died on July 8, 2020. Survivor's Claim (SC) Director's Exhibits 2, 3. She is pursuing the miner's claim as well as her own survivor's claim. SC Director's Exhibit 1.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] The ALJ subsequently granted the Director's, Office of Workers' Compensation Programs, Motion for Reconsideration amending the onset date from June 2018 to April 2018. *See* Order Granting Director, OWCP's Motion for Reconsideration and Errata Order Amending Date of Entitlement for Miner's Benefits.

[5] Section 422(*l*) of the Act provides that the survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

On appeal, Employer asserts the ALJ erred in excluding portions of Employer's Exhibits 1 and 2 it submitted and in denying its request to exclude the Department of Labor (DOL)-sponsored complete pulmonary evaluation. On the merits, Employer argues the ALJ erred in finding the Miner was totally disabled and that Claimant thereby invoked the Section 411(c)(4) presumption. It also contends the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to submit a substantive response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders 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, 361-62 (1965).

Evidentiary Issues

An ALJ has broad discretion to make procedural and evidentiary rulings. *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc). Such orders may be overturned only if the party challenging them demonstrates the ALJ's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

On June 7, 2023, the ALJ issued his Order Regarding Evidence and Setting New Briefing Deadline denying Claimant's request to exclude or redact Employer's Exhibits 3 and 5. However the ALJ sustained, in part, Claimant's objections to the admission of Dr. Sood's medical reports contained in the Miner's treatment records and excluded Employer's Exhibit 1 at 35 to 50 and Employer's Exhibit 2 at 1 to 14, 16, and 30. Additionally, the ALJ denied Employer's request to exclude Dr. Sood's June 5, 2018 DOL-sponsored complete pulmonary evaluation report at MC Director's Exhibit 19.

Employer contends the ALJ erred in excluding portions of Employer's Exhibits 1 and 2, as well as admitting Dr. Sood's DOL-sponsored complete pulmonary evaluation report at MC Director's Exhibit 19, which it asserts adversely affected his findings on the merits of the miner's claim and his conclusion that Claimant is derivatively entitled to benefits based on the survivor's claim. For the reasons that follow, we see no abuse of discretion by the ALJ in his evidentiary rulings.

[6] The Board will apply the law of the United States Court of Appeals for the Tenth Circuit because the Miner performed his last coal mine employment in New Mexico. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibits 6, 7.

Employer's Exhibits 1 and 2

Employer's Exhibit 1 is 240 pages of records, dating from June 6, 2006 to July 28, 2018, from the Miners' Colfax Medical Center, which Employer designated as hospitalization records and treatment notes. 20 C.F.R. §725.414(a)(4); Employer's Exhibit 1; Employer's Evidence Summary Form at 7. Claimant sought to exclude pages 35 to 50, which she indicated are August 11, 2015 and October 18, 2016 "impairment evaluation[s] under the Black Lung Benefits Act" from Dr. Sood obtained in connection with the Miner's prior withdrawn claims. Claimant's Motion to Strike at 3-7; Employer's Exhibit 1 at 35-50. In the alternative, Claimant requested the ALJ require Employer to redesignate the evaluations as its two affirmative medical reports because they are not hospitalization or treatment notes. Claimant's Motion to Strike at 7.

Employer's Exhibit 2 is a September 19, 2017 DOL-sponsored complete pulmonary evaluation report from Dr. Sood prepared in connection with one of the Miner's prior withdrawn claims. Employer's Exhibit 2. Employer designated the pulmonary function study and arterial blood gas study Dr. Sood obtained on September 19, 2017, as affirmative evidence but did not also designate Dr. Sood's written medical opinion as affirmative evidence. Employer's Evidence Summary Form at 3-4. Claimant asserted Dr. Sood's written medical opinion was not admissible as a treatment record and that the ALJ was required to either strike the portions of Employer's Exhibit 2 that constitutes Dr. Sood's medical report or allow Employer to substitute this report as one of its two affirmative medical reports. Claimant's Motion to Strike at 7-8.

The ALJ agreed that all three of Dr. Sood's medical opinions, contained in Employer's Exhibits 1 and 2, constitute medical reports obtained in the course of litigation pursuant to 20 C.F.R. §725.414(a)(1) and therefore were submitted in excess of the evidentiary limitations. Consequently, he excluded those medical reports contained at Employer's Exhibit 1, pages 35 to 50, and Employer's Exhibit 2, pages 1 to 14, 16, and 30, from the record. ALJ's Evidentiary Order at 2-3.

Employer asserts the ALJ erred in excluding this evidence. Employer points out Dr. Sood's opinions were obtained in connection with the Miner's prior withdrawn claims. Because the regulations treat withdrawn claims as if they were never filed, it maintains that Dr. Sood's medical opinions do not qualify as evidence obtained for litigation purposes and thus are not subject to the evidentiary limitations. Employer's Brief at 10. In addition, Employer notes that because Dr. Sood's 2014, 2015 and 2017 medical opinions were contained in the medical records it received from the Miners' Colfax Medical Center, the Miner's treating physician there must have relied on them in monitoring the Miner's respiratory condition and they should be admissible as treatment records. *Id.* at 11. Further, Employer argues that Dr. Sood's medical opinions are part of the record developed

in the Miner's prior withdrawn claims pursuant to 20 C.F.R. §725.309(c)(2) and did not have to be separately designated. *Id*. at 11.

Initially, we reject Employer's assertion that Dr. Sood's medical opinions automatically became part of the record under 20 C.F.R. §725.309(c)(2). Employer's Brief at 11. That regulation states that "[a]ny evidence submitted in connection with any prior claim must be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim." 20 C.F.R. §725.309(c). A "subsequent claim" is defined as a claim filed "more than one year after the effective date of a final order denying a claim previously filed by the claimant." *Id*. Because a withdrawn claim is considered never to have been filed, the current miner's claim is not a subsequent claim and therefore, contrary to Employer's contention, the evidence associated with any prior withdrawn claims would not automatically be made part of the record. *See* 20 C.F.R. §725.306(b).

We further reject Employer's assertion that the ALJ erred in finding Dr. Sood's medical opinions are not admissible as treatment records under 20 C.F.R. §725.414(a)(4). As the ALJ accurately noted, "Dr. Sood has confirmed that the August 14, 2015, October 24, 2016, and September 19, 2017, examinations of the Miner were performed at the request of the Department of Labor." ALJ's Evidentiary Order at 3. We see no error in the ALJ's permissible conclusion that these examinations were administered for purposes of litigating the Miner's prior withdrawn claims and not in the regular course of the Miner's treatment at the Miners' Colfax Medical Center. *See Blake*, 24 BLR at 1-113; Employer's Exhibits 1 at 35-50, 2. The fact that the written medical opinions are contained in the Miner's treatment records and could have been reviewed by his treating physicians does not alter the fact that they were prepared to satisfy the DOL's regulatory obligation to provide the Miner with a complete pulmonary evaluation to substantiate his previously filed claims.[7] *See* 20 C.F.R. §§718.101(a), 718.107, 725.406(a). Thus, we affirm the ALJ's conclusion that Dr. Sood's written medical opinions constitute medical reports. Moreover, as Employer had already submitted two affirmative medical reports, and did not request the opportunity to revise its evidentiary designations or otherwise argue good cause for the admission of Dr. Sood's written medical opinions in excess of the evidentiary limitations,

[7] The ALJ stated that based on a review of the Miner's treatment records, he "d[id] not find any evidence in the record that Dr. Sood was the Miner's treating physician or had any role in his regular, on-going medical care." ALJ's Evidentiary Order at 4.

we affirm the ALJ's exclusion of them.[8] *See Blake*, 24 BLR at 1-113; ALJ's Evidentiary Order at 2-3.

MC Director's Exhibit 19

Employer also contends the ALJ erred in rejecting its request to exclude MC Director's Exhibit 19, the June 5, 2018 DOL-sponsored complete pulmonary evaluation of the Miner that Dr. Sood conducted in connection with the current miner's claim. Employer's Brief at 12-13. We disagree.

Employer correctly notes that Dr. Sood examined the Miner in the twelve months preceding his June 5, 2018 complete pulmonary evaluation of the Miner,[9] which it asserts is contrary to 20 C.F.R. §725.406(b), which provides that "the miner may not select any physician who has examined or provided medical treatment to the miner within the twelve

[8] We further reject Employer's contention that the Miner's treatment records are admissible as evidence that the district director should have obtained and admitted in the survivor's claim. Employer's Brief at 12 (citing 20 C.F.R. §725.405(c) ("In the case of a claim filed by or on behalf of a survivor of a miner, the district director shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.")). Employer's Brief at 12. Even if true, Employer has shown no error with regard to the ALJ's exclusion of that evidence in the miner's claim. Moreover, as the ALJ awarded benefits in the survivor's claim based on derivative entitlement and did not consider any medical evidence, Employer fails to explain how these documents would have changed the outcome in the survivor's claim. *Id.*; *see Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"). Employer also argues that Dr. Sood's medical opinion reports contained in Employer's Exhibits 1 and 2 are admissible for impeachment purposes; however, Employer did not make this argument below, thus we will not consider it. *See Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ); Employer's Reply Brief at 3 (unpaginated).

[9] Dr. Sood examined the Miner in connection with one of the Miner's prior withdrawn claims on September 19, 2017. Employer's Exhibit 2. The Miner's current claim was filed on May 1, 2018. MC Director's Exhibit 5. On June 5, 2018, Dr. Sood performed the DOL-sponsored complete pulmonary evaluation of the Miner in connection with this current claim. MC Director's Exhibit 19.

months preceding the date of the miner's application."[10] Employer's Brief at 12-13. However, as the ALJ recognized, there is nothing in 20 C.F.R. §725.406(b), or other regulations, that mandates the exclusion from evidence of medical opinions created in violation of the requirements governing who may conduct a DOL-sponsored complete pulmonary evaluation. ALJ's Evidentiary Order at 4. Because the allotted slots for Claimant's affirmative evidence had not been filled, and Claimant had requested redesignation, the ALJ acted within his discretion in finding Dr. Sood's DOL-sponsored complete pulmonary evaluation admissible under 20 C.F.R. §725.414(a)(2)(i), as one of Claimant's two permitted affirmative medical opinions in the miner's claim. Claimant's Final Brief Regarding Evidence at 5-8; ALJ's Evidentiary Order at 4-5; *see Blake*, 24 BLR at 1-113; Claimant's Evidence Summary Form at 5. Moreover, as the ALJ noted, the Miner is deceased and therefore it is not possible to remand the claim to the district director for a DOL-sponsored complete pulmonary evaluation from another physician in order to fulfill the DOL's regulatory requirement at 20 C.F.R. §725.406. ALJ's Evidentiary Order at 5. Consequently, we affirm the ALJ's denial of Employer's request to exclude Dr. Sood's June 2018 medical report.

Miner's Claim

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

To invoke the Section 411(c)(4) presumption, a claimant must establish the miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work.[11] *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,[12]

[10] The ALJ acknowledged that Dr. Sood performed his June 5, 2018 examination less than twelve months after his September 19, 2017 examination of the Miner. ALJ's Evidentiary Order at 4.

[11] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner's work mostly involved driving a haulage truck, but also "required a component of hard manual labor" when, for approximately two hours each day, the Miner was required to shovel coal that had spilled from the belt during the loading process. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

[12] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20

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).

Employer contends the ALJ erred in finding Claimant established total disability based on the blood gas studies, medical opinions, and the evidence as a whole.[13] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 8-11. Employer's allegations have merit.

Arterial Blood Gas Studies

The ALJ considered the results of three arterial blood gas studies. Decision and Order at 8-9. Dr. Sood's September 19, 2017 study produced non-qualifying values at rest and with exercise.[14] Employer's Exhibit 2 at 15. There are notations on the study report that the Miner "[e]xercised submaximally while walking for 8 [minutes] in hallway with a walker at a slow pace" and that "[m]aximal exercise" was contraindicated due to "unstable gait." *Id*. Dr. Sood's June 5, 2018 study, conducted as part of the DOL's complete pulmonary evaluation of the Miner, produced non-qualifying results at rest and qualifying results with exercise.[15] MC Director's Exhibit 19 at 9; MC Director's Exhibit 22. The

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C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[13] The ALJ found that the pulmonary function studies do not support a finding of total disability and that there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 7-8.

[14] The ALJ misstated that this study was administered on September 17, 2017, Decision and Order at 8, when it was actually administered on September 19, 2017. Employer's Exhibit 2 at 15.

[15] The ALJ permissibly determined that there was no basis in the record for him to find that the June 2018 blood gas study was performed during or soon after an acute respiratory illness. He noted that while the Miner was treated for bacterial pneumonia in April 2018, by April 15, 2018, he was no longer prescribed antibiotics and on April 16, 2018, he was discharged from in-patient treatment. 20 C.F.R. Part 718, Appendix C; *Northern Coal Co. v. Director, OWCP* [*Pickup*], 100 F.3d 871, 873 (10th Cir. 1996); Decision and Order at 10-11; Employer's Exhibit 1 at 177.

study's report states that the Miner "[w]alked at [one mile per hour] on a treadmill at a slow pace for 12 [minutes]" and that "[m]aximal exercise [was] contraindicated" because he was at "risk for falls." MC Director's Exhibit at 9. Dr. Tuteur's October 2, 2018 study was non-qualifying at rest and no exercise test was conducted. Employer's Exhibit 3 at 14-15.

The ALJ permissibly assigned greater weight to the exercise studies over the resting studies because he found they better reflected the Miner's functional capacity at the time of his death to perform the exertional requirements of his usual coal mine work. *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984); Decision and Order at 8. Further, the ALJ gave greater weight to the June 5, 2018 exercise study because the Miner exercised for twelve minutes, rather than the eight minutes he exercised during the September 19, 2017 study; the ALJ reasoned that the longer the exercise, the more probative the test would be to show the Miner's capacity to shovel coal for two hours. *Id*. at 8-9. Consequently, the ALJ found the preponderance of the blood gas study evidence supports a finding of total disability. *Id*. at 9.

Employer asserts the ALJ's weighing of the arterial blood gas studies was based on the mistaken belief that the exercise portion of the Miner's June 5, 2018 study was drawn at twelve minutes of exercise when it was actually drawn at two minutes.[16] Employer's Brief at 14-15. We agree.

While an ALJ can permissibly afford more weight to exercise studies than resting studies if he finds they are more indicative of the miner's ability to perform his usual coal mine employment, *Coen*, 7 BLR at 1-31-32, he must still resolve any conflicts in the evidence as the Administrative Procedure Act (APA) requires.[17] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[16] With respect to the blood gas study evidence, Employer reiterates its evidentiary challenge that the ALJ erred in excluding Dr. Sood's medical opinions contained in Employer's Exhibits 1 and 2; we have rejected this argument. Employer's Brief at 15-17; Employer's Reply Brief at 2-4 (unpaginated). Employer further contends now that Dr. Sood's excluded opinions should be admissible at "20 C.F.R. [§]725.313 as supplemental opinions" to show that Dr. Sood regularly measures blood gases at the peak of exertion just before ending the test. Employer's Brief at 16. However, it did not raise this argument below and therefore we will not consider it. *Salmons*, 39 F.4th at 208.

[17] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that 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.

In differentiating between Dr. Sood's non-qualifying September 19, 2017 and qualifying June 5, 2018 exercise studies, the ALJ primarily relied on the length of the exercise tests. *See* Decision and Order at 8-9. Specifically, the ALJ stated:

> I give greater weight to the study performed by Dr. Sood at twelve minutes of exercise, as opposed to the earlier study in which the Miner was exercised for only eight minutes. Logically, the longer the exercise the more probative the test would be of the Miner's pulmonary capacity to perform such physical activity as shoveling coal for two hours.

Id. at 9. However, as Employer correctly points out, Dr. Sood's June 5, 2018 exercise test was drawn at two minutes, not twelve minutes. Employer's Brief at 13-15; *see* Director's Exhibit 19 at 10. While Dr. Sood's medical report indicates that the Miner exercised on a treadmill for twelve minutes, the blood gas study report indicates the test was drawn after two minutes of stress. MC Director's Exhibit 19 at 3, 10. Therefore, because the ALJ mischaracterized the evidence and erroneously concluded the Miner exercised for a longer period of time during the June 5, 2018 study before his blood was drawn, we must vacate his reliance on this study to find Claimant established total disability at 20 C.F.R. §718.204(b)(2)(ii). *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985) (if the ALJ misconstrues relevant evidence, the case must be remanded for reevaluation of the issue to which the evidence is relevant); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984); Decision and Order at 8-9; Employer's Exhibit 2 at 15.

Medical Opinions and Evidence as a Whole

The ALJ considered the medical opinions of Drs. Sood, Tuteur, and Rosenberg. Decision and Order at 9-11. Dr. Sood opined the Miner was disabled from performing his usual coal mine work because the exercise blood gas study he obtained was qualifying and because the Miner's diffusing capacity results showed a Class II impairment of the whole person under American Medical Association standards. MC Director's Exhibit 19 at 3. Dr. Tuteur examined the Miner and reviewed Dr. Sood's objective testing. He opined there was "no demonstrated persistent impairment of pulmonary function of either ventilatory type or with respect to oxygen gas exchange." Employer's Exhibit 3 at 4. He acknowledged that the Miner was totally and permanently disabled from returning to his usual coal mine or similar employment but opined that his impairment had been entirely due to Parkinson's disease and unrelated to a respiratory impairment. Employer's Exhibit 3 at 4-5. Dr. Rosenberg reviewed Dr. Sood's and Dr. Fino's objective testing, opined the

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§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).

Miner was "not disabled from a primary pulmonary process," and attributed his respiratory issues during the latter part of his life to worsening Parkinson's disease with dementia and recurrent pneumonia. Employer's Exhibit 5 at 7.

The ALJ considered Dr. Sood's qualifying exercise blood gas study to be the most probative evidence in the record regarding the Miner's respiratory disability and rejected the opinions of Drs. Tuteur and Rosenberg, in part, because they did not adequately address that study. Because the ALJ's erroneous weighing of the blood gas studies affected his credibility determinations with respect to the medical opinions at 20 C.F.R §718.204(b)(2)(iv), we vacate them and his overall finding that Claimant established the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Consequently, we vacate the ALJ's conclusion that Claimant invoked the Section 411(c)(4) presumption and the award of benefits in the miner's claim.[18]

Survivor's Claim: Derivative Entitlement

Because we have vacated the award of benefits in the miner's claim, we must also vacate the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 22-23.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant established total disability in the miner's claim. He must initially evaluate the blood gas studies at 20 C.F.R. §718.204(b)(2)(ii), undertaking a quantitative and qualitative analysis of the conflicting results, and provide an adequate rationale for how he resolves the conflict in the evidence. *See Sea "B" Mining Co. v. Addison,* 831 F.3d 244, 252-54 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *see also Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 149 n.23 (1987) (ALJ must "weigh the quality, and not just the quantity, of the evidence").

He must then reconsider whether the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv). When weighing the medical opinions, the ALJ must address the comparative credentials of the physicians, the explanations for their medical findings, the documentation underlying their medical judgments, and the

[18] We decline to address, as premature, Employer's arguments that the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. Employer's Brief at 17-25; Employer's Reply Brief at 8-11.

sophistication of and bases for their conclusions.[19] *See Gunderson v. U.S. Dep't of Lab.*, 601 F.3d 1013, 1024 (10th Cir. 2010).

If the ALJ finds either the blood gas studies or medical opinions support a finding of total disability, he must weigh all of the relevant evidence together to determine whether the Miner was totally disabled. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987). The ALJ must explain his findings in accordance with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

If Claimant establishes total disability on remand, she will have invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305. The ALJ must then determine whether Employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). If Claimant is unable to establish total disability, benefits are precluded.[20] 20 C.F.R. Part 718; *see Trent v. Director, OWCP*, 11 BLR 1-26, 27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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[19]The ALJ should also address the discrepancies concerning the diffusing capacity of the lungs for carbon monoxide (DCLO) value results on the Miner's June 1, 2018 pulmonary function study. As Employer contends, the ALJ gave additional weight to Dr. Sood's opinion based on his determination that the Miner's adjusted DCLO on his June 1, 2018 pulmonary function study was 62% of predicted and met the criteria under the American Medical Association Guides for a class II impairment of the whole person. Decision and Order at 11; Employer's Brief at 20; *see also* Employer's Reply Brief at 9 (unpaginated). As Employer notes, the recorded adjusted DCLO was 21.1 and therefore was 70% of predicted prior to Dr. Sood's handwritten adjustment of the values. Employer's Brief at 20. In addition, as Employer contends, Dr. Sood did not explain "why the lab standards as printed were unreliable and why his presumably 'transposed data' was superior." *Id*. Further, the ALJ observed that both the test value results and Dr. Rosenberg indicate that the DCLO was 69% of predicted and does not explain why Dr. Sood's adjusted DCLO value was more reliable. Decision and Order at 11; *see* MC Director's Exhibit 19 at 17; Employer's Exhibit 5 at 2. Employer also notes that Dr. Tuteur concluded there was no issue with the Miner's diffusing capacity. Employer's Brief at 20; *see* Employer's Exhibit 3 at 4. Additionally, the ALJ should address Employer's assertion that the June 2018 pulmonary function study "was an outlier." Employer's Brief at 20.

[20] The irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act is not applicable in this case because there is no evidence of complicated pneumoconiosis in the record. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge