**U.S. Department of Labor**

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

BRB No. 21-0185 BLA

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| Claimant | ) | |
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| v. | ) | |
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| BIG I MINING, INCORPORATED | ) | |
| | ) | |
| and | ) | |
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| KENTUCKY EMPLOYERS MUTUAL INSURANCE | ) | DATE ISSUED: 5/31/2022 |
| | ) | |
| Employer/Carrier-Petitioners | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | |
| | ) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits on Remand of Steven D. Bell, Administrative Law Judge, Department of Labor.

Lee Jones and Denise H. Scarberry (Jones & Jones Law Office, PLLC), Pikeville, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits on Remand (2015-BLA-05899) rendered on a claim filed on November 1, 2013, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.

In his initial Decision and Order Denying Benefits, the ALJ credited Claimant with twenty-five years of underground coal mine employment but found he failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). The ALJ therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018), or establish entitlement under 20 C.F.R. Part 718. He therefore denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established twenty-five years of underground coal mine employment but did not establish the existence of complicated pneumoconiosis, 20 C.F.R. §718.304, or total disability at 20 C.F.R. §718.204(b)(2)(ii)-(iii). The Board vacated, however, the ALJ's findings that the pulmonary function studies and medical opinion evidence do not establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iv). Specifically, the Board held he did not adequately explain, as the Administrative Procedure Act (APA) requires,[2] his conclusion that the pulmonary function studies do not support a finding of total disability. Because his evaluation of the medical opinion evidence relied on his conclusion that the pulmonary function studies do not support a finding of total disability, the Board also vacated his finding that the medical opinion evidence does not establish total disability. Thus, the Board remanded the case for further consideration. *Sexton v. Big I Mining, Inc.*, BRB No. 18-0611 BLA, slip op. at 4-5 (Aug. 30, 2019) (unpub.).

On remand, the ALJ found the pulmonary function studies, medical opinion evidence, and evidence as a whole establishes total disability. 20 C.F.R. §718.204(b)(2)(i), (iv). He therefore found Claimant invoked the presumption of total disability due to

[1] 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); *see* 20 C.F.R. §718.305.

[2] The APA requires every adjudicatory decision to include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

pneumoconiosis at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. Furthermore, he found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption. Neither Claimant nor the Director, Office of Workers' Compensation Programs, filed a response.

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.[3] 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, 362 (1965).

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. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). On remand, the ALJ determined the pulmonary function study evidence, medical opinions, and evidence as a whole establish total disability. Decision and Order on Remand at 6-8.

Employer contends the ALJ erred in finding Claimant established total disability based on the pulmonary function study evidence because he did not adequately explain his weighing of the conflicting evidence. 20 C.F.R. §718.204(b)(2)(i); Employer's Brief at 5-6. We disagree.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 21 at 8.

The ALJ considered the results of five pulmonary function studies. The February 5, 2014 study yielded qualifying[4] values before and after the administration of a bronchodilator.[5] Director's Exhibit 10. The July 17, 2014 study produced qualifying results pre-bronchodilator; a post-bronchodilator study was not performed. Director's Exhibit 16. The January 8, 2015 study yielded qualifying pre-bronchodilator values and non-qualifying post-bronchodilator values. Director's Exhibit 13. The January 16, 2015 study produced qualifying pre-bronchodilator results; a post-bronchodilator study was not performed. Claimant's Exhibit 3. Finally, the March 12, 2015 study yielded non-qualifying values before and after the administration of a bronchodilator. Employer's Exhibit 1.

Contrary to Employer's contention, the ALJ permissibly gave greater weight to the pre-bronchodilator pulmonary function studies because, "when making disability determinations, the question is whether the miner is able to perform his job, not whether he is able to perform his job after he takes medication." Decision and Order at 5; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). He further permissibly declined to mechanically credit the non-qualifying March 12, 2015 study over the qualifying studies on the basis of its recency. *See Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014); *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993); Decision and Order at 5. Thus, because four out of the five pre-bronchodilator studies are qualifying for total disability, the ALJ rationally found the pulmonary function studies as a whole establish total disability. *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185.

The ALJ next considered the medical opinion of Dr. Ajjarapu that Claimant is totally disabled and the opinions of Drs. Dahhan and Jarboe that he is not. Decision and Order at 6; Director's Exhibits 10; 13; 59 at 18; 68; Employer's Exhibits 1-3. In her initial February 5, 2014 report, Dr. Ajjarapu opined Claimant is totally disabled based on his qualifying pulmonary function test showing severe pulmonary impairment and his arterial

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

[5] Drs. Vuskovich and Dahhan opined the February 5, 2014 pulmonary function study is invalid. Director's Exhibits 11 at 4; 13 at 15. The ALJ rejected their opinions and found the study valid. Decision and Order at 5. Employer does not challenge this finding on appeal, and it is thus affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

blood gas study showing severe hypoxemia. Director's Exhibit 10 at 35. In a supplemental report dated July 6, 2015, she opined the January 8, 2015 pulmonary function study demonstrates a moderate impairment and shows Claimant does not have the pulmonary capacity to perform his previous coal mine employment. Director's Exhibit 59 at 18. In a second supplemental report dated March 10, 2016, Dr. Ajjarapu stated she agreed with Dr. Jarboe's determination that Claimant is totally disabled. Director's Exhibit 68. However, as the ALJ noted, Dr. Ajjarapu did not indicate which of Dr. Jarboe's reports she had reviewed.[6]

Noting Dr. Ajjarapu's second supplemental report is conclusory and did not discuss the non-qualifying March 12, 2015 pulmonary function study, the ALJ concluded it is not well-reasoned or documented. Decision and Order at 7. He credited her earlier opinions, however, as well-reasoned and documented. *Id.* The ALJ gave less weight to Dr. Dahhan's opinion because the physician concluded the January 8, 2015 pulmonary function study results indicate a mild, non-disabling impairment, contrary to the ALJ's findings that it is qualifying, and as he failed to consider the exertional requirements of Claimant's usual coal mine work. *Id.* The ALJ further found Dr. Jarboe's opinion not well-reasoned or documented because the physician did not address the qualifying February 5, 2014 pulmonary function study or the exertional requirements of Claimant's usual coal mine job. *Id.* Therefore, crediting Dr. Ajjarapu's earlier opinions over her March 10, 2016 supplemental opinion and the opinions of Drs. Dahhan and Jarboe, the ALJ found the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Employer does not specifically challenge the ALJ's credibility findings with respect to Drs. Dahhan and Jarboe. Thus, we affirm the ALJ's rejection of their opinions. *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 7.

Employer argues the ALJ's weighing of Dr. Ajjarapu's opinion is contradictory because he found her February 5, 2014 report and July 6, 2015 supplemental report well-reasoned and documented but her March 10, 2016 report not reasoned or documented. Employer's Brief 6. Employer also argues Dr. Ajjarapu's opinion is not well-documented

[6] Dr. Jarboe initially opined Claimant is totally disabled. Employer's Exhibit 1. In a supplemental opinion, however, he opined the March 12, 2015 pulmonary function study demonstrates Claimant is not disabled. Employer's Exhibit 3.

because she did not consider the entirety of the evidence. *Id.* at 6-7. Employer's arguments lack merit.

Contrary to Employer's contention, the ALJ considered the entirety of Dr. Ajjarapu's opinions, including the underlying documentation on which she relied, and reasonably exercised his discretion as trier-in-fact in addressing her opinions. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 (4th Cir. 1999). The ALJ need not credit every aspect of an expert's opinion; he may reasonably credit part of an expert's opinion as long as it is not inconsistent with his own findings. *See Luketich v. Director, OWCP*, 8 BLR 1-477, 1-480 n.3 (1986). In addition, the ALJ was not required to discount Dr. Ajjarapu's opinion on the ground that she did not consider the most recent medical evidence. Rather, having determined Dr. Ajjarapu explained she relied on the earlier objective testing and considered the exertional requirements of Claimant's usual coal mine work, the ALJ permissibly found her opinion well-reasoned and documented. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 7.

Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We thus affirm the ALJ's determination that the medical opinion evidence establishes total disability. Decision and Order at 7. Furthermore, we affirm his finding that all of the relevant evidence, when weighed together, establishes total disability. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; Decision and Order at 8.

We therefore affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305. Because Employer does not challenge the ALJ's finding that it failed to rebut the presumption, we affirm the award of benefits. *See Skrack*, 6 BLR at 1-711; Decision and Order at 16.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge