U.S. Department of Labor

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

BRB No. 23-0426 BLA

RICHARD E. POLLARD, SR. Claimant-Petitioner v. CONSOLIDATION COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 09/05/2024 DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

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.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order on Remand Denying Benefits (2019-BLA-05472) rendered on a request for

modification[1] of a subsequent claim[2] filed on October 5, 2016. This case is before the Benefits Review Board for the second time.[3]

In his initial November 24, 2020 Decision and Order Denying Benefits on modification, the ALJ credited Claimant with eighteen years of underground coal mine employment based on the parties' stipulation. However, he found Claimant failed to establish a totally disabling pulmonary or respiratory impairment and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[4] *See* 20 C.F.R. §718.204(b)(2). As Claimant did not establish an essential element of entitlement, the ALJ denied benefits.

---

[1] This case involves Claimant's request for modification of a district director's denial of benefits. Director's Exhibit 50. In a case involving a request for modification of a district director's decision, the ALJ proceeds de novo and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

[2] This is Claimant's fourth claim for benefits. Director's Exhibits 2, 3. He withdrew his third and most recent prior claim. Director's Exhibit 3. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b). On May 15, 2006, the district director denied Claimant's second claim for failure to establish any element of entitlement. Director's Exhibit 2. That decision became final.

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 he 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); *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 any element of entitlement in his second claim, he had to submit new evidence establishing at least one element to warrant a review of the merits of this claim. *See White*, 23 BLR at 1-3; Director's Exhibit 2.

[3] We incorporate by reference the relevant factual and procedural history set forth in the Board's prior decision in this case. *Pollard v. Consolidated Coal Co.*, BRB No. 21-0128 BLA, slip op. at 3-4 (Aug. 15, 2022) (unpub.).

[4] 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

In consideration of Claimant's appeal, the Board affirmed, as unchallenged, the ALJ's determination that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii) and further affirmed the ALJ's finding that Claimant did not establish total disability based on the pulmonary function studies at 20 C.F.R. §718.204(b)(2)(i). *Pollard v. Consolidated Coal Co.*, BRB No. 21-0128 BLA, slip op. at 3-4 (Aug. 15, 2022) (unpub.). However, the Board held the ALJ failed to adequately explain his weighing of the medical opinions, vacated the denial of benefits, and remanded the case for further consideration as to whether Claimant has a totally disabling pulmonary or respiratory impairment. *Id*. at 7-9.

On remand, the ALJ again found Claimant failed to establish total disability based on the medical opinions at 20 C.F.R. §718.204(b)(2)(iv) and a weighing of the evidence as a whole. He thus denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish total disability. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file 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.[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).

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. *See* 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 consider all relevant evidence and weigh the evidence supporting total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp*.,

---

substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[5] The Board will apply the law of the United States Court of Appeals for the Seventh Circuit because Claimant performed his last coal mine employment in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 29; Director's Exhibit 7.

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).

Medical Opinions

Notwithstanding whether the objective testing is qualifying, total disability may be established by a reasoned medical opinion that the miner is unable to perform his usual coal mining work from a pulmonary or respiratory standpoint. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000). A miner's usual coal mine employment is the most recent job he performed regularly and over a substantial period of time. *Shortridge v. Beatrice Coal Co.*, 4 BLR 1-535, 1-538-39 (1982). Even a mild impairment may be totally disabling depending on the exertional requirements of the miner's usual coal mine employment. *Cornett*, 227 F.3d at 578.

The ALJ considered the medical opinions of Dr. Chavda, who opined Claimant is totally disabled, and Drs. Selby and Tuteur, who opined he is not. Decision and Order on Remand at 5-8; Director's Exhibits 14, 25; Employer's Exhibit 2. On remand, the ALJ credited Drs. Selby's and Tuteur's opinions as well-documented and well-reasoned. Decision and Order on Remand at 7. He accorded little weight to Dr. Chavda's opinion, again finding it inconsistent and less reliable. *Id*. at 5. Consequently, the ALJ found the medical opinion evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 4-7.

Claimant argues the ALJ failed to follow the Board's remand instructions in assessing the credibility of the medical opinion evidence, mischaracterized and again ignored relevant portions of Dr. Chavda's opinion, and erred in his overall conclusion that Dr. Chavda's opinion is inconsistent. Claimant's Brief at 7-14; *see Pollard*, BRB No. 21-0128 BLA, slip op. at 5-7; Decision and Order on Remand at 4-7. Claimant's arguments have merit.

Dr. Chavda's medical opinion

Dr. Chavda initially examined Claimant on behalf of the Department of Labor (DOL) on December 10, 2010, in conjunction with his prior claim. Director's Exhibit 22. He obtained non-qualifying pulmonary function studies with *no bronchodilator administered*. *Id*. at 5. He diagnosed moderate obstructive and restrictive airway disease and opined Claimant's significant decrease in lung capacity shown by reductions in his FEV1 and FVC values on his pulmonary function studies rendered Claimant unable to perform the walking required in his previous coal mine job. *Id*. at 3-4.

Dr. Chavda also performed the DOL-sponsored complete pulmonary evaluation of Claimant in his current claim on November 8, 2016. Director's Exhibit 14. He obtained qualifying pre-bronchodilator pulmonary function studies and non-qualifying post-bronchodilator studies. Again, he diagnosed moderate obstructive and moderate restrictive airway disease, but relied solely on the non-qualifying post-bronchodilator values to conclude that Claimant is not totally disabled. *Id*. at 7-8.

In a January 31, 2017 letter, Dr. Chavda responded to a DOL claims examiner regarding whether Claimant is totally disabled when considering the November 4, 2016 "qualifying"[6] pre-bronchodilator studies.[7] Dr. Chavda clarified that his opinion depends on whether the DOL considers the pre- or post-bronchodilator values in assessing a miner's total disability. Director's Exhibit 28 at 1; *see* Director's Exhibit 27. He noted that Claimant's pre-bronchodilator study has qualifying values and meets the disability criteria but his post-bronchodilator study does not.[8] Director's Exhibit 28 at 1.

[6] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i). In its previous decision the Board affirmed the determination that none of the pulmonary function studies are qualifying pursuant to 20 C.F.R. Part 718, Appendix B. *Pollard*, BRB No. 21-0128 BLA, slip op. at 3-4.

[7] The Board previously rejected Claimant's contention that the ALJ erred in finding the November 4, 2016 pulmonary function study is non-qualifying before and after the administration of bronchodilators based on a height of 71.4 inches, the average of the heights reported on Claimant's pulmonary function studies. *Pollard*, BRB No. 21-0128 BLA, slip op. at 4.

[8] Dr. Chavda stated:

> As [Claimant] has postbronchodilator FEV1 and FVC bets [sic], I would consider them as the best value. I would say because of that he does not meet disability criteria. If you consider the value of 2.11 liter in FEV1 and FVC of 2.71 and if that can be considered a value for disability establishment, he does have total pulmonary disability. It is up to the Department of Labor. In my opinion, his prebronchodilator testing meet [sic] total pulmonary disability criteria.

Director's Exhibit 28 at 1.

On July 24, 2017, the claims examiner asked Dr. Chavda to update his opinion, if necessary, based on his consideration of additional medical evidence, including Dr. Vuskovich's review of the November 4, 2016 pulmonary function study and the June 15, 2017 pulmonary function study results. Director's Exhibit 29. In his supplemental report, dated July 27, 2017, Dr. Chavda agreed with Dr. Vuskovich that the June 15, 2017 pulmonary function study "is not reproducible" and therefore invalid. However, he indicated Claimant is totally disabled based on the November 4, 2016 qualifying pre-bronchodilator study. Director's Exhibit 30 at 1.

During his September 20, 2019 deposition, Dr. Chavda explained that bronchodilators do not "cure the underlying disease" and are a "temporary fix." He reiterated that Claimant would be unable to perform the exertional requirements of his usual coal mine work based on the qualifying November 4, 2016 pre-bronchodilator study. Claimant's Exhibit 3 at 24; *see also* Claimant's Exhibit 3 at 6-8, 10-25.

The ALJ acknowledged on remand that he was required to consider Dr. Chavda's deposition testimony, which he had failed to do in his initial decision. Noting that Dr. Chavda opined in his deposition that Claimant is totally disabled, the ALJ determined that, even "[t]aking this specific deposition testimony into account,"[9] Dr. Chavda's opinion

[9] The ALJ indicated the Board instructed him to review Dr. Chavda's deposition testimony, specifically highlighting the portion of the Board's prior decision which stated:

> In his deposition testimony, Dr. Chavda explained that Claimant's prebronchodilator values from the November 4, 2016 pulmonary function studies are "low" and would prevent Claimant from performing his usual coal mine employment requiring him to spray equipment, do prep work, and walk. Claimant's Exhibit 3 at 25. He explained that "if [Claimant] has to work continuously . . . for six, seven hours in the day whether it's two or three hours in a day and take a break, still I think he would feel short of breath and then is not able to fulfill the duty . . . he needs to do." *Id*. Further, he explained the relief that a bronchodilator provides is only a "temporary fix," while Claimant's prebronchodilator testing reflects "his [permanent] lung condition." *Id.* at 23-25.

Pollard, BRB No. 21-0128 BLA, slip op. at 6; *see* Decision and Order on Remand at 4-5.

"remains inconsistent" in his reports and thus his opinion is "less reliable," as the ALJ detailed in his original decision.[10] Decision and Order on Remand at 4-5.

But contrary to the ALJ's conclusion, Dr. Chavda's opinion is not inconsistent in regard to whether the pre-bronchodilator results are disabling. *See* Decision and Order on Remand at 5; Director's Exhibit 28 at 1; Claimant's Exhibit 3 at 24. Moreover, as Claimant asserts, the ALJ appears not to have considered the entirety of Dr. Chavda's reports or the entirety of his deposition testimony wherein he provides an explanation regarding any perceived inconsistency in his opinions.[11] Claimant's Brief at 8-10; *see Pollard*, BRB No. 21-0128 BLA, slip op. at 5-6; Decision and Order on Remand at 4-7.

Further, we agree with Claimant that the ALJ erred in finding that Dr. Chavda did not address the exertional requirements of Claimant's last coal mine employment. In compliance with the Board's instruction, the ALJ on remand found Claimant's usual coal mine work required "bending, pulling and lifting cables, walking, crawling, stooping, and lifting and holding with one hand."[12] Decision and Order on Remand at 4; *see Pollard*, BRB No. 21-0128 BLA, slip op. at 4.

However, the ALJ failed to address Dr. Chavda's description of Claimant's usual coal mine work as requiring walking or being "on his feet the majority of his shift" or otherwise determine whether an opinion that Claimant cannot walk or stand for most of a shift is consistent with total disability in light of the ALJ's seemingly more demanding

[10] On remand, the ALJ briefly summarized Dr. Chavda's prior opinions as follows: on December 14, 2010, Dr. Chavda concluded Claimant is totally disabled even though his test results were non-qualifying; on November 8, 2016, he found Claimant is not totally disabled because his test results were non-qualifying without addressing his prior contrary opinion; Dr. Chavda subsequently found the November 4, 2016 pulmonary function results were qualifying, contrary to the ALJ's finding, but also offered conflicting opinions as to whether pre- or post-bronchodilator testing is "best;" and on July 27, 2017, he "reversed course yet again" by disagreeing with Dr. Selby and finding Claimant to be totally disabled based on his lung volumes. Decision and Order on Remand at 5.

[11] During his deposition, Dr. Chavda went through each of his reports and explained how he reached his results. Claimant's Exhibit 3 at 6-23. He then addressed Claimant's lung function over time and explained how he reached his overall conclusion that Claimant has a totally disabling respiratory impairment that would prevent him from performing the exertional requirements of his usual coal mine work. *Id*. at 23-25.

[12] As Claimant does not challenge this finding, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

exertional requirement findings.[13] *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 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*.") (emphasis added); Director's Exhibit 14 at 3; *see also* Director's Exhibit 22 at 6; Claimant's Exhibit 3 at 7. In addition, as Claimant notes, the ALJ also did not consider Dr. Chavda's testimony that Claimant's low FEV1 and FVC values on pulmonary function testing and shortness of breath would prevent him from walking, "working continuously," or performing the work he described. Claimant's Exhibit 3 at 25. Consequently, we vacate the ALJ's discrediting of Dr. Chavda's opinion as to whether Claimant is totally disabled.

Drs. Selby's and Tuteur's medical opinions

There is also merit to Claimant's contention that the ALJ did not follow the Board's remand instructions when he considered Drs. Selby's and Tuteur's opinions. Although the Board affirmed the ALJ's findings that the pulmonary function study evidence is non-qualifying and therefore insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i), it agreed with Claimant that the ALJ erred in failing to address the parties' arguments regarding the validity of two of the studies.[14] The Board specifically held:

> To the extent the experts who provided medical opinions relied on the November 4, 2016 and June 15, 2017 pulmonary function studies to make determinations as to total disability, the validity of these tests is relevant to the weighing of their opinions, and therefore the ALJ erred in failing to consider this evidence. On remand, the ALJ must consider the validity of the

[13] The ALJ noted that the parties stipulated "that [Claimant] 'worked for the Employer on the move crew, doing timber work, and doing belt work. This involved bending and pulling and lifting cables.'" Decision and Order on Remand at 4 (quoting ALJ Exhibit 4 at 2). In addition, the ALJ noted Claimant testified that "he did a lot of walking, bending, crawling, and stooping, and that his work was strenuous, including lifting and holding with one hand." *Id.*; *see* Decision and Order at 3.

[14] The regulation at 20 C.F.R. §718.103 states "no results of a pulmonary function study shall constitute evidence of the *presence or absence* of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with" the regulatory quality standards. 20 C.F.R. §718.103(c) (emphasis added); 20 C.F.R. Part 718, Appendix B.

> November 4, 2016 and June 15, 2017 pulmonary function studies prior to weighing the medical opinion evidence.

Pollard, BRB No. 21-0128 BLA, slip op. at 4-5 n.7 (citations omitted). The ALJ did not render findings on remand as to the validity of the pulmonary function study evidence but simply concluded that the opinions of Drs. Selby and Tuteur are reasoned and documented. Because the ALJ must evaluate the evidence underlying a physician's opinion, and he did not properly do so on remand, his decision fails to satisfy the Administrative Procedure Act (APA).[15]

Citing *Jefferson v. Ziegler Coal Co. et al.*, BRB Nos. 21-0171 BLA and 20-0172 BLA, (Sept. 28, 2022) (unpub.), Claimant accurately asserts that invalid pulmonary function studies are not relevant to whether he is totally disabled. Claimant's Brief at 15-17. As the Board explained in *Jefferson*:

> The regulation at 20 C.F.R. §718.103 states "no results of a pulmonary function study shall constitute evidence of the *presence or absence* of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with" the regulatory quality standards. 20 C.F.R. §718.103(c) (emphasis added); 20 C.F.R. Part 718, Appendix B.

BRB Nos. 21-0171 BLA and 20-0172 BLA, slip op. at 7-8 (footnote omitted).

Here, Drs. Selby and Tuteur based their medical opinions, at least in part, on pulmonary function studies whose validity has been questioned. Claimant's Brief at 15-17; *see* Director's Exhibit 25; Employer's Exhibits 1, 2, 4, 5. The ALJ's failure to render a finding regarding the validity of the November 4, 2016 and June 15, 2017 pulmonary function studies is not harmless because the ALJ specifically credited Drs. Selby's and Tuteur's opinions in finding Claimant is not totally disabled. Decision and Order on Remand at 5-7.

Based on the foregoing errors, we vacate the ALJ's finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv) or in consideration of the evidence as a whole. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); *see also Sullivan v. Hudson*, 490 U.S. 877, 886 (1989)

[15] The Administrative Procedure Act 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. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

("Deviation from the court's remand order in the subsequent administrative proceedings is itself legal error"); *Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 209-10 (4th Cir. 2022) ("[T]he Board consistently applies the mandate rule, whereby an ALJ must comply with the Board's directions on remand."); *Hall v. Director, OWCP*, 12 BLR 1-80, 1-82 (1988) ("a lower forum must not deviate from the orders of a superior forum, regardless of the lower forum's view of the instructions given it"). Thus, we vacate the ALJ's conclusion that Claimant did not invoke the Section 411(c)(4) presumption and the denial of benefits.

Remand Instructions

On remand, prior to weighing the medical opinions, the ALJ must address the validity of the November 4, 2016 and June 15, 2017 pulmonary function studies. *Pollard*, BRB No. 21-0128 BLA, slip op. at 4-5 n.7. Because the studies were performed in anticipation of litigation, the ALJ must assess whether they are in substantial compliance with the regulatory quality standards. *See Keener v. Peerless Eagle Coal Co*., 23 BLR 1-229, 1-237 (2007) (en banc). In doing so, the ALJ must be cognizant that compliance with the quality standards is presumed. 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to prove otherwise. *See Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

After the ALJ addresses the validity of the pulmonary function studies, he must reconsider whether the medical opinion evidence establishes the presence of a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2)(iv). In doing so, the ALJ must consider whether the physicians had an accurate understanding of the physical demands of Claimant's usual coal mine work. *Poole*, 897 F.2d at 894; *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988) (ALJ must identify the miner's usual coal mine work and then compare evidence of the exertional requirements of the miner's usual coal mine employment with the medical opinions as to the miner's work capabilities).

We remind the ALJ that a physician may offer a reasoned medical opinion diagnosing total disability even if the objective studies are non-qualifying. *See Killman*, 415 F.3d at 721-22 (claimant can establish total disability despite non-qualifying objective tests); *Cornett*, 227 F.3d at 578 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"). The ALJ must also be mindful that the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *see also* 20 C.F.R. §718.204(a) ("If . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary

impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis."); Claimant's Brief at 17-19.

If Claimant establishes total disability based on the medical opinion evidence, the ALJ must determine whether he is totally disabled taking into consideration all relevant evidence.[16] 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232. If the ALJ finds the evidence establishes total disability, Claimant will have invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4). The ALJ must then determine if Employer is able to rebut it.[17] 20 C.F.R. §718.305(d). However, if Claimant does not establish total disability, the ALJ may reinstate the denial of benefits, as Claimant will have failed to establish a necessary element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

The ALJ must explain the bases for his credibility determinations, findings of fact, and conclusions of law as the APA requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

[16] As the Board stated in its previous decision, Claimant bears the burden to establish the presence of a totally disabling pulmonary or respiratory impairment; thus Dr. Chavda's diagnosis of a totally disabling respiratory or pulmonary impairment does not create a presumption that he is totally disabled. *See* 20 C.F.R. §718.204(a), (b); *see also Pollard*, BRB No. 21-0128 BLA, slip op. at 7 n.11; Claimant's Brief at 23-28. The Section 411(c)(4) presumption that a miner's total disability is due to pneumoconiosis applies only if Claimant affirmatively establishes that he is unable to perform his usual coal mine work. *Taylor v. Evans & Gambrel Co*., 12 BLR 1-83, 1-86-87 (1988).

[17] We decline to address, as premature, Claimant's argument that the ALJ erred in not addressing whether Claimant has pneumoconiosis. Claimant's Brief at 28-31. Benefits are precluded if Claimant does not establish total disability; thus, the issue of whether Claimant has pneumoconiosis becomes relevant only if Claimant invokes the Section 411(c)(4) presumption that he has the disease (in its clinical or legal form) and the ALJ then considers if Employer is able to rebut it.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order on Remand Denying Benefits and remand the case for further consideration 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