U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0250 BLA

DANNY VERNON JACKSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DRUMMOND COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 02/27/2017
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Abigail P. van Alstyne (Quinn, Connor, Weaver, Davies & Rouco, LLP), Birmingham, Alabama, for claimant.

Jeannie B. Walston (Starnes Davis Florie LLP), Birmingham, Alabama, for employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2011-BLA-05031) of Administrative Law Judge Adele Higgins Odegard, rendered on a subsequent claim filed on May 18, 2012, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge credited claimant with twenty-three years of underground or substantially similar coal mine employment,[2] but found that claimant failed to establish that he has a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore determined that claimant could not invoke the presumption set forth at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012),[3] that he is totally disabled due to pneumoconiosis, and failed to establish a change in an applicable condition of entitlement since the denial of his previous claim, pursuant to 20 C.F.R. §725.309(c). The administrative law judge further found that claimant failed to establish the existence of pneumoconiosis, pursuant to 20 C.F.R. §718.202. Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in determining that claimant did not establish total disability, and thus erred in determining that claimant could not invoke the Section 411(c)(4) presumption. Claimant also contends that the administrative law judge erred in finding that claimant failed to establish the existence of

[1] This is claimant's second claim. His first, filed on January 14, 2010, was denied by the district director on August 5, 2010. Director's Exhibit 1. The district director found that claimant established the existence of pneumoconiosis that arose from his coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but determined that claimant failed to establish that he was totally disabled, pursuant to 20 C.F.R. §718.204(b)(2). *Id*. Claimant requested a hearing, but later withdrew his request and accepted the denial of benefits. *Id*.

[2] The record indicates that claimant's coal mine employment was in Alabama. Director's Exhibits 4, 6, 7. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis when the miner has fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

pneumoconiosis. Employer responds, urging the Board to affirm the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.[4]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge 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). Claimant's prior claim was denied because he failed to establish that he was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Director's Exhibit 1. Consequently, to obtain review of the merits of his current claim, claimant had to submit new evidence establishing that he is totally disabled. 20 C.F.R. §725.309(c).

Claimant contends that the administrative law judge erred in finding that he is not totally disabled. A miner is totally disabled if the miner has a respiratory or pulmonary impairment which, standing alone, prevents the miner from performing his or her usual coal mine employment. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability using any of four types of evidence: pulmonary function testing evidence, arterial blood gas study evidence, evidence of cor pulmonale with right-sided congestive heart failure, and medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the 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

[4] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant has twenty-three years of qualifying coal mine employment for purposes of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-7.

(1987) (en banc). In this case, claimant contends that the administrative law judge erred in weighing the new arterial blood gas study and medical opinion evidence.[5]

Arterial Blood Gas Study Evidence

In weighing the new arterial blood gas study evidence pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered studies performed by Drs. Barney, Goldstein, and Hasson. Dr. Barney's study, performed on June 27, 2012, produced a PCO2 value of 49.1 and a PO2 value of 67.7 at rest, and a PCO2 value of 50.3 and a PO2 value of 67.6 after exercise. Director's Exhibit 11. Dr. Goldstein's study, conducted on October 16, 2012, yielded a PCO2 value of 45.0 and a PO2 value of 65.0 at rest, and a PCO2 value of 41.0 and a PO2 value of 75.0 after exercise. Employer's Exhibit 5. Dr. Hasson's study, performed on October 23, 2012, produced a PCO2 value of 50.0 and a PO2 value of 55.1 at rest. Employer's Exhibit 6.

The administrative law judge determined that Dr. Hasson's study was qualifying,[6] but that the studies of Drs. Goldstein and Barney were not. Decision and Order at 9. She also cited Dr. Barney's note that claimant's results were "abnormal," despite being non-qualifying, and Dr. Hasson's attribution of claimant's qualifying results to claimant's obesity and sleep apnea. *Id.* at 9-10. The administrative law judge concluded that the blood gas study evidence did not support a finding of total disability:

[5] We affirm the administrative law judge's unchallenged determination that the new pulmonary function testing evidence did not support a finding of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(i). *See Skrack*, 6 BLR at 1-711; Decision and Order at 8-9. In addition, the record contains no evidence that claimant suffers from cor pulmonale with right-sided congestive heart failure, pursuant to 20 C.F.R. §718.204(b)(2)(iii).

[6] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii). All three blood gas studies discussed here were performed in Birmingham, Alabama, and Dr. Barney's study indicates that the altitude there is between zero and 2,999 feet above sea level. Director's Exhibit 11; Employer's Exhibits 5, 6. Therefore, the relevant table in this case is at 20 C.F.R. Part 718, Appendix C(1).

> On balance, two arterial blood gas studies yielded a non-qualifying result, including the most recent study,[7] and one rendered a qualifying result. Dr. Barney characterized the Claimant's blood gases as abnormal, but did not provide a justification for this characterization. Dr. Hasson, on the other hand, attributed the Claimant's qualifying result to the Claimant's obesity and sleep apnea. Because the arterial blood gas study evidence does not preponderantly point in the direction of a finding of total disability, I find that the arterial blood gas study evidence weighs in favor of a finding that the Claimant does not have a totally disabling pulmonary impairment.

Id. at 10 (footnote omitted).

Claimant argues that the administrative law judge erred when she discounted Dr. Hasson's qualifying blood gas study. Claimant's Brief at 7-9. In giving the study less weight, the administrative law judge cited Dr. Hasson's opinion that claimant's qualifying values were attributable to obesity and sleep apnea, and not indicative of any pulmonary impairment or lung dysfunction. Decision and Order at 10; Employer's Exhibit 6 at 3-4. Claimant points out that because employer designated two medical reports by Drs. Goldstein and Russakoff for admission into the record, the administrative law judge admitted Dr. Hasson's report only for the "very limited purposes" of Dr. Hasson's arterial blood gas study and pulmonary function test results. Claimant's Brief at 8; Hearing Transcript (Tr.) at 21-22. The administrative law judge stated at the hearing that she would consider only the results of Dr. Hasson's tests and any comments from him on how the tests were performed, but would not consider "his opinions derived from those test results, because that would exceed the evidentiary limitations."[8] Tr. at 21-22; *see* 20 C.F.R. §725.414(a)(3)(i).

[7] This was a misstatement by the administrative law judge. Dr. Hasson's October 23, 2012 study was the most recent, and the administrative law judge determined that it was qualifying.

[8] Under the evidentiary limitations, absent a showing of good cause, each party may submit no more than two medical reports. 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i). A "physician's written assessment of the miner's respiratory or pulmonary condition" constitutes a "medical report." 20 C.F.R. §725.414(a)(1). A "physician's written assessment of a single objective test, such as a chest X-ray or pulmonary function test," is not considered a medical report. *Id*. At the hearing, employer stated that it proffered only the parts of Dr. Hasson's report containing his blood gas study and pulmonary function study results. Hearing Transcript (Tr.) at 21.

Claimant therefore contends that, in citing Dr. Hasson's medical opinion to discount a qualifying blood gas study, the administrative law judge erred in two ways: by allowing employer to circumvent the evidentiary limitations with three medical reports, and by conflating the distinct issues of total disability and disability causation. Claimant's Brief at 8-9. We agree. Employer concedes that the administrative law judge "improperly considered Dr. Hasson's opinions regarding the arterial blood gas test results he obtained." Employer's Brief at 5. Further, a qualifying arterial blood gas study is evidence supporting a finding of the existence of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii). The *cause* of a claimant's disabling respiratory or pulmonary impairment is properly addressed at 20 C.F.R. §718.204(c) or, when a claimant has invoked the Section 411(c)(4) presumption, on rebuttal at 20 C.F.R. §718.305(d)(1)(ii).

While conceding that the administrative law judge erred in considering Dr. Hasson's opinion, employer suggests that the error was harmless because the administrative law judge misinterpreted the results of Dr. Hasson's blood gas study and thus erred in determining that it was qualifying. Employer's Brief at 5. Specifically, the PCO2 value in Dr. Hasson's study was exactly 50, and the PO2 value was 55.1. Employer's Exhibit 6. The table at 20 C.F.R. Part 718, Appendix C(1) states that for a PCO2 value from 40-49, a PO2 value "equal to or less than" 60 will be qualifying, and that for a PCO2 value "Above 50," any PO2 value will be qualifying. Employer therefore argues that the results of Dr. Hasson's blood gas study cannot be considered qualifying, because the table "does not actually contemplate" a PCO2 value of exactly 50. Employer's Brief at 6-8.

We reject employer's argument. Employer is technically correct that, as written, the tables in Appendix C do not account for a PCO2 value of exactly 50. Employer's position, however, would effectively preclude any study that produced such a value from ever being qualifying regardless of the PO2 value produced, or from being considered at all, even as studies with PCO2 values below and above 50 could be qualifying. It defies logic to think that the Department of Labor (DOL) would write the tables to account for any PCO2 value from "25 or below" to "Above 50," but deliberately exclude a value of exactly 50. 20 C.F.R. Part 718, App. C. Employer offers no reason why the tables should be read that way, and we will not interpret the regulations to produce such an absurd result. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (noting that "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available"); *U.S. Steel Mining Co. v. Director, OWCP* [*Starks*], 719 F.3d 1275, 1281-82, 25 BLR 2-297, 2-307-08 (11th Cir. 2013).

Moreover, there is evidence that when DOL introduced the current blood gas tables in Appendix C, it intended for any blood gas studies that produce PCO2 values of

50 or above — not "Above 50" — to be automatically qualifying. *See* 45 Fed. Reg. 13,678, 13,711 (Feb. 29, 1980) ("The Department has thus decided to adopt a value of 50 mm Hg $_pCO_2$ in order to establish disability independent of the $_pO_2$."). Consequently, we hold that a valid arterial blood gas study with a PCO2 value of 50 and any PO2 value is qualifying based on the tables at 20 C.F.R. Part 718, Appendix C, and we affirm the administrative law judge's determination that Dr. Hasson's October 23, 2012 blood gas study was qualifying. We therefore disagree with employer's suggestion that the administrative law judge's error in considering Dr. Hasson's opinion to discount that study was harmless.

Claimant further contends that the administrative law judge misinterpreted the results of Dr. Barney's June 27, 2012 blood gas study when she determined that both its resting and exercise values were non-qualifying. Claimant's Brief at 6-7; Decision and Order at 9-10. Claimant's PCO2 value at rest was 49.1, with a PO2 value of 67.7; his exercise PCO2 value was 50.3, with a PO2 value of 67.6. Director's Exhibit 11. The administrative law judge reasoned that both tests produced non-qualifying PO2 results under the table in Appendix C, "which states that for a PCO_2 value over 40, the corresponding PO_2 value cannot surpass 60 mmHg." Decision and Order at 9-10.

Claimant argues that the administrative law judge read the table incorrectly. Citing the Board's holding in *Tucker v. Director, OWCP*, 10 BLR 1-35, 1-41 (1987), that recorded PCO2 and PO2 values must be "equal to or less than" the applicable table values in Appendix C, claimant contends that both his resting and exercise studies obtained by Dr. Barney are qualifying, because the PCO2 values (49.1 and 50.3, respectively) should be treated as PCO2 values of 50 and above, for which any PO2 value is qualifying.[9] Claimant's Brief at 6-7. Employer acknowledges that the administrative law judge mischaracterized the results of Dr. Barney's exercise study, and concedes that the exercise study is qualifying. Employer's Brief at 6. However, employer contends that the resting study is non-qualifying, arguing that *Tucker* forbids "rounding up" the PCO2 value from 49.1 to 50, and that claimant's resting PO2 value of 67.7 renders the resting study non-qualifying under the table's standard for PCO2 values ranging from 40 to 49. *Id*. at 6-7.

[9] Claimant notes that the tables are "somewhat misleading" because they do not specifically address studies with PCO2 values of exactly 50. Claimant's Brief at 6 n.5. Claimant contends that because the tables "clearly set forth the highest level of [P]CO2 that can exist before there is an automatic finding of disability, and that level is 49 . . . the table[s] should be read as referring to an arterial [P]CO2 of 50 or above," instead of "[a]bove 50." *Id*. We have reached the same conclusion, as discussed in our analysis of Dr. Hasson's blood gas study.

We agree with claimant, and hold that both the resting and exercise studies performed by Dr. Barney are qualifying pursuant to 20 C.F.R. Part 718, Appendix C. That conclusion is not the result of any improper rounding of claimant's PCO2 and PO2 values. A claimant's PCO2 and PO2 values must be "equal to or less than" the values on the table used to evaluate the claimant's values. *Tucker*, 10 BLR at 41; *see* 20 C.F.R. Part 718, App. C. Therefore, the resting blood gas study performed by Dr. Barney, which produced a PCO2 value of 49.1 and a PO2 value of 67.7, is qualifying. Contrary to employer's contention, the study cannot be analyzed using the line on the table for PCO2 values from 40 to 49, because claimant's measured PCO2 value of 49.1 is not "equal to or less than" 49. Thus, the study must be analyzed using the next line, for PCO2 values "Above 50" — which, as we held in considering Dr. Hasson's blood gas study, effectively means "50 and above." 20 C.F.R. Part 718, App. C(1). As the table indicates, any PO2 value would be qualifying, including the 67.7 produced here. *Id*. Therefore, the administrative law judge erred in finding the June 27, 2012 blood gas study to be non-qualifying.

Next, we address claimant's argument that the administrative law judge failed to address a qualifying blood gas study conducted by Dr. Hawkins on August 3, 2011, and contained in claimant's treatment records. Claimant's Brief at 5-6; *see* 20 C.F.R. §725.414(a)(4). Employer concedes that the study is qualifying, and that the administrative law judge should have considered it. Employer's Brief at 5-6. The August 3, 2011 blood gas study yielded a PCO2 value of 48.0 and a PO2 value of 56.0. Claimant's Exhibit 4. The administrative law judge admitted Claimant's Exhibit 4 into the record, but there is no indication she considered Dr. Hawkins' blood gas study when she weighed the blood gas study evidence, or at any point in evaluating whether claimant is totally disabled. Tr. at 7-8; Decision and Order at 9-15. We agree with claimant that the administrative law judge erred by not considering the August 3, 2011 blood gas study. *See* 30 U.S.C. §923(b).

However, we reject employer's argument that the administrative law judge erred by failing to consider non-qualifying resting and exercise blood gas studies performed by Dr. O'Reilly on February 15, 2010. Employer's Brief at 8; Director's Exhibit 1. As employer recognizes, that study was conducted and considered during claimant's prior claim. Employer's Brief at 8 n.3. The current claim is a subsequent claim, and the administrative law judge must first determine whether claimant has demonstrated a change in an applicable condition of entitlement by establishing, with evidence developed since the denial of his prior claim, that he has a totally disabling respiratory or pulmonary impairment. *See* 20 C.F.R. §725.309(c)(3), (4). Although employer is correct that evidence submitted in the prior claim becomes part of the record in this claim, pursuant to 20 C.F.R. §725.309(c)(2), Dr. O'Reilly's 2010 blood gas studies are not relevant at this stage, and the administrative law judge properly limited her analysis to the new evidence

developed in connection with this claim. *See U. S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 984-90, 23 BLR 2-213, 2-225-35 (11th Cir. 2004).

Given the foregoing errors we have identified, we must vacate the administrative law judge's finding that the new blood gas study evidence does not support a finding of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii). On remand, the administrative law judge must reweigh the evidence in light of our holdings regarding the blood gas studies conducted by Drs. Hasson and Barney, and determine whether the blood gas study evidence supports a finding of total disability. The administrative law judge must also consider Dr. Hawkins' blood gas study and determine whether it supports a finding of total disability.

Medical Opinion Evidence

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the new medical opinion of Dr. Barney, who concluded that claimant has a totally disabling pulmonary impairment, and the new opinions of Drs. Goldstein and Russakoff, who both concluded that claimant is not totally disabled. Decision and Order at 10-13; Director's Exhibit 11; Employer's Exhibits 5, 7. The administrative law judge discounted Dr. Barney's opinion for being based on "an incomplete quantum of evidence as compared to the other physicians whose opinions were included in the record[.]" Decision and Order at 14. Specifically, the administrative law judge reasoned that Dr. Barney performed the DOL exam and "did not have the benefit of evaluating the subsequent pulmonary function tests and arterial blood gas tests that produced non-qualifying values." *Id*. As for Drs. Goldstein and Russakoff, the administrative law judge noted that they "drew conclusions consistent with the pulmonary function and arterial blood gas test results." *Id*. Determining that the opinions of Drs. Goldstein and Russakoff were better-reasoned, the administrative law judge found that the weight of the medical opinion evidence failed to support a finding of total disability. *Id*. at 15.

Claimant first argues that the administrative law judge erred by failing to consider an opinion from Dr. Hawkins, claimant's treating pulmonologist, who concluded that claimant is totally disabled. Claimant's Brief at 10-11; Claimant's Exhibit 7. Claimant submitted Dr. Hawkins' opinion after the hearing, which was held on May 15, 2014. The administrative law judge left the record open for sixty days after the hearing to allow claimant to submit a report responding to a report from Dr. Goldstein that employer submitted less than twenty days before the hearing. Tr. at 18-19; *see* 20 C.F.R. §725.456(b)(2)-(4). Claimant submitted Dr. Hawkins' report on the sixty-second day after the hearing, explaining to the administrative law judge and to employer that Dr. Hawkins needed two days after the deadline to finish it. Claimant's Exhibit 7; Claimant's Brief at 3. Claimant asserts that employer's counsel had no objection to the

delayed filing, and contends that the administrative law judge erred by inadvertently disregarding Dr. Hawkins' medical opinion. Claimant's Brief at 3.

Employer does not dispute that the administrative law judge properly left the record open after the hearing, and does not contend that Dr. Hawkins' opinion should have been excluded from the record for being late. Employer's Brief at 9. Instead, employer argues that it is "unclear" whether the administrative law judge overlooked the opinion or chose to disregard it. *Id*. Employer further suggests that the administrative law judge properly disregarded it because it appears to employer to be an affirmative medical report, rather than a response to Dr. Goldstein's opinion. *Id*. at 9-10.

We agree with claimant that the administrative law judge erred. The administrative law judge noted in her Decision and Order that she left the record open after the hearing for claimant to "submit any evidence to respond" to Dr. Goldstein's report, but did not refer to Dr. Hawkins' opinion thereafter, and provided no explanation for not addressing it. Decision and Order at 3; Tr. at 19. The administrative law judge thus failed to comply with the requirements of the Administrative Procedure Act (APA), which requires that every adjudicatory decision be accompanied by a statement of "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also L.P.* [*Preston*] *v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc)(holding that the administrative law judge should resolve evidentiary issues before issuing a Decision and Order). Therefore, on remand, the administrative law judge should address claimant's submission of Dr. Hawkins' report, and determine its admissibility in light of her ruling at the hearing. If the report is admitted, the administrative law judge should consider it in her analysis of the new medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv).

Finally, claimant argues that the administrative law judge erred in weighing the medical opinions of Drs. Barney, Goldstein, and Russakoff. Claimant's Brief at 11-14. Claimant contends that if the administrative law judge had considered Dr. Hawkins' opinion, she would have found it well-reasoned and given it great weight. *Id*. at 10-12. Moreover, claimant argues that the administrative law judge might have treated Dr. Barney's opinion differently if she had considered Dr. Hawkins' opinion, because it was in accord with Dr. Hawkins' opinion. *Id*. at 12. Claimant also contends that the administrative law judge subjected the opinions of Drs. Goldstein and Russakoff to "less scrutiny." *Id*. at 12-14.

We need not address all of claimant's specific arguments. The administrative law judge failed to consider Dr. Hawkins' opinion, and relied at least in part on her weighing

of the blood gas study evidence, which we have vacated, to discredit Dr. Barney's opinion and assign more weight to the contrary opinions of Drs. Goldstein and Russakoff. Therefore, we must vacate the administrative law judge's finding that the weight of the medical opinion evidence fails to support a finding of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(iv). On remand, the administrative law judge should address the physicians' explanations for their conclusions and the validity of their reasoning in light of the evidence. *See Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460, 12 BLR 2-371, 2-374-75 (11th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Conclusion

We vacate the administrative law judge's determination that claimant failed to establish that he has a totally disabling respiratory or pulmonary impairment. On remand, the administrative law judge must reconsider the new arterial blood gas study evidence, pursuant to 20 C.F.R. §718.204(b)(2)(ii), the new medical opinion evidence, pursuant to 20 C.F.R. §718.204(b)(2)(iv), and determine whether each supports a finding that claimant is totally disabled. The administrative law judge must then consider all of the evidence of total disability, including the new pulmonary function study evidence, and determine if the weight of the evidence establishes that claimant is totally disabled. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198.

If the administrative law judge determines that claimant did not establish that he has a totally disabling respiratory or pulmonary impairment, she must deny benefits based on claimant's failure to establish both a change in an applicable condition of entitlement under 20 C.F.R. §725.309(c), and an essential element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). If, on the other hand, the administrative law judge finds that claimant is totally disabled, claimant will have invoked the Section 411(c)(4) presumption, and the burden will shift to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,[10] or that "no

[10] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

part" of his total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)-(ii).[11]

[11] Therefore, we decline to address the administrative law judge's finding that claimant failed to affirmatively establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 15-24. We note, however, claimant's contention that the administrative law judge erred by not considering x-ray interpretations by Drs. Alexander and Miller that claimant states he submitted, with permission, as rebuttal x-ray readings during the sixty-day period after the hearing in which the administrative law judge left the record open. Claimant's Brief at 3, 15; Tr. at 26-29; Claimant's Exhibits 5, 6. Claimant argues that the administrative law judge's failure to consider those x-ray interpretations resulted "in an incorrect assessment of the radiographic evidence," and affected her analysis of the medical opinion evidence. Claimant's Brief at 15; Decision and Order at 20-21. If, on remand, the administrative law judge reaches the issue of the existence of pneumoconiosis, she should address the admissibility of the x-ray readings of Drs. Alexander and Miller.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge