U.S. Department of Labor

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

BRB No. 22-0436 BLA

JOHN BEISHLINE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
JEDDO-HIGHLAND COAL COMPANY	)	
	)	
and	)	
	)	
LACKAWANNA CASUALTY COMPANY c/o TRAVELERS INSURANCE COMPANY	)	DATE ISSUED: 11/16/2023
	)	
Employer/Carrier-Respondents	)	
	)	
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 Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for Claimant.

Ross A. Carrozza and A. Judd Woytek, King of Prussia, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Denying Benefits (2020-BLA-06153) rendered on a claim filed on May 15, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 10.69 years of coal mine employment and found he failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus, he 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), or establish an essential element of entitlement, and denied benefits.

On appeal, Claimant argues the ALJ erred in finding he failed to establish at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment necessary to invoke the Section 411(c)(4) presumption. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. Claimant has filed a reply brief reiterating his contentions.

The Benefits Review 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.[2] 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12

[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) (2018); *see* 20 C.F.R. §718.305.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.5; Director's Exhibit 5.

BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or "substantially similar" surface coal mine employment and has a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b)(1)(i).

Length of Coal Mine Employment

Claimant bears the burden to establish the number of years he worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The ALJ evaluated three separate periods of Claimant's employment. He found that between 1965 and 1971, Claimant worked part-time for his father as a "bootleg" coal miner extracting coal from a hole/mine in their back yard, and thus credited him with a total of three years of coal mine employment for this period. Decision and Order at 8. Further, the ALJ found that from 1972 to 1982, Claimant worked as a coal miner for Jeddo-Highland Coal Company (Employer) for a total of 7.69 years. *Id*. at 7. Finally, the ALJ acknowledged Claimant was self-employed after 1982, collecting coal from railroad tracks that he would later resell, but found this work did not constitute that of a miner. *Id*. at 7-9. Thus he found Claimant had a total of 10.69 years of coal mine employment, insufficient to invoke the Section 411(c)(4) presumption. *Id*.

1972 to 1982

Claimant argues the ALJ erred in calculating his coal mine employment with Employer from 1972 to 1982. Claimant's Brief at 37-41. His arguments are not persuasive.

The ALJ considered Claimant's testimony, employment history forms, Social Security Administration (SSA) earnings records, and the affidavit of his sister, Susan E. Strack. Decision and Order at 5-9; Director's Exhibits 2, 5-8; Claimant's Exhibit 7; Hearing Tr. at 12-14, 16-17. He permissibly found Claimant's SSA earnings records to be the most probative evidence. *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA records over testimony and other sworn statements); Decision and Order at 6.

Because he could not ascertain the beginning and ending dates of Claimant's coal mine employment with Employer, the ALJ permissibly applied the calculation method at 20 C.F.R. §725.101(a)(32)(iii) to ascertain the number of days Claimant worked.[3] *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 401-06 (6th Cir. 2019); *Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003); Decision and Order at 7-9. He divided Claimant's yearly earnings as reported in his SSA earnings records by the coal mine industry's average daily earnings, as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual.* Decision and Order at 7-9. If Claimant's earnings reflected 125 or more working days in a given year, the ALJ credited him with one year of coal mine employment. *Id.* If Claimant had less than 125 working days, the ALJ credited him with a fractional year based on the ratio of the actual number of days worked to 125. *Id.* Using this method of calculation, the ALJ credited Claimant with 7.69 years of coal mine employment from 1972 to 1982. *Id.*

Claimant argues the ALJ erred in failing to consider the direct evidence establishing the beginning and ending dates of his coal mine employment with Employer and thus erred in finding he could not ascertain the beginning and ending dates based on the record. Claimant's Brief at 39. We disagree.

The ALJ properly weighed the direct evidence in this case. He acknowledged Claimant stated on his employment history forms that he worked for Employer from November 1971 to June 1982. Decision and Order 6, *citing* Director's Exhibit 5. However, the ALJ noted Claimant also testified at the hearing that he worked for Employer from November 1972 to 1983. *Id.*, *citing* Hearing Tr. at 14. In light of this inconsistency, the ALJ permissibly found the evidence insufficient to establish the exact beginning and ending dates of Claimant's coal mine employment with Employer. *Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order at 6.

Claimant next argues the ALJ erred in crediting him with fractional years of coal mine employment for the years 1972, 1973, 1978, 1979, 1981, and 1982 because "there is no other employment reflected during that period of time" on his SSA earnings records, and Claimant had an employment relationship with Employer from 1972 to 1982. Contrary to Claimant's argument, the mere fact that he had an employment relationship with

[3] If an ALJ cannot ascertain the beginning and ending dates of a miner's coal mine employment, or the miner's employment lasted less than a calendar year, the ALJ may divide the miner's annual earnings by the coal mine industry's average daily earnings as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*. 20 C.F.R. §725.101(a)(32)(iii).

Employer from 1972 to 1982 does not establish eleven years of coal mine employment during those years, as the record must establish Claimant had 125 working days within each calendar year. 20 C.F.R. §725.101(a)(32)(i). Although there is a presumption that Claimant had 125 working days within each calendar year if the evidence establishes his employment lasted for a calendar year or partial periods totaling a 365-day period amounting to one year, 20 C.F.R. §725.101(a)(32)(ii), the ALJ found that presumption rebutted based on SSA earnings and application of the formula at 20 C.F.R. §725.101(a)(32)(iii) showing Claimant had less than 125 working days in each of the years 1972, 1973, 1978, 1979, 1981, and 1982. Decision and Order at 6-8. Thus, we reject Claimant's argument.

Claimant also asserts the ALJ's use of the coal mine industry's average daily earnings in Exhibit 610 deprives him of due process and equal protection because miners in Pennsylvania "earn substantially less than the figures listed." Claimant's Brief at 40. But Claimant does not identify any evidence of record establishing the wages of Pennsylvania miners for the years 1972 to 1982. Thus, Claimant has not established that the ALJ failed to consider evidence relevant to the length of his coal mine employment or otherwise erred in utilizing the coal mine industry's average daily earnings as reported in Exhibit 610, which is specifically permitted under 20 C.F.R. §725.101(a)(32)(iii). We therefore reject this argument.

As it is rational, based on a reasonable method of calculation,[4] and supported by substantial evidence, we affirm the ALJ's finding that Claimant established 7.69 years of coal mine employment with Employer from 1972 to 1982. *Soubik*, 366 F.3d at 234; *Muncy*, 25 BLR at 1-27; *Clark*, 22 BLR at 1-280; *Vickery*, 8 BLR at 1-432; Decision and Order at 7-8.

[4] Claimant asserts the ALJ should have credited him with coal mine employment for every pre-1978 quarter in which he had earnings from coal mine operators that exceeded $50.00 as reflected in his SSA earnings records. Claimant's Reply Brief at 6-7. We disagree. Although the ALJ may use this method of calculation, he is not required to do so; rather, his calculation must be affirmed if based on a reasonable method and supported by substantial evidence. *See Tackett v. Director, OWCP*, 6 BLR 1-839 (1984); *see also Shepherd v. Incoal, Inc.*, 915 F.3d 392, 405-06 (6th Cir. 2019) (ALJ may apply the *Tackett* method unless "the miner was not employed by a coal mining company for a full calendar quarter.").

Post-1982

With respect to his post-1982 employment, the ALJ found Claimant's work did not constitute coal mine employment because it did not meet the situs-function test.[5] Decision and Order at 8-9. He explained his finding as follows:

> Claimant also testified that while "self employed," he tried "for a couple more years" "bootleg[ing] coal from underneath railroad tracks" and selling it. Tr. at 17. The Tribunal does not credit Claimant with any coal mine employment during this period. Claimant has the burden of proof. Unlike his work for his father [extracting coal from a hole/mine in their back yard], here, there is no evidence that Claimant's activities were at a coal mine. The removal of coal from existing railroad tracks does not involve the extraction of coal "from its natural deposits in the earth by any means, and in the work of preparing the coal so extracted, and includes coal preparation facilities." 20 C.F.R. §725.101(a)(12). Further, the Tribunal finds that Claimant did not qualify as a miner when performing these acts. Here, Claimant has not provided evidence that he was removing coal at a mine or on mine property, but rather, he was removing it from some unspecified train track from under rail timers and had to remove ash off the top of the coal. Claimant is essentially obtaining coal that was in the process of being transported by rail and apparently fell off the train while en route. Claimant's work was not integral to the extraction of the coal. What Claimant was essentially doing was obtaining coal after it had been extracted and moved from the coal mine facility. Further, the work he performed was not integral to the extraction of the coal at a coal mine. He may have later "processed" it by breaking it into smaller chucks for resale after "procuring" it, but that did not occur at a mine. Further, there is a question as to the status of the coal itself that Claimant was obtaining it from the railroad tracks. Claimant has not established that the

[5] A "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d). The Third Circuit has held duties that meet situs and function requirements constitute the work of a miner as defined in the Act. *Hanna v. Director, OWCP*, 860 F.2d 88, 91 (3d Cir. 1988). The "situs" test requires work in or around a coal mine or coal preparation facility, while the "function" test requires performance of coal extraction or preparation work. *Stroh v. Director, OWCP*, 810 F.2d 61, 63 (3d Cir. 1987); *Wisor v. Director, OWCP*, 748 F.2d 176, 178-79 (3d Cir. 1984).

> coal he was obtaining was unprocessed coal . . . . In short, at best, Claimant's work was ancillary to the actual extraction and preparation of the coal.

Decision and Order at 8-9 (footnote omitted); *see Hanna v. Director, OWCP*, 860 F.2d 88, 91 (3d Cir. 1988); *Stroh v. Director, OWCP*, 810 F.2d 61, 63 (3d Cir. 1987); *Wisor v. Director, OWCP*, 748 F.2d 176, 178-79 (3d Cir. 1984).

Claimant generally argues the ALJ mischaracterized this work as "solely picking up coal that fell off trains" but does not set forth any other work he performed during this time. Claimant's Brief at 6, 37, 41. Because Claimant does not identify any specific error in the ALJ's finding that this work does not meet the situs or function elements, we are not persuaded by his argument. Thus, we affirm the ALJ's finding that Claimant did not establish any coal mine employment after 1982.

1965-1971

The ALJ found Claimant worked as a bootleg coal miner with his father for a six-year period from 1965 to 1971. Decision and Order at 8. This finding is affirmed as unchallenged. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). As Claimant did this work on a part-time basis, the ALJ reduced this period to three years. *Id.* Claimant argues the ALJ erred in reducing this period of coal mine employment by half. Claimant's Brief at 32-43; Claimant's Reply Brief at 5. Even if Claimant had established an additional three years of coal mine employment, however, he would still have less than fifteen years of coal mine employment. Thus, Claimant has not explained how the error he alleges would make a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

Based on the foregoing, we affirm the ALJ's finding that Claimant established less than fifteen years of coal mine employment and thus cannot invoke 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 or comparable gainful work.[6] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on

[6] The ALJ found Claimant's usual coal mine employment required him to frequently lift one hundred pounds and thus required "very heavy exertion." Decision and Order at 10. This finding is affirmed as unchallenged. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

qualifying[7] pulmonary function studies or 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).

The ALJ found Claimant failed to establish total disability by any method. Decision and Order at 11-22. Claimant argues the ALJ erred in weighing the pulmonary function studies and medical opinions.[8] Claimant's Brief at 43-55.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated May 9, 2019, and March 2, 2020. Decision and Order at 11-13. The May 9, 2019 study produced qualifying results before and after administration of bronchodilators, while the March 2, 2020 study produced non-qualifying results before and after administration of bronchodilators. Director's Exhibits 13, 23. The ALJ found both studies valid.

In resolving the conflict in the evidence, the ALJ credited the non-qualifying March 2, 2020 study because Claimant gave more effort when performing it, resulting in non-qualifying values. Decision and Order at 12-13. He explained "pulmonary function testing is effort-dependent," and thus "spurious low values can result, but spurious high values are not possible." *Id.*, *quoting Andruscavage v. Director, OWCP*, No. 93-3291 (3d Cir. Feb. 22, 1994) (unpub.). In addition, he gave greater weight to the non-qualifying March 2, 2020 study because it is "more recent." *Id.*

Claimant first argues the ALJ erred in finding that the March 2, 2020 non-qualifying study is valid.[9] Claimant's Brief at 10. We disagree. Dr. Simelaro stated the "vents" from

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] As it is unchallenged, we affirm the ALJ's finding that Claimant did not establish total disability based on arterial blood gas studies or evidence of cor pulmonale with right-sided congestive heart failure. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(ii), (iii).

[9] When considering pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23

this study are unacceptable because the pre-bronchodilator FEV_1 and post-bronchodilator FEV_1 are 100 cubic centimeters (cc) apart, "which is over the 100cc rule." Claimant's Exhibit 10. The ALJ correctly observed that the regulatory quality standards do not reference a comparison of the pre-bronchodilator results to the post-bronchodilator results when assessing whether a pulmonary function study is valid.[10] 20 C.F.R. Part 718, App. B; *see* Decision and Order at 12. Thus, he permissibly found Dr. Simelaro's opinion unpersuasive because the doctor did not set forth the "100cc rule" on which he based his opinion. Decision and Order at 12; *see Soubik*, 366 F.3d at 234. As it is supported by substantial evidence, we affirm the ALJ's finding that the March 2, 2020 non-qualifying study is valid. Decision and Order at 12.

Claimant next argues the ALJ erred in resolving the conflict in the pulmonary function study evidence. Claimant's Brief at 10-11, 46-47; Claimant's Reply Brief at 7-8. We agree.

First, the ALJ's decision to credit the non-qualifying pulmonary function study over the qualifying study because Claimant allegedly gave more effort on the non-qualifying study is inconsistent with applicable law. Decision and Order at 12-13. The ALJ did not cite any credible medical evidence to support his finding that Claimant gave more effort when performing the non-qualifying study. Thus, he improperly substituted his opinion

---

BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable); 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ must then, in his role as fact-finder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987).

[10] Appendix B to 20 C.F.R. Part 718 sets out the quality standards for the administration of pulmonary function studies. A miner's effort "shall be judged unacceptable" when there is "excessive variability between the three acceptable curves. The variation between the two largest FEV_1's of the three acceptable tracings should not exceed [five] percent of the largest FEV_1 or 100 [milliliters], whichever is greater. . . . Failure to meet this standard should be clearly noted in the test report by the physician conducting or reviewing the test." 20 C.F.R. Part 718, App. B; *see* Decision and Order at 12. The ALJ correctly stated that the quality standards refer to the "same type of testing," specifically a comparison of the pre-bronchodilator curves to one another, and not a comparison of pre-bronchodilator curves to post-bronchodilator curves. *Id*.

for that of a medical expert.[11] *See Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131, 1-135 (1986). In addition, the ALJ found the May 9, 2019 qualifying study is valid as it is in substantial compliance with the quality standards. Decision and Order at 12. By so finding, the ALJ determined Claimant put forth adequate effort when performing it. *Id*. Moreover, courts have cautioned against presuming that higher results are more credible than lower results among valid pulmonary function studies. *See Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991) (because pneumoconiosis is a chronic condition, a miner's functional ability on a pulmonary function study may vary, and thus could measure higher on any given day than its typical level).

The ALJ also erred by crediting the more recent non-qualifying study over the qualifying study based on its recency. It is irrational to credit evidence solely based on recency when it shows a miner's condition improves. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993), *citing Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *see also Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718 (4th Cir. 1993) ("blindly ascribing more weight to the most recent evidence" is "arbitrary and irrational"); *Smith v. Kelly's Creek Res.*, BLR , BRB No. 21-0329 BLA, slip op. at 10 (June 27, 2023); Decision and Order at 13.

As the ALJ did not set forth a valid basis for resolving the conflict in the evidence, we vacate his finding that Claimant failed to establish total disability based on the pulmonary function testing. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 12.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Corwin, Veglia, and Kruklitis. Decision and Order at 14-21. Drs. Corwin and Veglia opined Claimant is totally disabled, while Dr. Kruklitis opined he is not. Director's Exhibits 13, 19, 24; Claimant's Exhibits 8, 9; Employer's Exhibit 3. The ALJ credited Dr. Kruklitis's opinion because he reviewed a greater body of medical evidence, including the medical reports and objective studies of Drs. Corwin and Veglia. Decision and Order at 20. He assigned diminished weight to Dr. Corwin's opinion because the doctor did not review the non-qualifying objective testing or Dr. Kruklitis's opinion. *Id*. Although he acknowledged that Dr. Veglia is Claimant's treating physician, the ALJ found the doctor's opinion entitled to diminished

[11] Although the ALJ cited *Andruscavage v. Director, OWCP*, No. 93-3291 (3d Cir. Feb. 22, 1994) (unpub.), unpublished decisions are not considered binding precedent in the Third Circuit. *See* Fed. R. App. P. 32.1; 3d. Cir. Internal Operating Procedures 5.2, 5.3, 5.7.

weight because he assumed that the pulmonary function testing is qualifying for total disability, contrary to the ALJ's determination that it does not support a finding of total disability. *Id*. In addition, the ALJ found Dr. Veglia's opinion not credible because he did not review Dr. Kruklitis's medical report or objective testing. *Id*. Finally, he found Dr. Veglia did not have an accurate understanding of Claimant's cigarette smoking history or length of coal mine employment. *Id*. He thus concluded the medical opinion evidence does not support a finding of total disability. *Id*.

Because the ALJ's error in weighing the pulmonary function study evidence may have affected his weighing of the medical opinion evidence, we vacate his determination that the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21. Further, the ALJ has not set forth any reason why Dr. Veglia's opinion is not credible on the issue of total disability based on the doctor's understanding of Claimant's cigarette smoking and coal mine employment histories. 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). *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023).

Consequently, we vacate the ALJ's findings that Claimant did not establish total disability based on the medical opinions, 20 C.F.R. §718.204(b)(2)(iv), and the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 22. We therefore vacate the ALJ's denial of benefits.

Remand Instructions

On remand, the ALJ must first reconsider whether the pulmonary function studies support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i). 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 sophistication of and bases for their conclusions. *See Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986). He must also explain his findings in accordance with Administrative Procedure Act.[12]

[12] 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).

If Claimant establishes total disability based on the pulmonary function studies or medical opinions, the ALJ must then weigh all the relevant evidence together to determine whether he established total disability. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Rafferty,* 9 BLR at 1-232; *Shedlock,* 9 BLR at 1-198.

If Claimant establishes total disability, the ALJ must then determine whether he has established pneumoconiosis and total disability due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(c). If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *Anderson,* 12 BLR at 1-112; *Trent,* 11 BLR at 1-2.

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded to the ALJ 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