**U.S. Department of Labor**

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

BRB No. 24-0125 BLA

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| DOUGLAS FLETCHER<br><br>Claimant-Respondent<br><br>v.<br><br>JEWELL RIDGE COAL CORPORATION<br><br>Employer-Petitioner<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | **NOT-PUBLISHED**<br><br>DATE ISSUED: 04/24/2025<br><br>DECISION and ORDER |

Appeal of the Decision and Order Granting Benefits and Errata Order of Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Granting Benefits and Errata Order[1] (2021-BLA-05900) rendered on a

[1] The ALJ's Errata Order was issued after her Decision and Order awarding benefits to correctly identify Employer's Exhibits as Employer's Exhibits 1 through 5, not

subsequent claim[2] filed on December 26, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least nine years of coal mine employment and thus found he 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).[3] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established clinical and legal pneumoconiosis[4] and is totally disabled due to legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). She therefore found Claimant established a change in an applicable condition of entitlement,[5] 20 C.F.R. §725.309(c), and awarded benefits.

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Employer's Exhibits 1 through 7 as cited in her original decision. The Errata Order does not otherwise alter her original decision.

[2] The record reveals that this is a subsequent claim. Director's Exhibit 45 at 9. However, the ALJ stated that a memorandum from the district director indicates the Federal Records Center "likely destroyed" the records associated with Claimant's two prior claims, filed on March 31, 1981, and July 22, 2002. Decision and Order at 2. Because Claimant's prior claim records are unavailable, the ALJ assumed the district director denied the prior claim for failure to establish any element of entitlement. *Id*. Although Claimant also filed a prior claim on April 25, 2018, it was withdrawn and therefore is considered "not to have been filed." 20 C.F.R. §725.306(b); Decision and Order at 2.

[3] Section 411(c)(4) 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.

[4] "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). "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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[5] When a claimant 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 she finds that "one of the applicable conditions of entitlement . . . has changed since the date

On appeal, Employer challenges the ALJ's findings that Claimant established both clinical and legal pneumoconiosis, total disability, and total disability due to legal pneumoconiosis. Claimant did not file a response brief. The Acting Director, Office of Workers' Compensation Programs, declined to file a response brief.

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.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc*., 380 U.S. 359 (1965).

**Entitlement Under 20 C.F.R. Part 718**

To be entitled to benefits under the Act,[7] Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis 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. Failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc*., 12 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).

upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see 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 the ALJ assumed Claimant's prior claim was denied for failing to establish any element of entitlement, Claimant had to establish at least one element of entitlement to obtain review of the merits of this claim. *See White*, 23 BLR at 1-3; Director's Exhibit 2.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4; Hearing Transcript at 12.

[7] The ALJ properly found Claimant could not invoke the Section 411(c)(4) presumption because he did not establish the requisite fifteen years of qualifying coal mine employment. 20 C.F.R. §718.305(b)(1)(i); Decision and Order at 6-7.

**Legal Pneumoconiosis**

To establish legal pneumoconiosis, Claimant must demonstrate he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has held that a claimant can establish legal pneumoconiosis by showing coal dust exposure contributed "in part" to the miner's respiratory or pulmonary impairment. *See Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (A miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment.").

The ALJ considered the medical opinions of Drs. Forehand, Sargent, and McSharry. Dr. Forehand diagnosed legal pneumoconiosis in the form of an obstructive lung disease with impairment of gas exchange due to both coal mine dust exposure and cigarette smoking. Director's Exhibit 18 at 4. Conversely, Drs. Sargent and McSharry opined Claimant does not have legal pneumoconiosis and related Claimant's obstructive lung disease to smoking and asthma, respectively, and not to coal mine dust exposure.[8] Director's Exhibit 22 at 3; Employer's Exhibits 3 at 2; 4; 5 at 11-13. Dr. McSharry also diagnosed Claimant with hypoxemia due to a collapsed lung and not to coal mine dust exposure. Employer's Exhibits 3 at 2; 5 at 13, 17.

The ALJ credited Dr. Forehand's opinion and gave lesser weight to the contrary opinions of Drs. Sargent and McSharry to find that Claimant established legal pneumoconiosis. Decision and Order at 22-23.

Employer argues Dr. Forehand's opinion is not well-reasoned or documented, that the ALJ did not equally scrutinize the medical opinions, and that the ALJ failed to

[8] Dr. Sargent diagnosed a partially reversible mild obstructive ventilatory impairment consistent with cigarette smoking but not coal mine dust exposure because smoking is "the most common cause of obstructive impairment even in Appalachian coal miners." Director's Exhibit 22 at 3; *see also* Employer's Exhibit 4 at 20. Dr. McSharry opined that Claimant has a mild-to-moderate obstructive pulmonary impairment consistent with asthma and opined Claimant's hypoxemia is related to a collapsed lung (atelectasis) unrelated to coal mine dust exposure. Employer's Exhibits 3 at 2; 5 at 13, 17.

adequately explain the bases for her credibility findings as the Administrative Procedure Act (APA) requires.[9] Employer's Brief at 15 (unpaginated). We disagree.

Initially, we reject Employer's contention that the ALJ erred in relying on Dr. Forehand's opinion because he did not review all of the evidence of record or account for Claimant's "improved" diagnostic testing obtained after his examination.[10] Employer's Brief at 17 (unpaginated). An ALJ has the discretion to credit a physician's opinion that is based solely on the physician's personal examination of the miner and his interpretation of the objective testing obtained in that examination. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Fields*, 10 BLR at 1-21-22 (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion).

We also reject Employer's contention that Dr. Forehand's opinion is insufficient to support Claimant's burden of proof because the physician did not sufficiently address Claimant's smoking history nor sufficiently explain why Claimant has legal pneumoconiosis. Employer's Brief at 17 (unpaginated). As the ALJ noted, Dr. Forehand reported Claimant smoked two packs a day for thirty-two years, consistent with the ALJ's findings, and specifically acknowledged that smoking was the greater contributor to his respiratory disease. Decision and Order at 12-13; Director's Exhibit 18 at 2, 4. However, Dr. Forehand explained that Claimant's obstructive lung disease is the direct result of the synergistic effect of both smoking and coal mine dust exposure. Director's Exhibit 18 at 4. He concluded that while Claimant's respiratory impairment was caused by smoking,

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[9] The Administrative Procedure Act (APA) 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).

[10] The pulmonary function studies Dr. Forehand conducted on April 21, 2020, both before and after the administration of a bronchodilator, yielded an FEV1 result of 1.52, whereas the subsequent pulmonary function studies conducted by Drs. Sargent and McSharry yielded FEV1s with higher results of at least 1.72. Director's Exhibits 18, 22; Employer's Exhibit 3. Although the exercise blood gas study Dr. Forehand conducted is qualifying, subsequent exercise blood gas studies Drs. Sargent and McSharry conducted are non-qualifying. *Id*.

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).

coal mine dust exposure was still a substantially contributing factor in that impairment as the exposures are not mutually exclusive. *Id.*

The ALJ permissibly found Dr. Forehand's opinion is well-reasoned and well-documented because he set forth the rationale for his findings based on the interpretation of the medical evidence he considered, including Claimant's exposure histories, medical histories, and diagnostic testing. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); Decision and Order at 13; Director's Exhibit 18 at 4. In addition, the ALJ adequately explained that Dr. Forehand's conclusion "flows logically" from the objective "data" he collected[11] and his opinion is consistent with the Department of Labor's position in the preamble to the revised 2001 regulations that the risks of coal mine dust exposure can be additive with those of smoking. 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000) ("Even in the absence of smoking, coal mine dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis. The risk is additive with cigarette smoking."); *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 674 (4th Cir. 2017) (affirming the ALJ's crediting of medical opinions that were consistent with the premise underlying the regulations that the effects of smoking and coal mine dust are additive); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 13; Director's Exhibit 18 at 4. Thus, we affirm the ALJ's conclusion that Dr. Forehand's opinion supports a finding that Claimant has legal pneumoconiosis.

With regard to Employer's experts, Employer contends the ALJ shifted the burden of proof by requiring them to explain why Claimant's impairment was not significantly related to coal mine dust exposure. Employer's Brief at 17 (unpaginated). Employer asserts that to the extent Drs. Sargent and McSharry did explain why Claimant does not have legal pneumoconiosis, the ALJ did not adequately explain his rejection of their opinions. *Id*. at 17-19 (unpaginated).

Contrary to Employer's argument, the ALJ did not improperly shift the burden of proof but simply found unpersuasive Dr. Sargent's rationale for why Claimant does not

[11] As the ALJ observed, Dr. Forehand conducted a pulmonary function study which reflected an obstructive ventilatory impairment and a blood gas study that reflected arterial hypoxemia. Decision and Order at 12. Dr. Forehand reported Claimant had nine years of coal mine employment without wearing full-time dust mask protection at the face of underground mines and a significant smoking history (smoked two packs per day for thirty-two years); he took into account the simultaneous exposures of both coal mine dust and smoking. *Id.*; *see* Director's Exhibit 18 at 1, 3-4.

have legal pneumoconiosis. As the ALJ noted, in excluding coal mine dust exposure as a causative factor for Claimant's respiratory impairment, Dr. Sargent relied on the partial reversibility of Claimant's respiratory impairment after the use of a bronchodilator. Decision and Order at 17. The ALJ permissibly found Dr. Sargent's rationale unpersuasive because he did "not address the etiology of the fixed portion" of Claimant's impairment. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); Decision and Order at 17; Director's Exhibit 22 at 3; Employer's Exhibit 4 at 12-13.

Additionally, despite Dr. Sargent's reliance on his belief that the common cause of obstructive impairment is smoking, the ALJ permissibly found this aspect of Dr. Sargent's opinion was based on a "generality" without any further support or explanation. *See Cochran*, 718 F.3d at 324 (ALJ may find medical opinion unpersuasive if it is based on statistical generalities rather than the specifics of the miner's case); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985) (same); Decision and Order at 17; Director's Exhibit 22 at 3. Finally, the ALJ properly found Dr. Sargent's opinion that it is "highly unlikely" that coal mine dust exposure contributed to Claimant's impairment given his lack of positive x-ray evidence is inconsistent with the regulations that state that a diagnosis of legal pneumoconiosis can be made "notwithstanding a negative x-ray." 20 C.F.R. §718.202(a)(4); *Looney*, 678 F.3d at 313; Decision and Order at 17; Director's Exhibit 22 at 3.

Dr. McSharry diagnosed asthma unrelated to coal mine dust exposure, stating he did not expect residual coal dust-related irritation, especially after cessation of Claimant's coal mine dust exposure. Employer's Exhibit 5 at 12-13. The ALJ permissibly gave Dr. McSharry's opinion lesser weight because it "overlooks the fact that legal pneumoconiosis is . . . a latent and progressive disease which may become manifest long after the cessation of exposure." 20 C.F.R. §718.201(c); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); *see also* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) ("it is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period"); Decision and Order at 22. In addition, the ALJ permissibly gave lesser weight to Dr. McSharry's opinion that Claimant does not have legal pneumoconiosis due to the "significant" reversibility seen on Claimant's pulmonary function testing because the ALJ found Dr. McSharry did not account for the fixed portion of Claimant's respiratory impairment. *See Banks*, 690 F.3d at 489; *Swiger*, 98 F. App'x at 237; Decision and Order at 22; Employer's Exhibit 5 at 9, 13.

As the ALJ acted within her discretion in resolving the conflict in the medical opinions,[12] and permissibly credited Dr. Forehand's opinion that Claimant has legal pneumoconiosis, we affirm her determination that Claimant established legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).[13] 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 22-23.

**Total Disability**

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.[14] 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies, 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 established total disability based on the medical opinion evidence and the evidence as a whole.[15] Decision and Order at 26-30. Specifically, the ALJ credited Dr. Forehand's opinion that Claimant is totally disabled over the contrary

[12] As the ALJ provided a valid reason for giving lesser weight to Drs. Sargent's and McSharry's opinions, we need not address Employer's remaining arguments that the ALJ harshly scrutinized their opinions and ignored the inconsistency between their opinions and Dr. Forehand's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 19 (unpaginated).

[13] Because we have affirmed the ALJ's finding of legal pneumoconiosis, we need not address Employer's challenge to the ALJ's finding of clinical pneumoconiosis as any error in that regard would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 10-14 (unpaginated).

[14] The ALJ found Claimant's usual coal mine work as a beltman required heavy exertion. Decision and Order at 6-7; Director's Exhibit 4; Hearing Transcript at 13-14.

[15] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies and there is no evidence Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 23-26.

opinions of Drs. Sargent and McSharry. Decision and Order at 27-29; Director's Exhibits 18, 22; Employer's Exhibits 3-5.

Employer argues the ALJ erred in finding Dr. Forehand's opinion reasoned and documented since he relied on non-qualifying pulmonary function tests to support his conclusions and did not have access to all of Claimant's medical records or other objective tests which demonstrated higher results. Employer's Brief at 5-9 (unpaginated). We are unpersuaded by Employer's argument.

Contrary to Employer's argument, a physician can conclude a miner is totally disabled despite non-qualifying, objective testing. 20 C.F.R. §718.204(b)(2)(iv); *see Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997) (physician may conclude a miner is totally disabled even if the objective studies are non-qualifying); *Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-40 (2023) (same); Employer's Brief at 5 (unpaginated). Moreover, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner, objective test results, and exposure histories. *See Church*, 20 BLR at 1-13; *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984). Based on the studies he administered, Dr. Forehand described Claimant as having "[i]nsufficient residual ventilatory and gas exchange capacities" reflected by the pulmonary function study FEV1 result of 1.52, conducted both before and after the administration of a bronchodilator, and the exercise blood gas study PO2 result of 61. Director's Exhibit 18 at 4. Dr. Forehand stated that these values:

> leave [Claimant] with insufficient 'wind' (the ability to increase ventilation in response to an increase in physical activity) and oxygen to return to, meet the physical demands, or tolerate additional coal mine dust exposure at his last coal mining job.

*Id*. The ALJ permissibly credited Dr. Forehand's opinion because it was based on a "sufficient understanding of the exertional demands of Claimant's usual coal mine employment" and supported by "objective testing indicat[ing] insufficient residual ventilatory and gas exchange capacities to carry out those demands." *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997) (miner's exertional requirements mandate careful consideration when the physician must determine whether an impairment prevents the miner from performing his usual coal mine work); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Decision and Order at 27; Director's Exhibit 18 at 4. Because the ALJ acted within her discretion, we affirm her crediting of Dr. Forehand's opinion that Claimant is totally disabled.

Employer also argues that the ALJ failed to adequately explain why the opinions of Drs. Sargent and McSharry were entitled to no weight. Employer's Brief at 5, 7-9 (unpaginated). However, the ALJ permissibly found Dr. Sargent's opinion unpersuasive because he did not sufficiently consider whether Claimant would be able to perform the exertional requirements of his last coal mine employment and could only speculate regarding Claimant's impairment.[16] *See Lane*, 105 F.3d at 172; *Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991) (physician who asserts a claimant is capable of performing assigned duties should state his knowledge of the physical efforts required and relate them to the miner's impairment); *Walker v. Director, OWCP*, 927 F.2d 181, 184-85 (4th Cir. 1991); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *see also U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may not credit a purely speculative opinion); Decision and Order at 28; Director's Exhibit 22 at 2-3; Employer's Exhibit 4 at 15-17. Thus, we affirm the ALJ's finding that Dr. Sargent's opinion is speculative and not persuasive.

Dr. McSharry opined that Claimant does not have a disabling lung disease and that Claimant's cardiac and pulmonary health are appropriate for his age, but the physician stated whether that degree of health is adequate to allow him to perform his last coal mine job is "uncertain." Employer's Exhibit 3 at 2. Moreover, Dr. McSharry stated that if Claimant has a disability, it would be due to his age or mild to moderate asthma. *Id*. Further, Dr. McSharry testified that Claimant's limitation on exercise "may well be" due to heart issues and not respiratory issues. Employer's Exhibit 5 at 16-17. Dr. McSharry also testified that Claimant "probably" has a mild pulmonary impairment of an obstructive nature. *Id*. at 19.

Employer's general assertion that Dr. McSharry "fully explained" his opinion that Claimant is not totally disabled from a respiratory or pulmonary standpoint, and that Dr. Sargent's opinion is "in agreement with" Dr. McSharry's opinion, is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 8 (unpaginated). Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion

[16] Dr. Sargent diagnosed Claimant with severe resting hypoxemia with hypercarbia and opined that if Claimant did not have hypercarbia, his "oxygenation" would likely improve to the range of "moderate," instead of "severe." Director's Exhibit 22 at 2; *see also* Employer's Exhibit 4 at 15-17. He added that if Claimant's PO2 on blood gas testing were corrected for the elevated PCO2, Claimant "likely" would be in the "moderate, non-disabling" range if his PCO2 were normal. Director's Exhibit 22 at 3; Employer's Exhibit 4 at 15-17.

evidence at 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 30.

**Disability Causation**

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *Robinson v. Pickands Mather & Co*., 914 F.2d 35, 38 (4th Cir. 1990). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

Dr. Forehand diagnosed Claimant with a totally disabling obstructive lung disease with an impairment of gas exchange due in part to coal mine dust exposure and opined that it substantially contributes to Claimant's totally disabling respiratory impairment. Director's Exhibit 18 at 4-5. As discussed above, the ALJ permissibly relied on Dr. Forehand's opinion to conclude Claimant's totally disabling lung disease constitutes legal pneumoconiosis. Decision and Order at 13, 27. Therefore, we see no error in the ALJ's finding that Claimant established his legal pneumoconiosis is a substantially contributing cause of his total disability based on Dr. Forehand's opinion. *See American Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 326 (4th Cir. 2024) (if a miner's legal pneumoconiosis is his total disability, separately analyzing disability causation is unnecessary); *Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 186-87 (4th Cir. 2014) (death causation satisfied where the court found the miner's chronic obstructive pulmonary disease (COPD) constituted legal pneumoconiosis and all medical experts agreed COPD contributed to the miner's death); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 115 (4th Cir. 1995) ("The parties have not cited and we have not found, any case law addressing whether an ALJ who finds that the claimant established the existence of pneumoconiosis could also find that the claimant did not establish that his total disability was due to pneumoconiosis on the strength of the medical opinions of doctors who had concluded that the claimant did not have pneumoconiosis."); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-56 (2019); 20 C.F.R. §718.204(c); Decision and Order at 30-32.

In addition, the ALJ rationally discredited the disability causation opinions of Drs. Sargent and McSharry because they did not diagnose legal pneumoconiosis, contrary to her finding that Claimant has the disease. *Epling*, 783 F.3d at 505 (physicians who "erroneously fail to diagnose" either of the two predicates to disability causation – total disability and pneumoconiosis – "may not be credited at all, unless an ALJ is able to 'identify specific and persuasive reasons for concluding that the doctor's judgment on the

question of disability causation does not rest upon' the "predicate" [] misdiagnosis."); Decision and Order at 31. Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability due to legal pneumoconiosis based on Dr. Forehand's opinion. 20 C.F.R. §718.204(c); Decision and Order at 30-32. Consequently, we affirm the ALJ's finding that Claimant established entitlement under 20 C.F.R. Part 718 and affirm the award of benefits.

Accordingly, we affirm the ALJ's Decision and Order Granting Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the ALJ's award of benefits. Because the ALJ did not employ equal scrutiny to the physicians' opinions, and failed to properly consider all the relevant evidence, like and unlike, I would vacate the ALJ's findings that Claimant established legal pneumoconiosis and total disability. Because these findings affected the ALJ's determinations as to disability causation and ultimate entitlement, I would vacate those findings and conclusions as well.

At legal pneumoconiosis and total disability, the ALJ credited the opinion of Claimant's doctor, Dr. Forehand, and discredited those of Employer's doctors, Drs. McSharry and Sargent. Decision and Order at 21-23, 27-30. Employer argues the ALJ erred by closely scrutinizing the opinions of its doctors while not performing the same close scrutiny to Claimant's doctor's opinion. Employer's Brief at 5-10, 15-19 (unpaginated). Examination of the ALJ's opinion supports Employer's contention.

The ALJ must apply equal scrutiny to the evidence. *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc). In this case, the ALJ made conclusory

statements about Dr. Forehand's opinion but did not analyze it, while she closely analyzed the opinions of Employer's doctors. *See* Decision and Order at 13, 17-18, 21-23, 27-30.

Moreover, while an ALJ may credit a physician's opinion based on the documentation the physician considered, she must consider contrary evidence (particularly in weighing the evidence as a whole). *See Universal Camera v. NLRB*, 340 U.S. 474, 488 (1951) ("substantiality of evidence must take into account whatever in the record fairly detracts from its weight"); *Sterling Smokeless Coal Co., v. Akers*, 131 F.3d 438, 339-40 (4th Cir. 1997) (same); *Director, OWCP v. Congleton*, 743 F.2d 428, 430 (6th Cir. 1984) (finding which does not encompass discussion of contrary evidence does not warrant affirmance).

Here, Dr. Forehand opined Claimant is totally disabled based on Claimant's FEV1 and FEV1/FVC values, as well as on Claimant's p02 results on exercise blood gas study, in testing that he conducted. Director's Exhibit 18 at 4. As Employer points out, these values improved on subsequent testing that Dr. Forehand did not review. *See* Employer's Brief at 7 (unpaginated).

Moreover, Dr. Forehand also relied on the April 21, 2020 blood gas study that produced qualifying values during exercise; however, the later two studies conducted by Drs. Sargent and McSharry on March 10, 2021 and July 18, 2022, respectively, yielded non-qualifying values during exercise. Director's Exhibits 18, 22; Employer's Exhibit 3. Thus, the ALJ should have considered whether Dr. Forehand's opinion remained credible in the face of the evidence the other physicians found evidenced improvement. Further, when considering the arterial blood gas studies, the ALJ placed greater emphasis on the exercise testing, noting that Dr. McSharry emphasized the improvement in exercise test results in forming his opinion. Decision and Order at 25-26; Director's Exhibits 18, 22; Employer's Exhibits 3, 5. However, in considering the evidence as to disability as a whole, the ALJ summarily dismissed the blood gas and pulmonary function study evidence, as alternative means of establishing entitlement, and simply gave greater weight to the medical opinion evidence, observing Dr. Forehand based his opinion on a non-qualifying [pulmonary function study] result. Decision and Order at 23-30. Specifically, the ALJ concluded the pulmonary function study and blood gas study values did not undermine the weight of the medical opinion evidence because they were "not requisite means of

establishing total disability" and "measure[d] different types of impairment." Decision and Order at 30.[17]

But it was incumbent on the ALJ to consider the evidence together, like and unlike, to determine whether it supported or detracted from the conclusions that the ALJ had reached when considering the evidence in isolation. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987). Thus, it was the ALJ's obligation to examine Dr. Forehand's opinion of total disability in light of all of the blood gas study and pulmonary function study values, *including the improved results* seen on subsequent FEV1, FEV1/FVC ratio, and exercise arterial blood gas testing (which Dr. Forehand did not consider) to determine whether Dr. Forehand's opinion remained credible when considering the totality of the evidence. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 529 (4th Cir. 1998) ("If contrary probative evidence exists, 'the ALJ must assign the contrary evidence appropriate weight and determine whether it outweighs the evidence that supports a finding of total disability.'"), *citing Lane v. Union Carbide Corp.*, 105 F.3d 166, 171 (4th Cir. 1997). The ALJ did not do so, and as Employer argues, she failed to consider all of the evidence when weighing the evidence as a whole. Employer's Brief at 5-7 (unpaginated). Thus, I would vacate the ALJ's finding that the medical opinion evidence established total disability.

However, I would affirm the ALJ's findings and conclusions that the blood gas study and pulmonary function study evidence do not support the establishment of total disability as an element of entitlement, and there is no evidence of cor pulmonale with right-sided congestive heart failure.

JUDITH S. BOGGS
Administrative Appeals Judge

[17] In making this finding, the ALJ ignored the close connection between the pulmonary function and arterial blood gas evidence and the medical opinion evidence, since the medical opinion evidence he credited relied on the testing results.