U.S. Department of Labor

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

BRB No. 24-0158 BLA

JUAN MARTINEZ Claimant-Respondent v. PEABODY NEW MEXICO SERVICES, LLC, Self-insured through PEABODY ENERGY CORPORATION Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/11/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Donna E. Sonner and Joseph E. Wolfe (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Scott A. White (White & Risse, LLC), Arnold, Missouri, for Employer.

Before: ROLFE and JONES, Administrative Appeals Judges, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order Awarding Benefits (2019-BLA-05598), rendered on a claim filed on January 13, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.

In his initial Decision and Order, the ALJ credited Claimant with 13.5 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).[1] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established total disability due to pneumoconiosis. 20 C.F.R. §§718.202, 718.203, 718.204(b), (c). Thus, he awarded benefits.

In consideration of Employer's appeal,[2] the Board rejected Employer's arguments that the ALJ lacked the authority to hear and decide the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution and that the removal provisions applicable to the ALJ rendered his appointment unconstitutional.[3]

[1] 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.

[2] The Board consolidated Employer's appeal of the ALJ's Attorney Fee Order with its appeal of the Decision and Order for purposes of decision only. *Martinez v. Peabody N.M. Servs.*, BRB Nos. 20-0558 BLA and 21-0065 BLA, slip op. at 2 n.1 (Sept. 28, 2022) (unpub.). The Board affirmed the ALJ's award of $10,362.50 in attorneys' fees and $3,687.60 in expenses but vacated $50.00 in expenses and remanded for the ALJ to consider whether $50.00 for requesting medical records was reasonable and necessary to establish entitlement. *Id.* at 21-22. On remand, the ALJ accepted the parties' agreement on attorneys' fees and expenses. May 24, 2024 Attorney Fee Order.

[3] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment

Martinez v. Peabody N.M. Servs., BRB Nos. 20-0558 BLA and 21-0065 BLA, slip op. at 3-7 (Sept. 28, 2022) (unpub.). The Board also affirmed the ALJ's finding that Claimant established 13.5 years of coal mine employment. *Id.* at 3 n.4. But the Board vacated his findings that Claimant established legal and clinical pneumoconiosis,[4] total disability, and disability causation. *Id.* at 7-16. Thus, the Board vacated the award of benefits and remanded the case for further consideration. *Id.* at 15-16, 22.

Considering entitlement under 20 C.F.R. Part 718 on remand, the ALJ found Claimant established total disability due to legal pneumoconiosis and awarded benefits. 20 C.F.R. §§718.202(a)(4), 718.204(b), (c).

On appeal, Employer again challenges the validity of the ALJ's appointment and reasserts its argument that the removal provisions applicable to ALJs render his appointment unconstitutional. On the merits of entitlement, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis, total disability, and disability causation. Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response brief; in a footnote, however, he urges the Board to reject Employer's constitutional arguments, asserting the Board already rejected the same arguments in the prior appeal and those holdings are now the law of the case.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance

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> of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[4] "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). "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).

with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359. 361-62 (1965).

Appointments Clause and Removal Provisions Challenges

Employer urges the Board to vacate the ALJ's Decision and Order on Remand and remand this case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. 237 (2018).[6] Employer's Brief at 1 n.1; Employer's Reply Brief at 2-5. Employer asserts neither the ALJ's appointment nor his removal protections comply with the United States Constitution. Employer's Reply Brief at 2-5. In its September 28, 2022 decision, the Board rejected Employer's challenges to the ALJ's appointment and authority to adjudicate this claim.[7] *Martinez*, BRB Nos. 20-0558 BLA and 21-0065 BLA, slip op. at 3-7. Because Employer has not shown the Board's decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board's prior disposition. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988, 1-989-90 (1984).

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit, as Claimant performed his coal mine employment in New Mexico. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 18.

[6] *Lucia* involved a challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. 237, 251 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)). The Department of Labor (DOL) has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[7] The Board held the Secretary of Labor properly ratified ALJ Larsen's appointment in the Secretary's December 21, 2017 Letter to ALJ Larsen, thereby bringing his appointment into compliance with the Appointments Clause. *Martinez*, BRB Nos. 20-0558 BLA and 21-0065 BLA, slip op. at 3-5. Further, the Board rejected Employer's argument that the ALJ's removal protections are unconstitutional, holding that Employer did not explain why the legal authorities it cited apply to DOL ALJs or otherwise undermine the ALJ's ability to hear and decide the case. *Id.* at 6-7.

Entitlement under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3)[8] and (c)(4) presumptions, 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. Failure to establish any one of these elements 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove 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(b).

The ALJ considered the medical opinions of Drs. Sood, Raj, and Nader that Claimant has legal pneumoconiosis and the contrary opinions of Drs. Tuteur and Farney that he does not have the disease. Decision and Order on Remand at 25-33; Director's Exhibits 12 at 24; 16 at 11-13; 28 at 4; 32 at 3-5; 77 at 44-46; 79 at 74-77; 82 at 21; Claimant's Exhibits 1 at 3-5; 2 at 3-5; Employer's Exhibits 1 at 4; 2 at 4; 5 at 4; 11 at 35-37. The ALJ found the opinions of Drs. Sood and Raj well-reasoned and documented whereas he found Drs. Nader's, Tuteur's, and Farney's opinions insufficiently reasoned and documented. Decision and Order on Remand at 26-33. Thus, crediting Drs. Sood's and Raj's opinions over those of Drs. Nader, Tuteur, and Farney, the ALJ found Claimant established legal pneumoconiosis.[9] *Id.* at 33.

[8] There is no evidence of complicated pneumoconiosis in the record; thus, Claimant cannot invoke the presumption at Section 411(c)(3). 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304; Decision and Order on Remand at 21 n.6.

[9] The ALJ found Dr. Nader's opinion not well-documented and not well-reasoned because Dr. Nader relied on his positive reading of Claimant's October 14, 2018 x-ray and a history of 13.25 years of coal mine dust exposure, contrary to the ALJ's findings. Decision and Order on Remand at 28-29. We affirm the ALJ's finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Employer argues the ALJ erred in crediting Drs. Sood's and Raj's opinions that Claimant has legal pneumoconiosis.[10] Employer's Brief at 18-19. We disagree.

Dr. Sood diagnosed legal pneumoconiosis in the form of a restrictive lung impairment based on Claimant's history of coal mine dust exposure, objective test results, and shortness of breath symptoms.[11] Director's Exhibits 12 at 19; 77 at 44, 71-72; 82 at 21. He opined only legal pneumoconiosis could have caused all of Claimant's unique symptoms, reasoning that the severity of Claimant's restriction cannot be fully explained by causes unrelated to coal mine dust exposure, and that cardiac stress testing did not reflect a pattern consistent with obesity or diastolic dysfunction.[12] Director's Exhibit 77 at 46-50, 52-53, 60, 71-72. The ALJ found Dr. Sood's opinion "slightly undermined" because the physician relied on a smoking history of only two-and-a-half to five pack-years, inconsistent with the ALJ's finding that Claimant smoked for twelve-and-a-half pack-years.[13] Decision and Order on Remand at 26. He nevertheless permissibly found this opinion well-reasoned and documented because the physician "adequately address[ed]" each of Claimant's comorbidities and explained why legal pneumoconiosis best explains all of Claimant's specific symptoms. Decision and Order on Remand at 26; *see N. Coal Co. v. Director, OWCP* [*Pickup*], 100 F.3d 871, 873 (10th Cir. 1996); *Hansen v. Director, OWCP*, 984 F.2d 364, 370 (10th Cir. 1993).

Dr. Raj diagnosed legal pneumoconiosis in the form of a moderate restrictive impairment. Claimant's Exhibit 1 at 3. He explained Claimant's comorbidities of diastolic dysfunction and pulmonary hypertension do not explain the hypoxemia seen in the resting

[10] Employer further contends the ALJ erroneously failed to consider Claimant's treatment records, asserting these records do not support a finding of legal pneumoconiosis. Employer's Brief at 20. Contrary to Employer's argument, the ALJ expressly considered Claimant's treatment records and found they neither support nor weigh against a finding of legal pneumoconiosis. Decision and Order on Remand at 10-11, 24.

[11] Contrary to Employer's assertion, the ALJ did not rely on a positive x-ray to find Claimant has legal pneumoconiosis. *See* Director's Exhibit 77 at 43; Employer's Reply Brief at 9.

[12] Dr. Sood explained cardiac stress testing demonstrated gas exchange abnormalities as well as a decrease in PaO2 and increase in alveolar arterial gradient levels during exercise, which is inconsistent with the pattern one would expect if the restriction were due to obesity or diastolic dysfunction. Director's Exhibit 77 at 47-48.

[13] Thus, contrary to Employer's contention, the ALJ did "discount [Dr.] Sood's opinion for underestimating his smoking." Employer's Brief at 19.

arterial blood gas study or the restriction seen in the pulmonary function study during his examination. *Id.* at 4-5. He further opined that fluid would be visible in the lungs on chest x-ray and testing would produce abnormal diffusing capacity measurements -- neither of which was present here -- if diastolic dysfunction or pulmonary hypertension caused Claimant's impairment. *Id.* at 4-5. The ALJ found Dr. Raj's opinion "slightly undermined" because he inaccurately believed Claimant worked for fifteen years in coal mine employment.[14] Decision and Order on Remand at 27-28. Nevertheless, the ALJ permissibly found Dr. Raj's opinion well-reasoned and documented because it is based on the objective testing and the physician "adequately explain[ed]" his conclusions that Claimant's symptoms are not caused by diastolic dysfunction or pulmonary hypertension.[15] Decision and Order at 27-28; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311 n.2 (4th Cir. 2012) (effect of an inaccurate coal mine dust exposure history on the credibility of a medical opinion is a determination for the ALJ to make); *Pickup*, 100 F.3d at 873; *Hansen*, 984 F.2d at 370; Decision and Order on Remand at 28.

Employer next contends the ALJ erred in discrediting Dr. Tuteur's opinion.[16] We are not persuaded.

Dr. Tuteur diagnosed a restrictive abnormality caused by pulmonary hypertension, diastolic dysfunction, and nonmorbid obesity, but unrelated to coal mine dust exposure. Director's Exhibits 28 at 4; 32 at 6. He explained legal pneumoconiosis causes an obstructive impairment, not a restrictive one. Director's Exhibit 32 at 4. The ALJ permissibly discredited this rationale as contrary to the regulations, which define legal

[14] Thus, contrary to Employer's contentions, the ALJ did not err by failing to consider Dr. Raj's inaccurate understanding of the length of Claimant's coal mine employment history. Employer's Brief at 19.

[15] The record does not support Employer's assertion that Drs. Sood and Raj relied on a positive x-ray to conclude Claimant has legal pneumoconiosis. *See* Employer's Reply Brief at 9.

[16] Employer also contends the ALJ erred in discrediting Dr. Farney's opinion. Employer's Brief at 20; Employer's Reply Brief at 8-12. The Board previously affirmed the ALJ's finding that Dr. Farney's opinion is entitled to less weight. *Martinez*, BRB Nos. 20-0558 BLA and 21-0065 BLA, slip op. at 9-10. Because Employer has not shown the Board's decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board's prior disposition. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988, 1-989-90 (1984).

pneumoconiosis to include "any chronic *restrictive* or obstructive pulmonary disease arising out of coal mine employment."[17] 20 C.F.R. §718.201(a)(2) (emphasis added); *see Peabody Coal Co. v. Director, OWCP* [*Opp*], 746 F.3d 1119, 1127 (9th Cir. 2014) (ALJ may discredit medical opinions inconsistent with premises underlying the regulations); Decision and Order on Remand at 30-31.

Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 18-22; Employer's Reply Brief at 11-12, 14-15. Thus, we affirm the ALJ's finding that Claimant established legal pneumoconiosis based on the weight of the medical opinion evidence.[18] *See Pickup*, 100 F.3d at 873; *Hansen*, 984 F.2d at 370; Decision and Order on Remand at 33.

Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment, which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must consider all relevant evidence and weigh the evidence supporting 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 (1987) (en banc). The ALJ found Claimant established total disability based on the pulmonary function studies, arterial blood gas studies, medical opinion evidence, and the evidence as a whole.[19] Decision and Order on Remand at 39-42; 20 C.F.R. §718.204(b)(2)(i), (ii), (iv).

[17] As the ALJ provided a valid reason for according less weight to Dr. Tuteur's opinion, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order on Remand at 30-31; Employer Brief at 19-22.

[18] As we have affirmed the ALJ's determination that Claimant has legal pneumoconiosis, we need not address Employer's arguments on clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 19.

[19] The ALJ found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order on Remand at 41.

Pulmonary Function Studies

The ALJ considered five pulmonary function studies dated May 6, 2014, September 16, 2014, September 24, 2014, October 12, 2018, and October 14, 2018, all of which produced qualifying values[20] before and after the administration of bronchodilators.[21] Decision and Order at 34-39; Director's Exhibits 12 at 2; 28 at 6; 31 at 13; Claimant's Exhibits 1 at 10; 2 at 9.

In compliance with the Board's instructions, the ALJ initially determined Claimant is sixty-seven inches in height. Decision and Order on Remand at 36; *see Martinez*, BRB Nos. 20-0558 BLA and 21-0065 BLA, slip op. at 13 n.24; *see also Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983) ("If there are substantial differences in the recorded heights among all the studies, the [ALJ] must make a factual finding to determine [C]laimant's actual height."). We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ next addressed the validity of the pulmonary function studies. Decision and Order at 37-39. He found the May 6, 2024 pulmonary function study invalid, based on the uncontradicted opinions of Drs. Sood and Renn. Decision and Order on Remand at 37-38; Director's Exhibits 12 at 2; 18 at 4.

The record contains no opinions challenging the validity of the September 16, 2014 study, and the ALJ therefore found it valid. Decision and Order on Remand at 38. Dr. Farney opined the September 24, 2014 study is "imperfect but [ ] adequate," Employer's Exhibit 5 at 3, and, there being no contrary opinions, the ALJ found this study valid. Decision and Order on Remand at 38. Dr. Nader performed the October 14, 2018 pulmonary function study and opined it meets the American Thoracic Society criteria for acceptance and reproducibility. Claimant's Exhibit 2 at 2. Dr. Farney opined the October 12, 2018 and October 14, 2018 studies are "imperfect and should be interpreted cautiously," stating he was "concerned that these findings may be at least in part related to technical factors." Employer's Exhibits 1 at 2, 4; 2 at 2, 4. The ALJ discredited Dr. Farney's rationale because the physician did not "specifically assert how the test is invalid"

[20] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[21] Claimant did not perform post-bronchodilator testing as part of the October 12, 2018 and October 14, 2018 pulmonary function studies. Claimant's Exhibits 1 at 10; 2 at 9.

or explain how these studies were performed incorrectly. Decision and Order on Remand at 38-39. Thus, the ALJ found the October 12, 2018 and October 14, 2018 pulmonary function studies valid. *Id.*

Employer generally contends the ALJ erred in discrediting Dr. Farney's validity opinions. Employer's Brief at 23; Employer's Reply Brief at 12. We are not persuaded.

The ALJ permissibly discredited Dr. Farney's validity opinions regarding the October 12, 2018 and October 14, 2018 pulmonary function studies because the physician failed to adequately explain what specific technical deficits in the testing caused him to believe the studies were invalid. *Pickup*, 100 F.3d at 873; *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361-62 (1984) (party challenging the validity of a study has the burden to establish the results are suspect or unreliable); Decision and Order at 38-39. As Employer does not challenge this rationale on appeal, we affirm it. *See Skrack*, 6 BLR at 1-711. Moreover, Employer does not challenge the ALJ's findings that the September 16, 2014 and September 24, 2014 pulmonary function studies are valid and qualifying. Decision and Order on Remand at 38. Thus, even accepting Employer's argument, the qualifying September 16, 2014 and September 24, 2014 are the only valid pulmonary function studies in the record, and any error in evaluating the validity of the October 12, 2018 and October 14, 2018 pulmonary function studies was therefore harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Employer does not otherwise challenge the ALJ's finding that the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i),[22] and we therefore affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 39.

[22] Citing the Board's decision in *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986), Employer also contends the ALJ must consider whether a non-pulmonary impairment caused Claimant's qualifying pulmonary function studies. Employer's Reply Brief at 13. In *Casella*, the Board concluded a physician's testimony that a miner's "severe degenerative neuromuscular problem" affected his objective testing results may be "relevant to the issue of the *reliability* of pulmonary function studies as indicators of a chronic respiratory or pulmonary disease" for purposes of invoking an interim presumption that is no longer in effect. 9 BLR at 1-134 (emphasis added). But the Board did not hold that a physician's opinion on the *cause* of a respiratory or pulmonary impairment that was reflected on an otherwise reliable objective test is relevant to whether a miner is disabled. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the claimant has a totally disabling respiratory or pulmonary impairment. The cause of that impairment is addressed at 20 C.F.R. §718.202(a) or 20 C.F.R. §718.204(c). *See Bosco v. Twin Pines Coal Co.*,

Arterial Blood Gas Studies

The ALJ considered five arterial blood gas studies dated May 6, 2014, September 16, 2014, September 24, 2014, October 12, 2018, and October 14, 2018. Decision and Order on Remand at 39-41. The ALJ found the May 6, 2014, September 16, 2014, October 12, 2018, and October 14, 2018 studies all produced qualifying values, whereas the September 24, 2014 study did not. Director's Exhibits 12 at 12; 28 at 6; 31 at 22; Claimant's Exhibits 1 at 3; 2 at 2. In finding all the tests valid, the ALJ discredited Dr. Farney's opinion that the qualifying studies would not have produced qualifying values if performed at sea level.[23] Decision and Order on Remand at 39-40 (citing Employer's Exhibits 1 at 3; 11 at 6-7, 11-12). Thus, the ALJ found the arterial blood gas study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii). *Id.* at 40-41.

Employer argues the ALJ erred in discrediting Dr. Farney's opinion.[24] Employer's Brief at 22-23; Employer's Reply Brief at 13. We disagree.

As the ALJ observed, the tables at Appendix C to 20 C.F.R. Part 718 already take elevation into account.[25] *See Big Horn Coal Co. v. Director, OWCP* [*Alley*], 897 F.2d 1052, 1056 (10th Cir. 1990) ("We see no reason why the [ALJ] should accept [a doctor's]

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892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-11 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023).

[23] As the ALJ observed, the May 6, 2014 study was conducted at an elevation more than 6,000 feet above sea level, the September 16, 2014 study was conducted more than 4,500 feet above sea level, and the October 12, 2018 and October 14, 2018 studies were conducted more than 2,000 feet above sea level. Decision and Order on Remand at 39-40; Director's Exhibit 12 at 12; Employer's Exhibits 1 at 3; 2 at 3; 11 at 11.

[24] Employer further asserts Dr. Renn opined all the arterial blood gas studies would have produced non-qualifying values if performed at sea level. Employer's Reply Brief at 13. Contrary to Employer's assertion, Dr. Renn reviewed only the May 6, 2014 study. Director's Exhibit 18 at 2. Further, Dr. Renn did not opine this study would be qualifying if performed at a lower elevation but, rather, asserted the laboratory may have quality control deficiencies, as the study report states the barometric pressure was 680 Pbar during the arterial blood gas study but only 600 Pbar during the pulmonary function study. *Id.*

[25] When revising Appendix C of 20 C.F.R. Part 718, the DOL explained that it created the three altitude tables as "an acceptable and valid compromise, which takes into account the effect of altitude without becoming overly complicated." 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980).

unsupported assertion that altitude caused a 'false positive' in this case, over the contrary result that is reached by comparing the test results with the altitude-adjusted Appendix C tables."); Decision and Order on Remand at 39-40. Thus, as Employer raises no additional argument regarding the arterial blood gas studies, we affirm the ALJ's finding that the arterial blood gas study evidence supports a finding of total disability at 20 C.F.R §718.204(b)(2)(ii). Decision and Order on Remand at 40-41.

Medical Opinions

Before weighing the medical opinion evidence, the ALJ addressed the exertional requirements of Claimant's usual coal mine work. Decision and Order on Remand at 5, 7. He considered Claimant's deposition and hearing testimony, in which Claimant indicated he last worked in coal mining as a truck driver. Hearing Transcript at 14, 31; Director's Exhibit 80 at 21. Claimant further testified he mostly sat during this job but also walked around and crouched under equipment to check for issues, helped the mechanic fix issues with the tractor-trailer, and climbed nine steps to enter and exit the vehicle. Hearing Transcript at 14-17; Director's Exhibit 80 at 25, 31-32. Based on Claimant's testimony, the ALJ found Claimant's last coal mine job as a truck driver required light-duty work with occasional heavy-duty exertion. Decision and Order on Remand at 7.

Employer contends the ALJ erred in assessing the exertional requirements of Claimant's usual coal mine work as a truck driver because he failed to consider Claimant's Description of Coal Mine Work (Form CM-913). Employer's Brief at 26; Director's Exhibit 4 at 1-2. While Employer generally asserts the ALJ "ascribed harder work responsibilities to [Claimant]" than he performed, it nevertheless specifically concedes Claimant's work as a truck driver "was light to nearly sedentary with occasional heavy work[,]" Employer's Brief at 26, which the ALJ also found to be true. Decision and Order on Remand at 7, 41. As such, any error in failing to address Claimant's Form CM-913 was harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni*, 6 BLR at 1-1278; *see also Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991) (in assessing exertional requirements of a miner's usual coal mine employment, the ALJ must determine the requirements of the most difficult job the miner performed and may not base a finding solely on the least demanding aspects of the job). Thus, we affirm the ALJ's finding that Claimant's usual coal mine work as a truck driver required light-duty work with occasional heavy-duty exertion. Decision and Order on Remand at 7.

The ALJ next considered the medical opinions of Drs. Raj, Nader, and Sood that Claimant has a totally disabling respiratory impairment, Dr. Tuteur's opinion that Claimant has a totally disabling cardiac impairment unrelated to his respiratory or pulmonary

function, and Dr. Farney's opinion that Claimant is not disabled.[26] Decision and Order on Remand at 41-42; Director's Exhibits 12 at 24; 28 at 4; 32 at 2; 79 at 73-76; Claimant's Exhibits 1 at 6-7; 2 at 5-6; Employer's Exhibit 11; Hearing Transcript at 33-93. Giving the greatest weight to Dr. Sood's opinion, the ALJ found the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order on Remand at 42.

Employer argues the ALJ erred in finding Dr. Sood opined Claimant is totally disabled because the physician opined Claimant can perform light labor and can perform all but the heavy labor aspects of his last coal mine job. Employer's Brief at 26-27 (quoting Director's Exhibit 77 at 26-28, 63-64). Contrary to Employer's argument, however, an opinion that Claimant cannot perform all the requirements of his last coal mine job constitutes an opinion that Claimant is totally disabled. *See Eagle*, 943 F.2d at 512-13; *Walker v. Director, OWCP*, 927 F.2d 181, 183 (4th Cir. 1991). The ALJ permissibly credited Dr. Sood's opinion because the doctor understood the exertional requirements of Claimant's coal mine employment and relied on qualifying objective studies. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); Decision and Order on Remand at 26-27, 41.

Employer raises no further argument regarding the medical opinion evidence. Thus, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Consequently, we affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; Decision and Order on Remand at 42.

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). 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

[26] Dr. Farney opined Claimant is "totally disabled from performing strenuous labor" but stated Claimant's usual coal mine job as a truck driver did not seem to require strenuous labor. Employer's Exhibit 11 at 38. The ALJ discredited Dr. Farney's disability opinion because he did not have an accurate understanding of the exertional requirements of Claimant's usual coal mine job. Decision and Order on Remand at 41. We affirm this finding as unchallenged. *See Skrack*, 6 BLR at 1-711.

caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

Employer asserts the ALJ erred in crediting Drs. Sood's and Raj's opinions and discrediting the contrary opinions of Drs. Tuteur and Farney, and it generally contends the ALJ failed to provide sufficient analysis of whether Claimant established disability causation.[27] Employer's Brief at 27-30; Employer's Reply Brief at 16-17. We disagree.

As discussed above, the ALJ permissibly relied on Drs. Sood's and Raj's opinions that Claimant's totally disabling restrictive impairment is legal pneumoconiosis. *See Opp*, 746 F.3d at 1127; *Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010); *Pickup*, 100 F.3d at 873; Decision and Order on Remand at 25-28, 33. Claimant's legal pneumoconiosis thus is a substantially contributing cause of his total disability. *See Energy W. Mining Co. v. Director, OWCP* [*Bristow*], 49 F.4th 1362, 1369 (10th Cir. 2022) (disability causation correctly found where the miner's impairment constituted legal pneumoconiosis and was totally disabling); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Island Creek Ky. Mining Co. v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order on Remand at 42-43.

Thus, we reject Employer's arguments and affirm the ALJ's finding that legal pneumoconiosis is a substantially contributing cause of Claimant's totally disabling impairment. *See* 20 C.F.R. §718.204(c); Decision and Order on Remand at 43.

[27] Employer further asserts without citing to any evidence that it is Claimant's age, and presumably not legal pneumoconiosis, that "prevents him from returning to mining." Employer's Brief at 28-29. But even accepting that Claimant's age is a contributing factor to his total disability, the fact that there are other contributing factors does not preclude the ALJ from finding that legal pneumoconiosis is also a substantially contributing cause. *See* 20 C.F.R. §718.204(c)(1).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge