U.S. Department of Labor

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

BRB No. 24-0322 BLA

HAROLD L. MEADE Claimant-Respondent v. L & L EXCAVATION AND SITE PREP and NORTHSTONE INSURANCE COMPANY c/o ENCOVA INSURANCE COMPANY Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/05/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

John Earl Hunt, Allen, Kentucky, for Claimant.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2021-BLA-05736) rendered on a claim filed on March 27, 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 forty-one years of surface coal mine employment in conditions substantially similar to those in an underground coal mine and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also contends the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. Employer filed a reply reiterating its contentions.[2] The Acting Director, Office of Workers' Compensation Programs, has not filed a response.

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.[3] 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).

[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] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant had at least forty-one years of qualifying coal mine employment. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 12-13.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 31.

Invocation of the Section 411(c)(4) Presumption: Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). 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.[4] *See* 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 evidence supporting total disability 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 pulmonary function studies, medical opinion evidence, and in consideration of the evidence as a whole.[5] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 21, 26.

Pulmonary Function Studies

The ALJ considered six[6] pulmonary function studies performed on October 6, 2016, March 16, 2018, September 17, 2019, February 18, 2020, June 12, 2020, and November 9, 2022. Decision and Order at 15-21; Director's Exhibits 50 at 1-2; 52; 55 at 22-23; 56 at 18; 69 at 7-8, 10-11, 13; 70 at 17; Claimant's Exhibits 1; 3; Employer's Exhibits 1 at 12; 10 at 18-24. Relevant to the issues Employer raises on appeal, the ALJ found the non-qualifying[7] October 6, 2016 pulmonary function study is not sufficiently reliable to make

[4] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant's usual coal mine work was as a heavy equipment operator and foreman, which required heavy manual labor at times. *Skrack*, 6 BLR at 1-711; Decision and Order at 15.

[5] The ALJ found the arterial blood gas study evidence does not support total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 14-21.

[6] Claimant performed a May 23, 2019 pulmonary function study as a part of the Department of Labor (DOL) complete pulmonary evaluation. Director's Exhibit 53. However, the study was invalid due to poor effort; thus, DOL provided Claimant an additional opportunity to perform a valid pulmonary function study on September 17, 2019. Director's Exhibits 50, 51, 53; *see* 20 C.F.R. §725.406(c); Decision and Order at 19.

[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.

a disability determination, while the qualifying March 16, 2018 and June 12, 2020 studies are sufficiently reliable.[8] Decision and Order at 16, 18, 20. The ALJ concluded that the pulmonary function study evidence supports a finding of total disability. *Id.* at 21.

Employer challenges the ALJ's findings regarding the October 6, 2016, March 16, 2018, and June 12, 2020 pulmonary function studies. Employer's Brief at 5-9. For the following reasons, we affirm the ALJ's findings.

When weighing pulmonary function studies conducted in anticipation of litigation, the ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; *see Keener v. Peerless Eagle Coal Co*., 23 BLR 1-229, 1-237 (2007) (en banc). The quality standards do not apply to pulmonary function studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101(b), 718.103; *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). However, an ALJ must determine if the results are sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,927-28 (Dec. 20, 2000). The party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

October 6, 2016 Pulmonary Function Study

The October 6, 2016 pulmonary function study was obtained in conjunction with Claimant's medical treatment at Hazard Clinic and produced non-qualifying results; a bronchodilator was not administered. Director's Exhibit 56 at 18. Dr. Fino opined that the test was invalid because Claimant did not produce maximum exhalation.[9] Director's

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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 they are unchallenged, we need not address the ALJ's findings that the qualifying September 17, 2019, February 18, 2020, and November 9, 2022 pulmonary function studies are not sufficiently reliable to support a finding of total disability. Decision and Order at 19-21; Director's Exhibits 50 at 1-2; 52; 70 at 8, 17; Employer's Exhibit 1 at 6, 11, 21.

[9] Dr. Fino opined that none of the spirometry values are valid and they all underestimate Claimant's true lung function. Director's Exhibit 70 at 12; Employer's Exhibits 1 at 12; 10 at 19-20, 38; Employer's Brief at 6.

Exhibit 70 at 12; Employer's Exhibits 1 at 12; 10 at 20-21, 38. Based on Dr. Fino's uncontradicted opinion, the ALJ concluded that the October 6, 2016 study was not sufficiently reliable for making disability determinations. Decision and Order at 17.

Employer argues the ALJ erroneously found the October 6, 2016 study was unreliable without considering Dr. Fino's testimony that its non-qualifying values represented Claimant's minimum lung function, as this testing cannot overestimate function. Employer's Brief at 5-7; Director's Exhibit 70 at 12; Employer's Exhibits 1 at 12; 10 at 19-20, 38. We disagree.

Initially, the ALJ accurately observed that the October 6, 2016 study was obtained in conjunction with Claimant's medical treatment and was therefore not subject to the quality standards. Decision and Order at 16 (citing 20 C.F.R. §§718.101, 718.103); *Stowers*, 24 BLR at 1-92. Further, the ALJ addressed Dr. Fino's validity opinion and correctly noted the record contains no other evidence regarding the reliability of this study. Decision and Order at 16. He noted that Dr. Fino invalidated the October 6, 2016 test for lack of effort, the doctor's explanation that it produced the highest values of all the lung function studies, and the doctor's opinion that "had a better effort been given, [the] values would have been higher." *Id.* at 16 (citing Employer's Exhibit 10 at 21, 38).

Based on Dr. Fino's uncontradicted opinion that Claimant did not give maximum effort, the ALJ acted within his discretion in finding the October 6, 2016 test was not sufficiently reliable for making a disability determination.[10] 65 Fed. Reg. at 79,927-28; Director's Exhibit 70 at 12; Employer's Exhibits at 1 at 12; 10 at 20-21, 38; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002) (it is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). We therefore affirm, as supported by substantial evidence, the ALJ's determination that the October 6, 2016 study was not

[10] Moreover, the ALJ permissibly declined to consider whether this study, which Dr. Fino deemed invalid, nonetheless demonstrates reliable evidence to support Employer's contention, i.e., that it was Claimant's "minimum" lung function. *See* 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000) ("Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator must still be persuaded the evidence is reliable in order for it to *form the basis for a finding of fact on an entitlement issue*.") (emphasis added); *see also* 20 C.F.R. §718.103(c) ("no results of a pulmonary function study shall constitute evidence of the presence or absence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance" with the quality standards); Decision and Order at 16, 24-25; Employer's Brief at 6-7.

sufficiently reliable. *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 17.

March 16, 2018 Pulmonary Function Study

The March 16, 2018 study was conducted in connection with Claimant's state workers' compensation claim and produced qualifying results before and after the administration of a bronchodilator. Director's Exhibit 55 at 22-23. Dr. Rivas-Perez conducted the test and noted that Claimant had difficulty completing it, which may have affected the results. *Id.* The technician indicated that Claimant had difficulty with the test due to "fatigue and dyspnea." Director's Exhibit 55 at 23. Dr. Rosenblum noted the technician's comments and testified that the study was "adequate" even though Claimant had difficulty performing the test.[11] *Id.* at 11-12. Dr. Fino opined that the study was invalid because Claimant's effort was "not a maximum velocity on exhalation." Director's Exhibit 70 at 12; Employer's Exhibits 1 at 12; 10 at 21-22. Dr. Rosenberg also indicated the flow-volume curves suggested incomplete and submaximal effort and invalidated the study. Director's Exhibit 69 at 13. The ALJ accorded less weight to Dr. Rivas-Perez's opinion as equivocal and accorded little weight to Drs. Fino's and Rosenberg's opinions. Decision and Order at 18-19. He found the study in substantial compliance with the quality standards based on Dr. Rosenblum's explanation, which was consistent with the technician's notation. *Id.*

Employer argues the ALJ based his determination on Dr. Rosenblum's "faulty logic" that presupposed Claimant has lung disease that affected his ability to perform the test.[12] Employer's Brief at 5, 7-8. We disagree.

The ALJ indicated that the study was developed in anticipation of litigation and thus considered whether it was in substantial compliance with the regulatory quality standards.[13]

[11] Dr. Rosenblum testified that he would discard the study's post-bronchodilator values, but its pre-bronchodilator values were as accurate as possible given the level of Claimant's lung disease. Director's Exhibit 55 at 11; *see* Decision and Order at 18.

[12] As Employer raises no specific challenge to the ALJ's determinations to accord little weight to Drs. Fino's and Rosenberg's opinions and less weight to Dr. Rivas-Perez's opinion regarding the reliability of the March 16, 2018 study, we affirm them. *See Skrack*, 6 BLR at 1-711.

[13] We note the March 16, 2018 study was obtained in a state claim, not a claim under the Act. Director's Exhibit 55 at 21-22. It is unclear how the ALJ determined that the quality standards apply to this study developed in connection with a state claim. *See* 20 C.F.R. §718.101(b) ("The standards for the administration of clinical tests and

20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; *see Keener*, 23 BLR at 1-237. 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 accurately noted, "[I]ndividuals with obstructive disease or rapid decline in lung function will be less likely to achieve [the] degree of reproducibility [outlined in the quality standards, and] tests not meeting this criterion may still be submitted for consideration in support of a claim for black lung benefits." Decision and Order at 18 (citing 20 C.F.R. Part 718, App. B (2)(ii)(G));[14] *see* 65 Fed. Reg. at 79,952-53 (This requirement "will provide the adjudicator with greater flexibility in determining whether the pulmonary function study actually substantiates the presence of a significant pulmonary impairment[.]"). Dr. Rosenblum testified that the March 16, 2018 test was accurate because it had at least one good flow volume loop, and he indicated that the full lung volumes and DLCO confirm Claimant has "bad lung disease." Director's Exhibit 55 at 11-12, 15. Dr. Rosenblum testified that the technician reported "good patient effort and cooperation. [T]hat's . . . clear to me what she is saying. She's saying he did a good job. I have no reason to believe these are not accurate. And look at the . . . biggest flow volume loop, it looks like a good loop to me." Director's Exhibit 55 at 11.

The ALJ permissibly accorded probative weight to Dr. Rosenblum's opinion as he explained that the pre-bronchodilator values were as accurate as possible given Claimant's level of lung disease, particularly given the technician's observations. Decision and Order at 18; 20 C.F.R. Part 718, App. B(2)(ii)(G). Thus, contrary to Employer's argument, the ALJ provided sufficient reasoning for determining the March 16, 2018 study could be relied upon as evidence of total disability. Decision and Order at 17-19; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Vivian*, 7 BLR at 1-361. We therefore affirm, as supported by substantial evidence, the ALJ's determination that the March 16, 2018 test is

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examinations contained in this subpart shall apply to all evidence developed by any party after January 19, 2001 *in connection with a claim governed by this part* . . . .") (emphasis added); 20 C.F.R. §718.103(b) ("[P]ulmonary function test results submitted in connection with a claim for benefits . . . ."). However, given the ALJ's other affirmable findings, any error in his consideration of this study under the quality standards is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[14] This standard allows studies with excessive variability to be submitted in certain circumstances, recognizing that "individuals with obstructive disease or rapid decline in lung function will be less likely to achieve [a] degree of reproducibility." 20 C.F.R. Part 718, App. B (2)(ii)(G).

in substantial compliance with the quality standards and thus sufficiently reliable to support total disability. Decision and Order at 18-19; *see Martin*, 400 F.3d at 305.

June 12, 2020 Pulmonary Function Study

Dr. Sikder obtained the June 12, 2020 pulmonary function study in conjunction with Claimant's medical treatment; it produced qualifying values before and after the administration of a bronchodilator. Claimant's Exhibit 1. There was a notation of "good effort" on the study. *Id.* Dr. Vuskovich determined the FVC and FEV1 results were acceptable, but the testing was invalid because it included only one trial, and thus "did not satisfy Department of Labor rules." Claimant's Exhibit 3 at 2. Dr. Fino invalidated the study because Claimant's effort was "not a maximum velocity on exhalation" and there was only one attempt. Director's Exhibit 70 at 12; Employer's Exhibit 10 at 22-24. Dr. Rosenberg opined that the study was invalid because there was only one trial and Claimant's efforts were submaximal. Employer's Exhibit 3 at 5. The ALJ discredited Drs. Vuskovich's, Fino's, and Rosenberg's opinions and concluded they were insufficient to prove the June 12, 2020 study was not sufficiently reliable to support a finding of total disability. Decision and Order at 20.

Employer contends the ALJ erred in finding the June 12, 2020 pulmonary function study reliable when it was based on fewer than three tracings, as the regulations require, and Drs. Fino and Rosenberg explained that Claimant gave submaximal effort. Employer's Brief at 8-9; Employer's Reply. We disagree.

Initially, the ALJ accurately noted that the June 12, 2020 study was obtained in conjunction with Claimant's medical treatment and therefore not subject to the quality standards. Decision and Order at 20 (citing 20 C.F.R. §718.103, 20 C.F.R. Part 718, App. B); *Stowers*, 24 BLR at 1-92; *see also Crapp v. U.S. Steel Corp.*, 6 BLR 1-476, 1-478-79 (1983) (while missing tracings render a pulmonary function study non-conforming, the study is not necessarily unreliable). Thus, the ALJ permissibly rejected Drs. Vuskovich's, Fino's, and Rosenberg's opinions that the study was invalid based on the lack of three trials in a treatment record. *See Napier*, 301 F.3d at 713-14; *Stowers*, 24 BLR at 1-92; Employer's Exhibit 10 at 22, 24; Employer's Exhibit 3 at 5; Claimant's Exhibit 3 at 5.

Moreover, the ALJ reasonably discredited Dr. Fino's and Dr. Rosenberg's opinions for failing to explain how they determined Claimant's efforts were submaximal, while he noted Dr. Vuskovich opined to the contrary. Decision and Order at 20; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Crisp*, 866 F.2d at 185; *Vivian*, 7 BLR at 1-361. We therefore affirm, as supported by substantial evidence, the ALJ's determination that the June 12, 2020 pulmonary function study is sufficiently reliable to support a finding of total disability. Decision and Order at 20.

Employer's arguments regarding the pulmonary function studies amount to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). Consequently, we affirm the ALJ's determination that the March 16, 2018, and June 12, 2020 pulmonary function studies are sufficiently reliable. Decision and Order at 21. We thus also affirm the ALJ's finding that the pulmonary function studies support a finding of total disability. *See Martin*, 400 F.3d at 305; 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 21, 26.

Medical Opinions

Next, the ALJ considered the opinions of Drs. Alam, Sikder, Rosenblum, Fino, and Rosenberg. Decision and Order at 22-26. Drs. Alam, Sikder, and Rosenblum opined that Claimant is totally disabled, while Drs. Fino and Rosenberg opined that he is not. Director's Exhibits 53 at 5; 55 at 16, 21; 70 at 12; 76 at 1-2; Claimant's Exhibit 11 at 1; Employer's Exhibits 1 at 12; 3 at 7-8; 7 at 2-3; 10 at 27, 30-31. The ALJ credited the opinions of Drs. Rosenblum and Sikder and discredited those of Drs. Alam, Fino, and Rosenberg.[15] Decision and Order at 22-26.

Employer challenges the ALJ's crediting of Dr. Sikder's opinion based on its view that the June 12, 2020 pulmonary function study, which she relies upon, is not sufficiently reliable. Employer's Brief at 10-11. It also contends the ALJ erred in giving her opinion additional weight based on her status as Claimant's treating physician without considering whether her opinion is well-reasoned and documented. *Id.* We disagree.

Initially, we affirmed the ALJ's determination that the June 12, 2020 pulmonary function study is sufficiently reliable; thus, we reject Employer's contention that the ALJ erred in according probative weight to Dr. Sikder's opinion because it is partially based on that study. Decision and Order 22-23; *see Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 478 (6th Cir. 2011); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). In addition, contrary to Employer's argument, the ALJ addressed whether Dr. Sikder's opinion was sufficiently documented and reasoned prior to noting that he found it significant that Dr. Sikder was Claimant's treating physician. Decision and Order at 22-23; *see Peabody Coal Co. v. Odom*, 342 F.3d 486, 492 (6th Cir. 2003) ("[T]he opinions of treating physicians get the deference they deserve based on their power to persuade."); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513 (6th Cir. 2003); *Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983). As the ALJ noted, Dr. Sikder opined that

[15] As it is unchallenged by the parties on appeal, we need not address the ALJ's determination that Dr. Alam's disability opinion is entitled to little weight. Decision and Order at 23.

Claimant lacks the respiratory capacity to perform the work of a coal miner as he has moderate impairment due to chronic obstructive pulmonary disease, pointing to his poor FEV1. Decision and Order at 22; Claimant's Exhibit 11 at 1. Thus, the ALJ permissibly found Dr. Sikder's opinion was sufficiently documented and reasoned as it was supported by the preponderance of valid pulmonary function study evidence. Decision and Order at 22-23; *see Rowe*, 710 F.2d at 255 (ALJ is granted broad discretion in evaluating the credibility of the evidence); *Clark*, 12 BLR at 1-155. We therefore affirm the ALJ's finding that Dr. Sikder's opinion is entitled to probative weight. *See Martin*, 400 F.3d at 305; Decision and Order at 23.

Employer also challenges the ALJ's crediting of Dr. Rosenblum's opinion because it is based on the March 16, 2018 pulmonary function study, which Employer contends is invalid, and because Dr. Rosenblum relied in part on a "mere recitation of symptoms." Employer's Brief at 9-10. We disagree.

As we affirmed the ALJ's weighing of the pulmonary function studies, we reject Employer's contention that the ALJ erred in assigning probative weight to Dr. Rosenblum's opinion given his reliance on alleged invalid evidence. Decision and Order 22-23. Further, in addition to finding Dr. Rosenblum's opinion consistent with the weight of the pulmonary function study evidence, the ALJ permissibly found Dr. Rosenblum's opinion well-reasoned as he understood Claimant's last coal mine employment and that Claimant could barely walk up one flight of stairs due to dyspnea. Decision and Order at 22; Director's Exhibit 55 at 9, 11, 16, 18, 20-21; *see Morrison*, 644 F.3d at 478; *Clark*, 12 BLR at 1-155. We therefore affirm the ALJ's weighing of Dr. Rosenblum's opinion on total disability. Decision and Order at 22; *see Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185.

Next, Employer asserts the ALJ erred in discrediting Drs. Fino's and Rosenberg's opinions regarding total disability. We disagree.

Employer contends the ALJ erred in discrediting Dr. Fino's opinion because he explained that the non-qualifying October 6, 2016 study demonstrated Claimant's minimum lung function and he opined, based on this study, Claimant is capable of performing even heavy labor. Employer's Brief at 11-12. Dr. Fino opined that Claimant is not disabled because there is no valid objective evidence of any impairment. Director's Exhibit 70 at 12; Employer's Exhibits 1 at 11-12; 10 at 19-22, 27, 30-31, 38. The ALJ reasonably discredited Dr. Fino's opinion because the doctor excluded total disability based on the October 6, 2016 study, which the ALJ found was not sufficiently reliable based on Dr. Fino's own opinion. Decision and Order at 24-25; *see Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; *see also* 20 C.F.R. §718.103(c). The ALJ further explained that he found Dr. Fino's logic that Claimant could perform heavy labor unpersuasive given the

doctor's observation that Claimant is dyspneic on exertion and his failure to consider that Claimant's inability to produce a "robust" effort on the pulmonary function reflected his breathing difficulties. *See Crisp*, 866 F.2d at 185 (it is within the purview of the ALJ to weight evidence, draw inferences, and determine credibility); Decision and Order at 25. Additionally, the ALJ rationally found Dr. Fino's opinion was inconsistent with the preponderant weight of the reliable pulmonary function study evidence, which supported a finding of total disability. *See Rowe*, 710 F.2d at 255 (factfinder determines whether a medical opinion is reasoned and documented considering the studies conducted and objective information upon which the medical conclusions are based); Decision and Order at 24-25. We therefore affirm the ALJ's determination that Dr. Fino's opinion that Claimant is not disabled is unpersuasive. Decision and Order at 25.

Finally, Employer argues the ALJ erred in discrediting Dr. Rosenberg's opinion because he assumed that the qualifying pulmonary function studies were invalid. Employer's Brief at 12-13. Dr. Rosenberg opined that Claimant was not disabled from a pulmonary perspective as there are no valid pulmonary function studies. Employer's Exhibits 3 at 7-8; 7 at 2-3.

The ALJ reasonably discredited Dr. Rosenberg's opinion because he excluded total disability based on his contention that none of Claimant's pulmonary function tests were valid, when the ALJ found the qualifying March 16, 2018, and June 12, 2020 studies sufficiently reliable. Decision and Order at 24-25; *see Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; *see also* 20 C.F.R. §718.103(c). Moreover, the ALJ found Dr. Rosenberg's logic that none of the pulmonary function tests were valid and thus disability could not be established to be unpersuasive, a finding Employer does not challenge. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 25. Consequently, we affirm the ALJ's discrediting of Dr. Rosenberg's opinion. Decision and Order at 25.

We therefore affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000); Decision and Order at 26. As Employer raises no further arguments regarding the ALJ's weighing of the evidence, we further affirm the ALJ's finding that Claimant established total disability based on the preponderance of the evidence. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[16] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 1-154-56 (2015). The Sixth Circuit holds this standard requires Employer to show Claimant's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

The ALJ considered the opinions of Drs. Fino and Rosenberg that Claimant does not have legal pneumoconiosis because there is no objective basis for diagnosing any impairment; rather, they opine to the extent he has any impairment, it is due to obesity.[17] Decision and Order at 35-36; Director's Exhibit 70 at 12; Employer's Exhibits 1 at 12; 3

[16] "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).

[17] Dr. Rosenberg opined that "when one combines [Claimant's] incomplete efforts on pulmonary function testing and obesity, this likely accounts for his respiratory impairment." Employer's Exhibit 7 at 2. Dr. Fino testified that Claimant is carrying around more weight, causing his lungs to not "expand as well because of all the extra tissue . . . ." Employer's Exhibit 10 at 13.

at 8; 7 at 2; 10 at 13. The ALJ found neither physician's opinion sufficiently reasoned to rebut legal pneumoconiosis. Decision and Order at 35-36.

Employer's argument is based on its contention that the ALJ erred in weighing the pulmonary function studies, asserting that if the ALJ's consideration of the pulmonary function study evidence is vacated, then his discrediting of Dr. Fino's and Dr. Rosenberg's opinions must also be vacated. Employer's Brief at 13. Because we have affirmed the ALJ's weighing of the pulmonary function studies, we affirm his discrediting of the opinions of Drs. Fino and Rosenberg as reliant on their determination that none of the pulmonary function studies were valid and thus that Claimant does not have legal pneumoconiosis. Decision and Order at 35-36; *see Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255.

As Employer raises no other challenge to the ALJ's analysis regarding legal pneumoconiosis, we affirm the ALJ's finding that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 36. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[18] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 37. The ALJ permissibly discredited the opinions of Drs. Fino and Rosenberg because they did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove the disease. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 37. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of Claimant's totally disabling respiratory or pulmonary impairment was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[18] Therefore, we need not address Employer's contention that the ALJ erred in also finding that it failed to rebut clinical pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni*, 6 BLR at 1-1278; Decision and Order at 37; Employer's Brief at 13.

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