



BRB No. 25-0035 BLA

JAMES E. VANCIL)
)
 Claimant-Respondent)
)
 v.)
)
 PEABODY GATEWAY SERVICES, LLC)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 02/27/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Joseph E. Allman (Allman Law LLC), Bloomington, Indiana, for Claimant.

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

Victoria Yee (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits (2020-BLA-05822) rendered on a claim filed on October 26, 2015,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant had thirty-two years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found 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).² He further found Employer failed to rebut the presumption and therefore awarded benefits.

On appeal, Employer argues the ALJ lacked authority to hear and decide the case because he was not appointed in a manner consistent with the Appointments Clause of the United States Constitution, Art. II § 2, cl. 2.³ It also argues the removal provisions applicable to ALJs rendered his appointment unconstitutional. On the merits, Employer contends the ALJ erred in finding Claimant established total disability and, in the alternative, that it did not rebut the Section 411(c)(4) presumption. It also asserts the ALJ incorrectly identified the onset date of Claimant's total disability due to pneumoconiosis

¹ Claimant filed a prior claim for benefits that he subsequently withdrew. Director's Exhibit 1. A withdrawn claim is "considered not to have been filed." 20 C.F.R. §725.306(b).

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is 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.

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 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.

for the commencement of benefits.⁴ Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response urging the Benefits Review Board to reject Employer's constitutional and onset date arguments, as well as its arguments regarding the ALJ's application of the preamble to the revised 2001 regulations.

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 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 Protections

Employer urges the Board to vacate the ALJ's Decision and Order and remand the 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 6, 32-38. It acknowledges the Secretary of Labor ratified the prior appointments of all sitting Department of Labor (DOL) ALJs on December 21, 2017,⁷ but maintains the ratification was insufficient to cure the

⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has thirty-two years of qualifying coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4; *see* Hearing Transcript at 11-14.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit because Claimant performed his coal mine employment in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14; Director's Exhibit 4 at 1.

⁶ *Lucia* involved a challenge to the appointment of a Securities and Exchange Commission (SEC) ALJ. 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 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 Secretary of Labor (Secretary) issued a letter to the ALJ on December 21, 2017, stating:

In my capacity as head of the [DOL], and after due consideration, I hereby ratify the Department's prior appointment of you as an [ALJ]. This letter is intended to address any claim that administrative proceedings pending

constitutional defect in the ALJ's prior appointment. *Id.* For the reasons set forth in *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-5-7 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023), we reject Employer's Appointments Clause arguments.

Employer also challenges the constitutionality of the removal protections afforded DOL ALJs. Employer's Brief at 32-38. The Board and the United States Court of Appeals for the Sixth Circuit rejected similar arguments, in part, because the employer did not sufficiently allege "it suffered any harm due to the ALJ's removal protections." *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-307 (2022) (applying *Calcutt v. FDIC*, 37 F.4th 293, 319 (6th Cir. 2022)), *aff'd sub nom.*, *Apogee Coal Co. v. Director, OWCP [Howard]*, 112 F.4th 343 (6th Cir. 2024), *cert. denied*, 145 S. Ct. 2732 (2025); Director's Brief at 6-7. Thus, even if the Board had authority to remedy the violation presented by Employer's removal protections arguments, we would decline to do so because Employer has failed to identify a harm.

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. *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,⁸ 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 the preponderance of the arterial blood gas study and medical opinion evidence, as supported

before, or presided over by, [ALJs] of the U.S. [DOL] violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's Dec. 21, 2017 Letter to ALJ Bell.

⁸ 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).

by Claimant's treatment records, establishes total disability.⁹ 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 11, 18, 20.

Arterial Blood Gas Studies

The ALJ considered four arterial blood gas studies performed on March 10, 2016, September 26, 2016, August 9, 2018, and January 9, 2022. Decision and Order at 10-11; Director's Exhibits 14 at 2, 29-31; 34 at 20; Employer's Exhibits 1 at 13; 25 at 191. The March 10, 2016 blood gas study was non-qualifying at rest and qualifying with exercise. Director's Exhibit 14 at 2, 29-31. The September 26, 2016 study was non-qualifying at rest; no exercise test was performed. Employer's Exhibit 1 at 13. The August 9, 2018 and January 9, 2022 studies were qualifying at rest, with no exercise testing performed. Director's Exhibit 34 at 20; Employer's Exhibit 25 at 191.

The ALJ determined that the most recent qualifying test, on January 9, 2022, was performed during or soon after an acute respiratory or cardiac illness that required hospitalization and therefore cannot be used to establish total disability. 20 C.F.R. §718.105; Appendix C to 20 C.F.R. Part 718; Decision and Order at 11. Crediting the August 9, 2018 qualifying study as the most recent valid study of record and the March 10, 2016 qualifying exercise study as the only exercise study of record, the ALJ found that the arterial blood gas studies support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 11.

Employer states that "[t]he normal A-a gradient and normal blood gases adjusted for altitude" do not support a finding of total disability. Employer's Brief at 51. However, Employer does not explain the basis for this argument or state how the evidence supports its contention; therefore, its argument is not adequately briefed. 20 C.F.R. §802.211(b) (requirements for an issue to be adequately briefed); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

Moreover, Dr. Farney is the only physician of record to opine that a study was non-qualifying based on the A-a gradient. Director's Exhibit 22. He stated that the March 10, 2016 resting study was non-qualifying when adjusted for age and elevation. *Id.* at 6. However, the ALJ accurately determined that this resting study was non-qualifying based on the disability standards in weighing the evidence. Decision and Order at 10. The ALJ also acknowledged Dr. Farney's statement that the "regulation[]"s ABG tables are not

⁹ The ALJ found the pulmonary function study evidence is inconclusive and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 6, 10.

adjusted for exercise, age and elevation.” *Id.* at 13-14; Director’s Exhibit 22 at 6. But the ALJ accurately found that Dr. Farney did not state the exercise study was non-qualifying when adjusted for these factors or that Claimant is not disabled. Decision and Order at 13-14; Director’s Exhibit 22 at 6. Consequently, the ALJ found Dr. Farney’s opinion equivocal and inconclusive. Decision and Order at 13-14; *see Big Horn Coal Co. v. OWCP [Alley]*, 897 F.2d 1052, 1055-56 (10th Cir. 1990) (ALJ is not required to accept a medical opinion that is contrary to the altitude adjusted Appendix C tables).

In addition, as addressed below, all the experts providing relevant medical opinions stated that Claimant is totally disabled based upon his arterial blood gas studies. Director’s Exhibits 14 at 15; 17 at 4; 34 at 14-15; Claimant’s Exhibit 1 at 20, 23; Employer’s Exhibits 1 at 3; 26 at 39; 31 at 16. Furthermore, in revising Appendix C of 20 C.F.R. Part 718, the DOL declined to use the A-a gradient as a measure of disability because it was laborious, difficult to administer, and few laboratories were equipped to perform it. 45 Fed. Reg. 13,678, 13,683 (Feb. 29, 1980). Instead, the regulations provide three ranges of altitudes by which arterial blood gas testing is assessed, which the ALJ correctly applied.¹⁰ 20 C.F.R. Part 718, App. C; Decision and Order at 10.

As it is supported by substantial evidence, we affirm the ALJ’s crediting of the qualifying March 10, 2016 exercise study and the August 9, 2018 resting study, and we further affirm his conclusion that the preponderance of the blood gas evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); *see Amax Coal Co. v. Beasley*, 957 F.2d 324, 327 (7th Cir. 1992); Decision and Order at 11.

Medical Opinions

The ALJ considered the medical opinions of Drs. Schroedl, Sood, Jarboe, and Tuteur, who all opined that Claimant is totally disabled.¹¹ Decision and Order at 12-18;

¹⁰ Employer also contends Claimant’s blood gases are normal when adjusted for altitude. Employer’s Brief at 51. Again, Employer points to no evidence supporting this contention. To the extent Employer’s assertion can be considered adequately briefed, the ALJ properly considered the March 10, 2016, September 26, 2016, August 9, 2018, and January 9, 2022 blood gas studies using the values for studies performed at test sites that are 3,000 to 5,999 feet above sea level, consistent with the altitude indicated on the respective reports. Director’s Exhibit 14 at 2, 29-31; 34 at 20; Employer’s Exhibit 1 at 13; 25 at 191.

¹¹ Dr. Schroedl opined that Claimant is totally disabled based on his moderate obstructive impairment, moderate diffusion impairment, and exertional hypoxemia. Director’s Exhibits 14 at 15; 17 at 4. Dr. Sood determined Claimant has a disabling

Director's Exhibits 14 at 15; 17 at 4; 22; 34 at 15; Claimant's Exhibit 1 at 20, 23; Employer's Exhibits 1 at 3; 26 at 8-9; 31 at 16. Finding all of the doctors were well-qualified to offer an opinion, the ALJ further found each opinion well-reasoned, documented, and consistent with the arterial blood gas studies and thus accorded them all probative weight.¹² Decision and Order at 12-13, 15-16, 18.

Employer asserts that the ALJ failed to thoroughly discuss the exertional requirements of Claimant's usual coal mine work when assessing the medical opinions regarding total disability. Employer's Brief at 49-50.

Even if we were to agree with Employer's argument, none of the medical opinions constitute contrary evidence to the arterial blood gas studies, as all the experts found Claimant totally disabled. 20 C.F.R. §718.204(b)(2) ("in the absence of contrary evidence," qualifying arterial blood gas studies "shall establish a miner's total disability"); Director's Exhibits 14; 17; 34 at 15; Claimant's Exhibit 1; Employer's Exhibits 1 at 3; 31 at 16. The ALJ reasonably credited their opinions as well-reasoned and consistent with his findings regarding the arterial blood gas studies. Decision and Order at 15-16; *see Poole*

respiratory impairment based on his most recent arterial blood gas studies at rest and after exercise. Claimant's Exhibit 1 at 20, 23. Dr. Tuteur indicated Claimant is totally disabled based on a blood gas exchange impairment that worsens during exercise. Employer's Exhibits 1 at 3; 26 at 7, 39. Dr. Jarboe opined that Claimant could not perform his last coal mine job based on his consistently abnormal blood gas results, including hypoxemia with exercise. Director's Exhibit 34 at 14-15; Employer's Exhibit 31 at 16.

¹² The ALJ also addressed Dr. Farney's opinion but accorded it little weight because it was equivocal and inconclusive on total disability. Decision and Order at 13-14. As Employer contends, Dr. Farney's opinion was not designated as an affirmative medical opinion; rather Employer designated it as rebuttal to the March 10, 2016 objective testing. Employer's Brief at 43-44; *see* 20 C.F.R. §725.414(a)(3)(ii). However, Employer fails to explain how the ALJ's consideration of Dr. Farney's opinion would make a difference in the weighing of the medical opinion evidence on total disability. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Amax Coal Co v. Director, OWCP [Chavis]*, 772 F.2d 304, 306 (7th Cir. 1985); Employer's Brief at 5 n. 5, 43-44; Director's Exhibit 22. The ALJ correctly noted that Dr. Farney did not specifically address the issue of total disability and that his report was designated as rebuttal to the March 10, 2016 testing. Decision and Order at 10 n.61 (citing Director's Exhibit 22), 13. Thus, any error by the ALJ in weighing Dr. Farney's report as medical opinion evidence is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

v. Freeman United Coal Mining Co., 897 F.2d 888, 895 (7th Cir. 1990); *Amax Coal Co. v. Burns*, 855 F.2d 499, 501 (7th Cir. 1988). Thus, any alleged error the ALJ made in not specifically identifying Claimant’s usual coal mine employment or its exertional requirements is harmless.¹³ 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”); *Amax Coal Co v. Director, OWCP [Chavis]*, 772 F.2d 304, 306 (7th Cir. 1985); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer’s Brief at 49-50.

Moreover, other than arguing the ALJ erred in his consideration of the blood gas studies, an argument we have rejected, Employer does not challenge the ALJ’s conclusion that Drs. Schroedl’s, Sood’s, Jarboe’s, and Tuteur’s opinions are entitled to probative weight and support a finding of total disability.¹⁴ Employer’s Brief at 7-11. Thus, we affirm the ALJ’s weighing of the medical opinion evidence regarding total disability. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18.

As Employer raises no other challenges to the ALJ’s weighing of the evidence, we affirm the ALJ’s determination that the evidence as a whole supports a finding that Claimant is totally disabled by a pulmonary or respiratory impairment. Decision and Order at 20. Thus, we also affirm his conclusion that Claimant invoked the Section 411(c)(4) presumption. *Id.*; 20 C.F.R. §718.305(b)(1).

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,¹⁵ or that “no part of [his] respiratory or pulmonary total

¹³ Of note, Employer’s expert, Dr. Tuteur, testified Claimant was unable to perform coal mine work that involved heavy labor at times. Employer’s Exhibits 1 at 3; 26 at 13.

¹⁴ Assuming Employer’s argument is adequately briefed, we reject its assertion that non-respiratory conditions, like Claimant’s advanced age and traumatic shoulder injury, preclude him from returning to his coal mine employment, as we have already affirmed the ALJ’s conclusion that the preponderance of the blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); see also 20 C.F.R. §718.204(a) (A nonpulmonary condition that causes an independent disability unrelated to a miner’s pulmonary disability “shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis.”); Decision and Order at 11; Employer’s Brief at 50.

¹⁵ “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

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 did not establish rebuttal by either method. Decision and Order at 31.

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.” 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Safeco Ins./Liberty Mutual Sur. v. Director, OWCP [McLain]*, 103 F.4th 1285, 1291 (7th Cir. 2024); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Drs. Jarboe’s and Tuteur’s opinions that Claimant does not have legal pneumoconiosis to rebut its existence. Dr. Jarboe opined Claimant has moderate chronic obstructive pulmonary disease (COPD) due to smoking and a blood gas exchange impairment likely due to a congenital abnormality, both of which he stated are unrelated to coal mine dust exposure. Director’s Exhibit 34 at 12-14; Employer’s Exhibit 31 at 20-23. Dr. Tuteur diagnosed moderate obstruction due to an arteriovenous (AV) malformation, which he indicated was unrelated to coal mine dust exposure. Employer’s Exhibits 1 at 3; 26 at 7-10, 21-23, 39. The ALJ discredited both opinions as not well-reasoned or documented. Decision and Order at 25, 28.

Employer argues the ALJ erred in finding it failed to rebut the presumption of legal pneumoconiosis. Employer’s Brief at 39-47. We disagree.

Dr. Jarboe opined Claimant’s COPD is due solely to cigarette smoking based, in part, on “a pattern of a disproportionate reduction of FEV1 compared to FVC” on pulmonary function testing and his opinion that smoking causes a more significant reduction in the FEV1 than coal mine dust exposure does. Director’s Exhibit 34 at 12-13. In addition, Dr. Jarboe concluded that Claimant’s blood gas impairment is unrelated to coal mine dust exposure due to a lack of fibrosis on x-rays and computed tomography (CT) scans. *Id.* Dr. Tuteur attributed Claimant’s COPD and blood gas impairment solely to a congenital abnormality based, in part, on the lack of fibrosis on CT scans and the

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).

disproportionate hypoxemia compared to his spirometry. Employer's Exhibits 1 at 3; 26 at 7-10, 21-23, 39. The ALJ found that Dr. Jarboe's opinion that coal mine dust causes only a parallel reduction of the FEV1 and FVC is contrary to the premises underlying the regulations, and that Dr. Jarboe did not adequately explain why coal mine dust exposure could not have contributed to, or aggravated, the smoking-related COPD. Decision and Order at 27; *see Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484 (7th Cir. 2007); *Wilgar Land Co. v. Director, OWCP [Adams]*, 85 F.4th 828, 840 (6th Cir. 2023); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017). The ALJ further rejected both opinions as based upon premises contrary to the regulations which allow claimants to establish entitlement based on qualifying blood gas studies even in the absence of qualifying pulmonary function testing or positive x-rays. Decision and Order at 24-28; *see* 20 C.F.R. §§718.204(b)(2)(ii), 718.201(a)(2).

Employer does not challenge these specific credibility findings. Rather, it generally argues the ALJ erred in using the preamble to the revised 2001 regulations in assessing the medical opinion evidence. Employer's Brief at 38-39. Contrary to Employer's contentions, federal circuit courts, including the Seventh Circuit, under whose jurisdiction this case arises, have consistently held that an ALJ may evaluate expert opinions in conjunction with the preamble, as it sets forth the DOL's resolution of questions of scientific fact relevant to the elements of entitlement. *See McLain*, 103 F.4th 1289-90; *Consol. Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726 (7th Cir. 2008); *see also Energy W. Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 830-31 (10th Cir. 2017); *Cent. Ohio Coal Co. v. Director, OWCP [Sterling]*, 762 F.3d 483, 491 (6th Cir. 2014); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 313 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 257 (3d Cir. 2011). Indeed, Employer concedes that the ALJ has discretion to consider the preamble when weighing the evidence. Employer's Brief at 48.

Employer also argues that the medical literature DOL considered when developing the preamble "has been superseded and/or called into question by more recent literature." Employer's Brief at 39. While Employer was free to develop and submit evidence responding to the scientific findings in the preamble and attempt to show they are no longer valid or not relevant to this case, it did not do so. *See Midland Coal Co. v. Director, OWCP [Shores]*, 358 F.3d 486, 490 (7th Cir. 2004) (evidence may be offered challenging the preamble's medical conclusions, but the DOL's position will be credited unless the evidence is "the type and quality of medical evidence that would invalidate a regulation"). Employer has not pointed to any medical studies it believes supersede the preamble, nor does it identify how it believes the ALJ specifically erred in considering the preamble in

making his credibility determinations. Thus, we reject Employer's argument that the ALJ improperly applied the preamble in weighing the evidence.¹⁶ See *Beeler*, 521 F.3d at 726.

We also reject Employer's argument that when discrediting its experts' opinions, the ALJ erroneously referred to the presence of emphysema noted on CT scans as if such a diagnosis is "equivalent to a finding of legal pneumoconiosis." Employer's Brief at 47. We disagree.

The ALJ stated, consistent with the preamble, that "[Chronic Obstructive Pulmonary Disease] includes . . . chronic bronchitis, emphysema, and asthma, and COPD may be caused by coal dust exposure." Decision and Order at 24, 28 (citing 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000)). He further noted that Drs. Tuteur and Jarboe concluded that Claimant does not have legal pneumoconiosis but did not address the emphysema consistently noted on Claimant's CT scans or adequately explain why it was not substantially contributed to or aggravated by coal mine dust exposure. *Id.* at 24, 28.

While Employer argues there is no evidence in the record connecting the emphysema indicated on CT scan with pneumoconiosis,¹⁷ given Claimant has invoked the Section 411(c)(4) presumption, legal pneumoconiosis is presumed and it is Employer's burden to affirmatively establish the absence of legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); see *Minich*, 25 BLR at 1-155 n.8; Employer's Brief at 47-48. Thus, the ALJ permissibly found Drs. Tuteur's and Jarboe's opinions that Claimant does not have legal pneumoconiosis inadequately explained. See *Consolidation Coal Co. v. Director, OWCP [Ross]*, 911 F.3d 824, 846 (7th Cir. 2018) (ALJ permissibly discounted medical opinions that did not adequately explain how the physicians eliminated coal mine dust exposure as a potential cause of the miner's pulmonary impairment); *Burns*, 855 F.2d at 501; *Looney*, 678 F.3d at 313-14 (ALJ may accord less weight to a physician who fails to adequately explain why a miner's obstructive disease "was not due at least in part to his coal dust exposure"). Similarly, the ALJ permissibly discredited Drs. Jarboe's and Tuteur's opinions because they failed to adequately explain why coal mine dust

¹⁶ We also reject Employer's argument that the ALJ's reliance on the preamble treated it as a rule in violation of the Administrative Procedure Act's notice and comment requirements. Employer's Brief at 38-39; see also *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012).

¹⁷ Contrary to Employer's argument that no opinion indicates Claimant's emphysema was dust-related, Dr. Sood diagnosed Claimant with "mixed chronic bronchitis and emphysema phenotype of COPD" related to Claimant's coal mine dust exposure. Employer's Brief at 47; Claimant's Exhibit 1 at 20-21; see Director's Exhibit 17 at 1.

exposure did not significantly contribute to, or substantially aggravate, Claimant's blood gas impairment, even if the primary cause was an AV malformation. *See Ross*, 911 F.3d at 846; *Beeler*, 521 F.3d at 726; *Zeigler Coal Co. v. Director, OWCP [Villain]*, 312 F.3d 332, 336 (7th Cir. 2002); *Stallard*, 876 F.3d at 673-74, 673 n.4; *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); Decision and Order at 24, 27-28; Director's Exhibit 34 at 14; Employer's Exhibits 1 at 3; 26 at 39; 31 at 16.

Finally, we reject Employer's argument that Drs. Tuteur's and Jarboe's opinions merited greater weight than the opposing opinions as they are better reasoned, they were based on a "more comprehensive review" of the record, and the authoring physicians are better credentialed. Employer's Brief at 45-47. Contrary to Employer's arguments, an ALJ is not required to credit one physician's opinion over another because they have additional qualifications or considered more evidence. *See Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-13 (2007) (en banc); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ considered all the relevant evidence and provided valid reasons for discrediting the opinions of Drs. Jarboe and Tuteur, the only opinions supportive of Employer's burden on rebuttal,¹⁸ we affirm his determination that Employer failed to rebut the presumption that Claimant has legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 29. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.¹⁹ 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 29.

¹⁸ We need not address Employer's arguments concerning the opinions of Drs. Schroedl and Sood because they diagnosed legal pneumoconiosis and thus do not aid Employer's burden on rebuttal. *See Shinseki*, 556 U.S. at 413; Employer's Brief at 40, 44-47; Director's Exhibit 17 at 2; Claimant's Exhibit 1 at 23.

¹⁹ We therefore need not address Employer's arguments regarding the ALJ's failure to consider clinical pneumoconiosis. Employer's Brief at 6, 9, 39-44; *see Consolidation Coal Co. v. Director, OWCP [Ross]*, 911 F.3d 824, 844 (7th Cir. 2018) ("While the ALJ was required to review all medical evidence before determining if a total disability existed, the [e]mployer does not cite any authority to support the notion that the ALJ may not decide that the employer cannot rebut the presumption because [it] cannot rebut one of the requisite elements.").

Disability Causation

Next, the ALJ 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 29-31; *see Minich*, 25 BLR at 1-154-56. The ALJ permissibly discredited the disability causation opinions of Drs. Jarboe and Tuteur because he could not find any specific or persuasive reason why their opinions relied upon anything other than their disagreement with his finding of pneumoconiosis. Decision and Order at 31; *see Consolidation Coal Co. v. Director, OWCP [Burris]*, 732 F.3d 723, 735 (7th Cir. 2013) (“Having denied that [the miner] suffered from pneumoconiosis, the doctor was, of course, unable to opine on the cause of a disease that he denied the claimant had.”); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (where a physician erroneously fails to diagnose pneumoconiosis, an ALJ “may not credit” their opinion on causation absent “specific and persuasive reasons” that are independent of the mistaken belief the miner did not have the disease); Employer’s Exhibits 26 at 33, 39; 31 at 20, 27.

We therefore affirm the ALJ’s finding that Employer did not rebut the presumption that Claimant’s disability is due to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 31. Consequently, we affirm the ALJ’s finding that Employer did not rebut the Section 411(c)(4) presumption.

Commencement Date of Benefits

Finally, Employer contends the ALJ erred in setting the date for the commencement of benefits, asserting that Dr. Shroedl’s examination date, not the claim filing date, should govern. Employer’s Brief at 53. We disagree.

The date for the commencement of benefits is the month in which Claimant became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the date is not ascertainable, benefits commence the month the claim was filed, unless the ALJ credits evidence that establishes Claimant was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65, 1-68-69 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-51 (1990).

The ALJ found that Claimant was totally disabled when Dr. Schroedl examined him in March 2016. Decision and Order at 32. But contrary to Employer’s argument, the date of the first medical evidence of record indicating total disability does not necessarily establish the onset date. Rather, such evidence indicates only that Claimant became totally disabled some time before then. *Tobrey v. Director, OWCP*, 7 BLR 1-407, 1-409 (1984);

Hall v. Consolidation Coal Co., 6 BLR 1-1306, 1-1310 (1984). The ALJ did not credit any evidence that Claimant was not totally disabled after the filing date of his claim, and Employer cites no evidence that would support such a finding. See *Lykins*, 12 BLR at 1-182. We therefore affirm the ALJ's determination that Claimant is entitled to benefits commencing in October 2015, the month his claim was filed. 20 C.F.R. §725.503(b); see *Owens*, 14 BLR at 1-51; *Tobrey*, 7 BLR at 1-409; *Hall*, 6 BLR at 1-1310.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge