U.S. Department of Labor

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

BRB No. 21-0204 BLA

ROGER D. YATES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 01/25/2023
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Johnson City, Tennessee, for Employer.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

BOGGS, Chief Administrative Appeals Judge, and ROLFE, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order Awarding Benefits (2019-BLA-06282) in a claim filed on August 10, 2018, 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 more than fifteen years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4)(2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the constitutionality of the Section 411(c)(4) presumption. Alternatively, it argues the ALJ erred in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption.[2] Claimant has not filed a response to Employer's appeal. The Director, Office of Workers' Compensation Programs, filed a limited response urging rejection of Employer's constitutional argument.

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 (1965).

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

Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the Affordable Care Act (ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556

[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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established more than fifteen years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 29; Director's Exhibit 5, 7-8.

(2010), is unconstitutional. Employer's Brief at 4-5. Employer's arguments with respect to the constitutionality of the ACA and the severability of its amendments to the Black Lung Benefits Act are moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).

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

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. 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 weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2). The ALJ found Claimant established total disability based on the medical opinion evidence.[4] Decision and Order at 13.

The ALJ considered the medical opinions of Drs. Raj and Ibrahim that Claimant is totally disabled and the opinions of Drs. McSharry and Sargent that he is not. Decision and Order at 4, 6-13; Director's Exhibit 13; Claimant's Exhibit 4; Employer's Exhibits 1-2, 10. The ALJ found Dr. Raj's opinion "most credible of all," and credited both Dr. Raj's and Dr. Ibrahim's opinions over those of Drs. McSharry and Sargent. He thus found Claimant established total disability based on the medical opinion evidence. Decision and Order at 13.

Employer argues the ALJ erred in finding the medical opinions established total disability. Employer's Brief at 6-15. We agree.

Dr. Raj performed a complete pulmonary examination of Claimant on September 24, 2018. Director's Exhibit 13. He acknowledged the objective testing from this examination "does not quite meet" the standards for total disability. *Id.* at 3. He opined, however, that the exercise blood gas study is consistent with "significant levels of

[4] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or 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.

hypoxemia" such that Claimant is unable to meet the physical demands of his last coal mining job. *Id.* at 4.

Dr. Ibrahim reported he had treated Claimant for at least six years for pneumoconiosis, chronic obstructive pulmonary disease (COPD), and bronchitis. Claimant's Exhibit 4 at 1. He did not expressly state Claimant is totally disabled from performing his previous coal mine work, but did explain exacerbations of Claimant's impairments have required numerous emergency room visits as well as hospitalizations, that his condition has gradually worsened over the years, and that he is on oxygen at home with exertion. *Id.* Dr. Ibrahim further stated Claimant has chronic shortness of breath on exertion. *Id.*

Dr. McSharry examined Claimant on February 18, 2020. Employer's Exhibit 2. He indicated the pulmonary function study and blood gas studies were "normal." *Id.* at 1, 3. Though he noted Claimant hyperventilated during the exercise blood gas study, he stated the exercise study also showed a "decrease in the A-a gradient," which he indicated is a normal response to exercise. *Id.* at 1. He thus opined there is "no evidence of impairment." *Id.* at 3. Dr. McSharry further opined Dr. Raj's September 24, 2018 exercise study is "misleading," likely due to the "extremely short" duration of the exercise testing of one minute, and that with longer exercise testing of more than three minutes, such as he had performed, there is a "clear increase in oxygen tension" thus demonstrating Claimant is not totally disabled. *Id.*

Dr. Sargent examined Claimant on April 24, 2019. Employer's Exhibit 1. He noted the pulmonary function study results had deteriorated since the September 24, 2018 study performed by Dr. Raj but opined it still showed only mild obstruction. *Id.* at 1-2. He further noted the blood gas study he performed produced qualifying results at rest and with exercise and thus opined Claimant is "disabled from the respiratory standpoint at this point." *Id.* at 2. However, following his review of additional medical records, including Dr. McSharry's examination report and opinion, Dr. Sargent changed his opinion and stated Claimant is not totally disabled. *Id.* at 30. He explained that the deterioration in Claimant's lung function and hypoxemia that he had observed in his April 24, 2019 testing had clearly resolved by the time of Dr. McSharry's February 18, 2020 testing and that, based on Dr. McSharry's testing, he no longer believed the objective testing demonstrated any degree of respiratory disability. *Id.*

In resolving the conflict in the medical opinions, the ALJ concluded Dr. Ibrahim's opinion is "not well-reasoned, although buttressed to some extent by [the treatment records contained in Employer's Exhibit 9]." Decision and Order at 13. He thus did not disregard Dr. Ibrahim's opinion but gave it "less evidentiary weight than Dr. Raj's opinion." He further found "the opinions of Dr. McSharry and Dr. Sargent are entitled to even less

evidentiary weight than Dr. Ibrahim's opinion." *Id.* Finally, he found "Dr. Raj's opinion is the most credible of all," and he gave it "the greatest evidentiary weight." *Id.*

We cannot affirm the ALJ's findings. Initially, as Employer contends, Employer's Brief at 9-15, the ALJ credited Drs. Ibrahim's and Raj's opinions without adequately explaining why they are more credible than the explanations provided by Drs. McSharry and Sargent. Though the ALJ indicated Dr. Ibrahim's opinion is "buttressed to some extent" by the treatment records, he did not explain how Dr. Ibrahim's opinion demonstrates Claimant is disabled, nor how his opinion is supported by Claimant's treatment records. The ALJ likewise did not provide any rationale at all to support his conclusion that Dr. Raj's opinion is "the most credible of all." Decision and Order at 13. The ALJ's crediting of the opinions of Drs. Ibrahim and Raj thus fails to satisfy the explanatory requirements of the Administrative Procedure Act (APA)[5], 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

We further agree with Employer that the ALJ did not provide sufficient rationale for discrediting the opinions of Drs. Sargent and McSharry with regard to whether Claimant is disabled. Employer's Brief at 6-8.

The ALJ initially discredited the opinions of Drs. Sargent and McSharry because both doctors opined Claimant has asthma unrelated to coal mine dust exposure, and the ALJ rejected their rationale on this point. Decision and Order at 11-12; Employer's Exhibits 1-2, 10. However, under the regulations, the issue of whether the miner suffered from a totally disabling respiratory or pulmonary impairment is a separate inquiry from whether he suffered from pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2). A physician may provide a reasoned opinion that the miner was totally disabled distinct from his opinion regarding the existence of pneumoconiosis. 20 C.F.R. §718.204(b)(2)(iv). Thus, whether Drs. Sargent and McSharry provided valid reasons for excluding coal mine dust exposure as a cause of Claimant's respiratory or pulmonary impairment is not at issue in evaluating whether they provided documented and reasoned opinions with regard to the existence of a totally disabling respiratory or pulmonary impairment.

[5] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

The ALJ also discredited Drs. Sargent and McSharry's opinions because their conclusion that Clamant has no respiratory disability is inconsistent with Claimant's testimony, his subjective complaints, and his "continued use of inhalers and supplemental oxygen." Decision and Order at 12. However, a finding of pulmonary or respiratory impairment refers to a loss of *function. See Clay v. Director, OWCP*, 7 BLR 1-82 (1984). The presence or absence of a disease, such as asthma, is not necessarily reflective of the presence or absence of impairment. *See Short v. Westmoreland Coal Co.*, 10 BLR 1-127, 1-129 n.4 (1987); *Webb v. Armco Steel Corp.*, 6 BLR 1-1120 (1984); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983). Further, a mere recitation of symptoms, such as shortness of breath, is not a finding of the existence of an impairment, or a conclusion as to its severity. *See Heaton v. Director, OWCP*, 6 BLR 1-1222 (1984); *Bushilla v. North American Coal Corp.*, 6 BLR 1-365 (1983). Thus, that Claimant is being treated for a respiratory condition does not inherently demonstrate he is impaired by that condition. Moreover, Claimant's testimony as to the severity of his symptoms, standing alone, does not constitute a valid basis to discredit a physician's opinion on total disability. *See* 20 C.F.R. §§718.204(d)(5), 718.305(b)(3); *c.f. Madden v. Gopher Mining Co.*, 21 BLR 1-122, 1-125 (1999) (finding of total disability cannot be based solely on lay evidence).

The ALJ further discredited Drs. Sargent's and McSharry's opinions because neither physician evaluated whether Claimant's impairment affects "his ability to perform his most recent coal mine employment." Decision and Order 12-13. However, contrary to the ALJ's finding, Dr. Sargent expressly opined Claimant could perform the exertional requirements of his last coal mining job even if that job required "very heavy manual labor." Employer's Exhibit 10 at 15-16. Moreover, because Drs. Sargent and McSharry opined Claimant has no impairment, no discussion of the exertional requirements of Claimant's work was necessary. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172-73, 21 BLR 2-34, 2-45-46 (4th Cir. 1997) (ALJ "may rely on a physician's report that does not discuss the exertional requirements of the miner's work if the physician concludes that the miner suffers from no impairment at all"); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-142 (1985).[6]

[6] Our dissenting colleague argues the ALJ provided enough of a rationale for us to affirm the ALJ's discrediting of the opinions of Drs. Sargent and McSharry, independent of the ALJ's irreparably flawed discussion of Drs. Ibrahim and Raj. Regardless of how persuasive his argument is, however, the vast majority of it simply is not in the ALJ's brief discussion of disability. Decision and Order at 11-13. Instead, of the four paragraphs on the subject, the ALJ dedicated the first two to whether the Miner suffered from asthma caused or aggravated by coal dust -- instead of whether a respiratory impairment disabled the Miner. The ALJ thus improperly conflated the disease elements with disability and disability causation elements for half of his disability analysis. *Id.*at 11-12. In the

Therefore, we must vacate the ALJ's finding that Claimant established a totally disabling respiratory impairment and remand the case for further evaluation in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165; 20 CFR §718.204(b)(2). Consequently, we must also vacate the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption.[7]

Remand Instructions

On remand, the ALJ must reweigh the medical opinions and determine whether Claimant has established total disability. 20 C.F.R. §718.202(b)(2)(iv). He must fully explain the reasons for his credibility determinations in light of the physicians' explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Rowe*, 710 F.2d at 255; *Wojtowicz*, 12 BLR at 1-165. If Claimant establishes total disability at 20 C.F.R. §718.204(b)(2)(iv), the ALJ must make a determination as to whether the evidence as a whole establishes that Claimant is totally disabled. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock*, 9 BLR at 1-198.

If Claimant establishes total disability, he will have invoked the Section 411(c)(4) rebuttable presumption, and the ALJ must consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1)(i), (ii). Alternatively, if the ALJ finds Claimant cannot establish a totally disabling respiratory or pulmonary impairment, the ALJ may reinstate

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remaining two paragraphs, the ALJ further discredited Drs. McSharry and Sargent because he generally found them to be entitled to less weight than Drs. Ibrahim and Raj, among other things. *Id.* But as discussed above, the ALJ provided no rationale whatsoever for why he found Drs. Ibrahim and Raj persuasive; in the absence of that rationale, it is thus impossible to uphold that portion of his reasoning comparing their opinions to Drs. McSharry's and Sargent's. Under the circumstances, the appropriate approach-- rather than attempting to, metaphorically speaking, unscramble the egg -- is to vacate the ALJ's findings on Drs. McSharry and Sargent and require that he redo his examination of the medical opinions in total, instead of performing the job of the fact finder and piecemeal affirming portions of an interrelated whole. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016).

[7] Because we have vacated the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, we decline to address Employer's allegation that the ALJ erred in determining it failed to rebut the presumption. If the ALJ again finds Claimant has invoked the Section 411(c)(4) presumption, Employer may challenge the ALJ's findings on rebuttal in a future appellate proceeding.

the denial of benefits, as total disability is an essential element of entitlement under 20 C.F.R. §718 part 718. *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).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring and dissenting:

I concur in the majority's decision to remand the claim for the ALJ to explain why he credited Drs. Raj's and Ibrahim's opinions to find Claimant totally disabled. I respectfully dissent, however, from my colleagues' decision to overturn the ALJ's discrediting of Drs. Sargent's and McSharry's opinions that Claimant is not disabled. As explained below, that finding is rational and supported by substantial evidence and, therefore, must be affirmed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

First, the ALJ acted well within his discretion in finding credible Claimant's testimony regarding his breathing difficulties. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988) (Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable); Decision and Order at 13.

As the ALJ noted, Claimant testified at the August 2020 hearing that he has difficulty breathing "day and night, every day" and requires supplemental oxygen and inhalers. Decision and Order at 5, 13, *citing* Hearing Transcript at 16-19. Claimant explained that he cannot engage in physical activities such as hunting and fishing because

he is "out of breath;" he can walk at most a quarter of a mile on "real level ground;" he uses his inhaler every day because "it's hard to get [air] in;" and his typical day entails using supplemental oxygen for "a couple hours" and then sitting on the porch if his "breathing is doing better." Hearing Transcript at 17-19.

Second, the ALJ rationally found Claimant's testimony and complaints of breathing difficulties consistent with and reinforced by the medical evidence of record. *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252 (4th Cir. 2016) (Board cannot substitute its inferences for those of the ALJ but must limit its review to whether the ALJ's factual findings are supported by substantial evidence, *i.e.*, such evidence as a reasonable mind could accept as supporting a conclusion); *see also Newport News Shipbldg. and Dry Dock Co. v. Ward*, 326 F.3d 434, 438 (4th Cir. 2003) (substantial evidence is "more than a scintilla but less than a preponderance") (citations omitted); Decision and Order at 8, 12, *citing* Claimant's Exhibit 4; Employer's Exhibits 9, 10.

Employer's expert, Dr. Sargent, testified that Claimant reported to him in April 2019 that his breathing had gotten "much worse" in the preceding two years; he had several bronchoscopies to clear mucus from his lungs; "he could only walk about a quarter mile on level ground;" he "had trouble going up a hill, and it took him several minutes to recover when he rested;" he had recently been placed on oxygen; and he "has a lot of wheezing that got worse at night." Employer's Exhibit 10 at 7-8. Beyond these consistently reported "symptoms," Dr. Sargent confirmed that Claimant's "medical history" revealed a "very aggressive bronchodilator regimen" to treat his lung disease; and the physician's own evaluation of Claimant's lungs was "very abnormal" in that he had "expiratory wheezing in all lung fields" even after bronchodilator administration and despite using supplemental oxygen during the examination. *Id*. at 8-9. Meanwhile, Dr. Ibrahim's September 2019 treatment records, which Employer introduced into evidence, similarly document Claimant's "shortness of breath;" his use of bronchodilator medication; "several" hospitalizations for lung disease; a bronchoscopy in July 2019; and his need for supplemental oxygen "with exertion." Employer's Exhibit 9.

Third, the ALJ provided several permissible reasons for finding Drs. Sargent's and McSharry's diagnoses of no impairment or disability inadequately explained in light of the other evidence of record. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533-34 (4th Cir. 1998); *see also Stark v. Director*, OWCP, 9 BLR 1-36, 1-37 (1986) (ALJ may assign less weight to physician's opinion which reflects an incomplete picture of miner's health); Decision and Order at 12.

Dr. Sargent initially opined Claimant suffered from "asthma with disabling hypoxemia" as of April 2019 based on his symptoms of "wheezing, exertional dyspnea, hypoxia, and sputum production" and qualifying hypoxic values on blood gas testing.

Employer's Exhibit 1. As the ALJ found, however, the physician "whipsawed" to conclude there is no evidence of any impairment or disability as of February 2020, based primarily on Claimant's non-qualifying blood gas and pulmonary function testing obtained by Dr. McSharry. Employer's Exhibit 10 at 14. Dr. McSharry similarly diagnosed asthma based on Claimant's symptoms of "cough, wheezing, and shortness of breath" along with his "variable spirometric values." Employer's Exhibit 2 at 2-3. He nevertheless opined there is no evidence of any impairment or disability, and the disability Dr. Sargent diagnosed in April 2019 had resolved because the February 2020 objective testing was normal. *Id*.

Having credited Claimant's testimony and supporting medical evidence as reliably documenting his lung disease-induced breathing problems and need for bronchodilators and supplemental oxygen through the time of the hearing, the ALJ found Drs. Sargent and McSharry failed to address these factors in opining there is "no evidence" of any impairment or disability at all. Decision and Order at 12. Further, to the extent both physicians diagnosed Claimant with asthma-induced cough, wheezing, and shortness of breath, he found neither "evaluated [the] effect" of these respiratory problems on Claimant's "ability to perform his previous coal mine work." *Id*. Finally, while the two doctors based their opinions on normal objective testing conducted in February 2020, the ALJ found they failed to explain why they treated that testing as "virtually dispositive" evidence of a complete and permanent reversal of the asthma-induced disability (and resulting need for oxygen and bronchodilators) Dr. Sargent diagnosed ten months prior. *Id*., *citing Greer v. Director, OWCP*, 940 F.2d 88, 91 (4th Cir. 1991) ("on any given day, it is possible to do better, and indeed to exert more effort, than one's typical condition would permit").

In rejecting the ALJ's analysis, the majority posits that "a mere recitation of symptoms, such as shortness of breath, is not a finding of the existence of an impairment, or a conclusion as to its severity." *Supra* p. 6. This statement is irrelevant to the facts of this case, however, as the ALJ's analysis and ultimate discrediting of Drs. Sargent's and McSharry's opinions is not based on a "mere recitation" of symptoms. The ALJ considered several factors including Claimant's credible, consistently reported symptoms that Drs. Sargent and McSharry either directly observed or specifically relied upon to diagnose asthma; his testimony regarding the effect of those symptoms on his ability to engage in physical activity; his documented prescriptions for bronchodilator medication and oxygen for exertion; and Dr. Sargent's diagnosis of totally disabling asthma just ten months before the February 2020 testing.

The majority's related conclusion, that "Claimant's testimony as to the severity of his symptoms, standing alone, does not constitute a valid basis to discredit a physician's opinion on total disability," misstates the law. *Id.* The relevant regulation states that a

living miner's "statements or testimony" cannot be the "sole" basis for a *finding* of total disability due to pneumoconiosis. 20 C.F.R. §718.204(d)(5). The regulation on its face neither precludes an ALJ from considering that testimony alongside other medical evidence (as happened here) nor deems a miner's credible respiratory complaints irrelevant for purposes of determining whether a physician's opinion is adequately explained in light of the underlying evidence. In fact, the ALJ would have erred had he simply ignored Claimant's credible testimony and statements he made to the medical experts about his respiratory symptoms—again, symptoms documented in his medical records and either confirmed through examination or specifically relied upon by Drs. Sargent and McSharry in rendering their diagnoses.[8] *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (an ALJ may not consider a physician's identification of symptoms "as being nothing more than mere notations of the patient's descriptions unless there is specific evidence for doing so in the report;" physician's identification of "shortness of breath," "acute shortness of breath," and "mild shortness of breath" with various activities constitutes a "reasoned medical opinion"); *Hicks*, 138 F.3d at 532 (ALJs must consider "all of the relevant evidence," including the entirety of a physician's opinion).

Finally, the majority faults the ALJ for considering the etiology of Claimant's asthma, i.e., whether it was due to coal mine dust exposure, when evaluating Drs. Sargent's and McSharry's opinions on total disability. *Supra* n. 6. Contrary to the majority's assessment, the ALJ did not conflate the issues of disease and total disability; he accurately observed that Drs. Sargent and McSharry intertwined *their diagnoses* of no disability with their belief that Claimant's asthma is not legal pneumoconiosis, i.e., because the asthma-induced disability Dr. Sargent observed in April 2019 was reversible and completely resolved as of February 2020, it is not due to coal mine dust exposure and is no longer disabling.[9] Decision and Order at 12-13 ("[B]ecause [Drs. Sargent and

[8] I thus disagree with the majority's related conclusion that Drs. Sargent's and McSharry's identification of no impairment at all somehow precludes the ALJ from considering the persuasiveness of their opinions on the question of whether Claimant can perform his previous coal mine work in light of the observations and symptomology they relied upon in rendering their diagnoses. *Supra* p. 6. Further, Dr. McSharry's examination, on which he and Dr. Sargent based their opinions that Claimant's disability had completely resolved, took place six months before the hearing at which the ALJ found Claimant credibly testified he continues to have breathing difficulties "day and night," suffers exertional limitations because of his breathing problems, and requires supplemental oxygen and bronchodilator medication. Hearing Transcript at 18.

[9] Dr. Sargent observed that because pneumoconiosis is a progressive and irreversible disease, whereas asthma is reversible, the improvement in Claimant's objective

McSharry] consider [Claimant's asthma] reversible, they opine it does not limit him in any way.").

Because the ALJ's discrediting of Drs. Sargent's and McSharry's opinions on total disability is supported by substantial evidence, I would affirm his findings. *Addison*, 831 F.3d at 252; *Ward*, 326 F.3d at 438; *Hicks*, 138 F.3d at 533-34; *Stark*, 9 BLR at 1-37. However, because I agree with the majority that the ALJ did not explain his reasons for crediting of Drs. Raj's and Ibrahim's opinions, I concur in my colleagues' decision to remand the claim on that basis.

GREG J. BUZZARD
Administrative Appeals Judge

testing confirmed his earlier opinion that Claimant's then-disabling asthma was not due to coal mine dust exposure. Employer's Exhibit 10 at 15, 17. Thus "the disabling workup that [he did in April 2019] could not have been due to dust exposure since [the disability] resolved over a ten-month period." *Id*. at 19. Dr. McSharry found "no evidence of impairment" in part because his February 2020 testing showed a reversible disease process, whereas a coal dust-induced impairment would be irreversible. Employer's Exhibit 2 at 3. He further found "no evidence of disability" because the February 2020 testing was "normal" and thus there is no evidence of a "fixed pulmonary disease that could be attributed to coal dust exposure[.]" *Id*.