U.S. Department of Labor

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

BRB No. 23-0479-BLA
and 23-0479-BLA-A

RANDALL L. HAYDEN Claimant-Respondent Cross-Petitioner v. RANGER FUEL CORPORATION Employer-Petitioner Cross-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 01/23/2025 DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Leonard J. Stayton, Inez, Kentucky, for Claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

David Giannaula (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer Feldman Jones, Deputy Associate Solicitor; Andrea J. Appel, 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, BOGGS and JONES, Administrative Appeals Judges.

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

Employer appeals, and Claimant cross-appeals, Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2020-BLA-05187) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on August 30, 2018.[1]

The ALJ found Claimant established 15.61 years of coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an

[1] Claimant filed a prior claim on October 8, 2010. Director's Exhibit 1 (2010). The district director denied the claim on April 20, 2011, for failure to establish any element of entitlement. *Id.*; Decision and Order at 2, 30 n.182.

[2] 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. §92l(c)(4) (2018); 20 C.F.R. §718.305(b).

applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). The ALJ further found Employer did not rebut the presumption and awarded benefits.[4]

On appeal, Employer argues the ALJ erred in finding that Claimant established 15.61 years of coal mine employment and a totally disabling respiratory impairment and that it did not rebut the Section 411(c)(4) presumption. It further states the ALJ erred in not considering total disability causation at 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), also responds, urging the Benefits Review Board to reject Employer's length of employment and total disability causation arguments.

On cross-appeal, Claimant challenges the ALJ's weighing of the pulmonary function study and medical opinion evidence regarding total disability. Neither Employer nor the Director filed a response.

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 (1965).

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[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, an ALJ must also deny the subsequent claim unless he or she finds "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish any element of entitlement in his prior claim, he had to submit new evidence establishing any element of entitlement to obtain a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Director's Exhibit 1 (2010).

[4] The ALJ also found Claimant did not establish he has complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304; Decision and Order at 14.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in West Virginia.

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

Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mine employment or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In calculating the length of Claimant's coal mine employment, the ALJ considered Claimant's hearing testimony, Claim Application Form (CM-911), Employment History Form (CM-911a), Description of Coal Mine Work Form (CM-913), Social Security Administration (SSA) earnings records, employment verification letters, a United Mine Workers of America (UMWA) Benefit Statement, and Dr. Prakash's report. Decision and Order at 6-11; Hearing Transcript at 11-13; Director's Exhibits 4-6, 8-14, 21. Utilizing three different methods to calculate Claimant's length of coal mine employment, the ALJ determined Claimant established 15.61 years of coal mine employment. Decision and Order at 6-7, 11.

Employer does not challenge, and we therefore affirm, the ALJ's finding that for Claimant's coal mine employment between 1970 and 1980, Employer's and other coal mine companies' employment verification letters provided "actual" dates of employment and Claimant established 7.34 years of coal mine employment.[6] Similarly, Employer

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 11.

[6] The ALJ calculated 7.34 years of coal mine employment by dividing the total calendar days Claimant was employed by 365 days for the following coal mine work: Island Creek Coal Company from August 27, 1970 to December 31, 1970; Consolidation Coal Company from March 24, 1971 to December 28, 1973, and January 28, 1975 to February 28, 1975; Robinson-Phillips Coal Company from January 28, 1975 to February 28, 1975, October 23, 1978 to April 27, 1979, and September 25 to 30, 1980; and National Mines Corporation from March 3, 1975 to October 13, 1978. Decision and Order at 7; Director's Exhibits 8-11.

does not challenge the ALJ's crediting of Claimant with one quarter year[7] of coal mine employment for work performed for Ranger Fuel Corporation in 1971.[8] *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7-8; Director's Exhibits 8-11, 13. Rather, Employer challenges the ALJ's determination that Claimant had 7.76 additional years of coal mine employment with Ranger Fuel Corporation, J&J Motors, Inc., and Tri-J Coal Company between 1979 and 1986 and 0.26 of a year of coal mine employment with Bock Coal Company in 1970 and 1979. Employer's Brief at 10-14.

In calculating the additional years of coal mine employment, the ALJ found the evidence insufficient to "clearly" establish the beginning and ending dates of Claimant's coal mine employment for those coal mine companies in those years. Decision and Order at 8. She determined that Claimant's SSA earnings records are most probative and also relied on Claimant's testimony, his Employment History Form (CM-911a), and his UMWA Benefits Statement as supplementary documentation. *Id.* Specifically, she found that Claimant's SSA earnings records document coal mine employment earnings in every year from 1979 to 1990 but noted Claimant testified his last day of coal mine employment was in December 1986. *Id.*; *see* Hearing Transcript at 19; Director's Exhibit 3. She then determined Claimant "engaged in coal mine employment for either full calendar years or partial periods totaling more than a year from 1978 to 1986." Decision and Order at 8. Applying 20 C.F.R. §725.101(a)(32)(iii), the ALJ divided Claimant's yearly earnings in his SSA earnings records by the coal mine industry's average daily earnings as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*. Decision and Order at 8-9; Director's Exhibits 12-14. For years in which Claimant's earnings reflected 125 or more working days in a given year,

[7] As the ALJ noted, we have previously held that for pre-1978 coal mine employment, an ALJ may credit a miner with a quarter of a year of coal mine employment for each quarter in which his SSA earnings records indicate he earned at least fifty dollars from coal mine operators. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 n.2 (1984); Decision and Order at 8.

[8] Relying on Claimant's SSA earnings records, the ALJ stated there are two quarters when Claimant earned at least fifty dollars while working for Ranger Fuel Corporation – January to March 1971 and April to June 1971. Decision and Order at 8. Due to the overlap in the second quarter with Claimant's coal mine employment with Consolidation Coal Company, the ALJ indicated she did not give him double credit for that quarter. *Id.*

the ALJ credited him with one year of coal mine employment. Decision and Order at 8-9. If he had less than 125 working days, the ALJ credited him with a fractional year based on the ratio of the actual number of days worked to 125. *Id*. Thus, she determined Claimant established 7.76 additional years of coal mine employment for Ranger Fuel Corporation, J&J Motors Incorporated, and Tri-J Coal Company. *Id*. Using the same method, she credited Claimant with 0.16 of a year for the twenty days he worked for Bock Coal Company in 1979 based on Claimant's hearing testimony, which she found consistent with his UMWA Benefits Statement.[9] Decision and Order at 9-10; Hearing Transcript at 12; Director's Exhibit 6. Similarly, she credited Claimant with an additional 0.10 of a year for the ten days he worked for Bock Coal Company at Black Eagle Coal Mines in 1970.[10] Decision and Order at 10; Hearing Testimony at 11-12; Director's Exhibits 1, 4.

Employer argues the ALJ's use of 125 days in calculating a year of coal mine employment "is contrary to longstanding case precedent from the Fourth Circuit Court of Appeals." Employer's Brief at 10. It asserts a reasonable method would have been to

[9] The ALJ noted Claimant testified that he worked for "Brock Coal" for "around a month or so . . . in May" 1979. Decision and Order at 9, *quoting* Hearing Transcript at 12. She also stated that Claimant's UMWA Benefits Statement reflected he worked for "Bock Coal Company" for 163 hours in 1979. Decision and Order at 9; Director's Exhibit 6. As the earnings on Claimant's UMWA Benefits Statement are consistent with Claimant's testimony, the ALJ found it "reasonable to infer" that Claimant's testimony about "Brock Coal" referred to his employment with "Bock Coal Company." Decision and Order at 9. Employer does not challenge this finding, and we therefore affirm it. *Skrack*, 6 BLR at 1-711.

[10] The ALJ summarized that Claimant's testimony and CM-911a form consistently indicate that he worked for Black Eagle Coal Mines for a short period of time in 1970. Decision and Order at 10; Hearing Transcript at 11-12; Director's Exhibit 4. She acknowledged Claimant's SSA earnings records do not contain any earnings from Black Eagle Coal Mines but noted Claimant's 2010 claim application contained an entry for "Black Egale, Mullens W. Va" underneath "Bock Coal Company," apparently indicating it is a mine location for Bock Coal Company. Decision and Order at 10; Director's Exhibit 1. The ALJ credited Claimant's testimony over the conflicting records, Decision and Order at 10, which Employer has not challenged. Therefore, we affirm the ALJ's credibility determination. *Skrack*, 6 BLR at 1-711.

divide the number of days Claimant worked each year by either 260 or 250,[11] resulting in a total of either 14.72 or 14.84 years of coal mine employment. *Id*. at 11-14.

Claimant responds that, contrary to Employer's assertion, the ALJ reasonably determined Clamant was entitled to a full year of coal mine employment for each of the years from 1980 through 1986. Claimant's Response Brief at 16-18. Thus, Claimant states that adding 0.37 of a year of coal mine employment – accounting for the reduction from Employer's proposed calculations for the years of 1980 through 1983 when using 260 days as a divisor – to either of Employer's asserted 14.72 or 14.84 total years of coal mine employment still results in at least 15 years of coal mine employment for Claimant. *Id*. In the alternative, Claimant argues that the ALJ's use of a 125-day divisor was reasonable. *Id*. at 18-20. The Director agrees with Claimant that the ALJ's use of the 125-day divisor was reasonable and contends the ALJ's finding of 15.61 years of coal mine employment should be affirmed. Director's Brief at 2-4.

The Fourth Circuit has held that before determining whether a miner established a year of coal mine employment with an employer, the ALJ must first determine whether the miner was engaged in an employment relationship for a period of one calendar year, i.e., 365 days, or partial periods totaling one year. 20 C.F.R. §725.101(a)(32)(i); *see Daniels Coal Co. v. Mitchell*, 479 F.3d 321, 334-35 (4th Cir. 2007) (one-year employment relationship must be established, during which the miner had 125 working days); *Armco, Inc. v. Martin*, 277 F.3d 468, 474-75 (4th Cir. 2002) (recognizing the 2001 revisions to the regulations require a one-year employment relationship during which the miner worked 125 days to establish a year of employment); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003). If the threshold one-year period is met, the ALJ must then determine whether the miner worked for at least 125 working days within that one-year period. 20 C.F.R. §725.101(a)(32). Proof that the miner worked at least 125 days or that his earnings exceeded the industry average for 125 days of work in a given year, however, does not satisfy the requirement that such employment occurred during a 365-day period of coal mine employment and therefore, in itself, does not establish one full year of coal mine employment as defined in the regulations. *See Clark*, 22 BLR at 1-281.

In this case, the ALJ initially found Claimant had "full calendar years or partial periods totaling more than a year from 1978 to 1986" and thus reasonably credited Claimant with a full calendar year of coal mine employment for each year from 1980 to

[11] Employer asserts that, assuming Claimant took no vacations and worked five days a week for all fifty-two weeks of the year, he would work 260 days per year, or assuming Claimant worked five days a week with two weeks' vacation, he would have worked 250 days per year. Employer's Brief at 12.

1986. Decision and Order at 8-9; *see Mitchell*, 479 F.3d at 334-35; *Martin*, 277 F.3d at 474-75. Consequently, we reject Employer's contention that Claimant was not entitled to a year of coal mine employment for each of these years and affirm the ALJ's determination that Claimant established seven years of coal mine employment from 1980 to 1986. *See* Employer's Brief at 10-13. We need not reach the issue of the reasonableness of using 125 days as a divisor, because even relying on Employer's calculations for Claimant's coal mine employment with Ranger Fuel Corporation, J&J Motors, and Tri J Coal Company in 1979 and for Claimant's employment with Bock Coal Company in 1970 and 1979, Claimant still would establish at least fifteen years of coal mine employment.[12] *See* Employer's Brief at 12-14. Thus, any error in the ALJ's calculations for these years would be harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 9.

Consequently, we affirm the ALJ's finding that Claimant established at least fifteen years of coal mine employment. The ALJ did not specifically determine whether Claimant's coal mine employment was underground coal mine employment, "substantially similar" surface coal mine employment, or any combination of both. 20 C.F.R. §718.305(b)(1)(i); *see* Decision and Order at 11-12. But the ALJ acknowledged Claimant testified that all his employment was performed underground and noted that an aboveground worker at the site of an underground mine is not required to show comparability of environmental conditions in order to invoke the Section 411(c)(4) presumption. *Muncy v. Elkay Mining Co*., 25 BLR 1-21, 1-28-29 (2011); Decision and Order at 5, 11; Hearing Transcript at 11; *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1058 (6th Cir. 2013). Further, as Employer has not challenged the nature of Claimant's coal mine employment, we affirm that he had at least fifteen years of qualifying coal mine employment. *Skrack*, 6 BLR at 1-711.

[12] The unchallenged periods of coal mine employment total 7.59 years. Adding the seven years of coal mine employment for 1980 to 1986 results in a total of 14.59 years. Employer asserts that using its calculations, "Claimant can only be credited with 0.08 year of coal mine employment in 1979 and 0.04 year of coal mine employment in 1970" with Bock Coal Company for a total of 0.12 year of coal mine employment. Employer's Brief at 14. Adding this amount to the 14.59 years results in a total of 14.71 years. For the remainder of Claimant's 1979 coal mine employment, Employer calculated 0.37 of a year, using 260 workdays per year as a divisor, and 0.39 of a year, using 250 workdays per year as a divisor. *Id*. at 12-13. Adding these amounts to 14.71 years results in 15.08 and 15.10 years, respectively.

Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must also 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 or comparable gainful work. *See* 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 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 concluded Claimant established total disability based on the medical opinion evidence and a weighing of the evidence as a whole.[13] 20 C.F.R. §718.204(b)(2)(iv).

Employer challenges the ALJ's weighing of the medical opinion evidence. Employer's Brief at 15-30. On cross-appeal, Claimant also challenges the ALJ's weighing of the medical opinion evidence and her consideration of the pulmonary function study evidence.[14] Claimant's Brief at 13-16. Because we affirm the ALJ's determination that

[13] We affirm, as unchallenged, the ALJ's determination that the arterial blood gas studies do not support total disability and there was no evidence of cor pulmonale. 20 C.F.R. §718.204(b)(2)(ii)-(iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 21-22.

[14] The ALJ considered the results of the November 30, 2018 pulmonary function study, which Dr. Prakash conducted and which produced qualifying values before the administration of bronchodilators. Decision and Order at 15; Director's Exhibit 21. Dr. Prakash did not obtain post-bronchodilator results. *Id.* The ALJ also considered Dr. Truncale's December 9, 2019 study, which produced non-qualifying results before and after the administration of bronchodilators. Decision and Order at 15; Employer's Exhibit 1. A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i). She found both studies reliable but gave more weight to the more recent December 9, 2019 study as "more reflective of [Claimant's] condition at the time of hearing, particularly because it was performed over one year after the next most recent [pulmonary function study]." Decision and Order at 20. Thus, she found the overall weight of the pulmonary function study evidence did not support a finding of total disability. *Id.* at 21.

Claimant established total disability based on the medical opinions and the weighing of the evidence as a whole, we need not address Claimant's arguments on cross-appeal.

Prior to weighing the medical opinion evidence, the ALJ considered the exertional requirements of Claimant's usual coal mine work as a continuous miner operator and performing "dead work" which involved "shoveling rock dust and setting timbers." Decision and Order at 12, *citing* Hearing Transcript at 13. The ALJ found Claimant consistently testified and reported that his work running a continuous miner required him to lift and carry seventy-five to one hundred pounds and therefore his usual coal mine work required a heavy level of exertion as defined in the Dictionary of Occupational Titles. Decision and Order at 12; *see* Director's Exhibits 5, 21; *see also* Hearing Transcript at 14. As this determination is unchallenged on appeal, we affirm it. *Skrack*, 6 BLR at 1-711.

The ALJ next considered the medical opinions of Drs. Prakash, Go, and Cohen, that Claimant has a totally disabling respiratory or pulmonary impairment, and the contrary opinions of Drs. Truncale and Spagnolo. Decision and Order at 22-30. She noted all of the physicians are Board-certified pulmonologists and therefore found them "well-qualified" to offer an opinion on whether Claimant has a totally disabling respiratory or pulmonary impairment. Decision and Order at 22-23; Director's Exhibit 21; Claimant's Exhibits 1, 2; Employer's Exhibits 1, 2, 5, 6. The ALJ gave "full probative weight" to Dr. Cohen's opinion as well-documented and well-reasoned because he adequately explained why Claimant is totally disabled from performing the exertional requirements of his usual coal mine work based on the diffusing capacity value on his December 9, 2019 pulmonary function study, his respiratory symptoms, his smoking history, and the exertional requirements of his usual coal mine work. Decision and Order at 27-28. She found Dr. Cohen's opinion supported by Dr. Go's opinion, which she accorded some weight, as he explained how the objective studies and Claimant's symptoms supported his diagnosis of a diffusion impairment that meets the "American Medical Association criteria for a class 4 pulmonary impairment." *Id*. at 29, *citing* Claimant's Exhibit 1 at 8. However, she gave slightly less weight to Dr. Go's opinion because he relied on Claimant's usual coal mine work requiring "very heavy" exertion while she found Claimant's usual coal mine work only required heavy exertion. Decision and Order at 29-30.

The ALJ gave less weight to the opinions of Drs. Prakash, Truncale, and Spagnolo. Dr. Prakash performed the Department of Labor-sponsored exam of Claimant; the ALJ assigned Dr. Prakash's opinion little probative weight as his opinion is internally inconsistent. Specifically, Dr. Prakash diagnosed Claimant's impairment as both mild and severe; relied solely on the 2018 pulmonary function study, which the ALJ determined is contrary to her finding that the overall weight of the pulmonary function study evidence does not support a total disability determination; and relied on Claimant's usual coal mine work as requiring a very heavy level of exertion, which again is contrary to the ALJ's

finding. Decision and Order at 23-24. The ALJ gave little weight to Dr. Truncale's opinion as well because she found it to be "poorly reasoned." *Id*. at 26. She determined he relied on Claimant's ability to perform moderate to heavy labor, which is contrary to her finding that Claimant's usual coal mine work required heavy labor. *Id*. In addition, she found Dr. Truncale did not provide a clear determination on total disability in his report and offered a vague and speculative opinion that the 2019 diffusing capacity is invalid. *Id*. Similarly, the ALJ gave little weight to Dr. Spagnolo's opinion as he did not adequately explain how Claimant can perform the heavy exertional requirements of his usual coal mine job despite his reduced FVC, FEV1, and diffusion capacity values on pulmonary function testing. *Id*. at 27. Further she determined Dr. Spagnolo did not address whether Claimant's reduced diffusing capacity was totally disabling but rather focused on other causes for the reduction. *Id*. Thus, the ALJ found Claimant established total disability based on the opinions of Drs. Cohen and Go. *Id*. at 30.

Employer contends the ALJ erred in crediting Dr. Cohen's opinion to find total disability established, specifically because he relied solely on Claimant's December 2019 diffusion capacity study to diagnose total disability and the ALJ did not consider whether this study was valid. Employer's Brief at 16-20. In addition, Employer argues the ALJ erred in generally giving more weight to Dr. Cohen's opinion and in giving less weight to the opinions of Drs. Truncale and Spagnolo. *Id*. at 20-29. We disagree.

When total disability cannot be shown under 20 C.F.R. §718.204(b)(2)(i)-(iii), total disability may nevertheless be found if a physician, exercising reasoned medical judgement based on medically acceptable clinical and laboratory diagnostic techniques, concludes a miner is totally disabled. 20 C.F.R §718.204(b)(2)(iv). Total disability can be established with a reasoned medical opinion even "[w]here total disability cannot be shown" by qualifying objective testing, as non-qualifying test results may still indicate a miner is incapable of performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). Further, a physician's opinion that a claimant is disabled due to a reduced diffusing capacity may constitute a valid basis for an ALJ's finding of total disability under the Act. *See Walker v. Director, OWCP*, 927 F.2d 181, 184-85 (4th Cir. 1991).

In considering the medical opinions, the ALJ evaluated the reliability and validity of the December 9, 2019 pulmonary function study,[15] specifically the diffusion capacity

[15] Weighing the pulmonary function studies, the ALJ indicated Dr. Truncale did not initially question the validity of the December 2019 study conducted in conjunction with

value. Decision and Order at 18-20, 24-30. She found credible Dr. Cohen's testimony that "[d]iffusion capacity is really one of the true lung function measures at rest where you evaluate the ability of the lung to transfer gas from the alveolar space into the blood stream" and that the medical community accepts diffusion capacity as a valid measure of the extent of a pulmonary impairment. Decision and Order at 28, *citing* Claimant's Exhibit 2 at 8-9. In addition, she considered Dr. Truncale's report, observing that he stated Claimant's diffusion capacity is "[m]oderately reduced." Employer's Exhibit 1 at 7. She indicated this finding is supported by Dr. Clum, who administered the December 2019 pulmonary function study conducted in conjunction with Dr. Truncale's evaluation and who stated "[d]iffusing capacity is moderately impaired at 44% predicted;" he concluded the study showed the following: "[m]oderate obstructive lung disease with a reduced FEV1 to vital capacity ratio, bronchodilator response is present, evidence for moderate impaired gas exchange." *Id*. at 13. As the ALJ noted, Dr. Truncale did not question the validity or reliability of the 2019 diffusion capacity testing until his deposition when he testified Claimant's respiratory capacity is "less than 50 percent of his total lung capacity, which suggests he didn't take a deep inspiration, which will falsely lower the [diffusing capacity of the lungs for carbon monoxide] DLCO." Decision and Order at 25, *quoting* Employer's Exhibit 5 at 24. However, the ALJ permissibly found Dr. Truncale's opinion concerning the 2019 diffusion capacity value "vague and speculative" because it was not based on any comments on the test form or in his initial evaluation and because he did not administer the test, indicate he observed Claimant performing the test, or indicate whether he reviewed any tracings in reaching his conclusions. *Milburn Colliery v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 26; Employer's Exhibit 5 at 23-24.

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his evaluation of Claimant but rather waited until his deposition to suggest that the study might be invalid. Decision and Order at 18-19. When questioned about the technician's comments that Claimant had shortness of breath and dizziness during the study, Dr. Truncale testified "[t]he comments suggest that the data is acceptable, but it doesn't say that it's reproducible" and concluded that pulmonary function and diffusion studies "grossly underestimate [Claimant's] true capacity." Employer's Exhibit 5 at 15-16. The ALJ noted Drs. Cohen and Go reviewed the tracings from the December 2019 study and found them to be valid. Decision and Order at 20; *see* Claimant's Exhibit 1 at 4; Claimant's Exhibit 2 at 17-18. She permissibly found Dr. Truncale's opinion outweighed by Drs. Go's and Cohen's opinions because the technician performing the study found the results to be acceptable, the doctor did not explain why the deficiencies he observed rendered the study unreliable or why the results were not reproducible, and he was the only physician to mention possible glottic closure issues. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Decision and Order at 20.

The ALJ also considered Dr. Spagnolo's comments that he gave "little weight" to the 2019 diffusion study because "[y]ou should never try to make a diagnosis based on one single value from any test" and "he's got multiple reasons why it could be a little reduced." Decision and Order at 27, *quoting* Employer's Exhibit 6 at 25-26. In addition, she considered his statement that "the only abnormality really that I saw – and I'm not sure we can say that it was abnormal because we didn't review the tracings – was the reduced DLCO." Decision and Order at 27, *quoting* Employer's Exhibit 6 at 29-30. However, Dr. Spagnolo did not directly address whether the diffusion study was invalid or unreliable. Consequently, the ALJ permissibly found Employer has failed to demonstrate that the 2019 diffusion capacity study was insufficient to establish a basis for total disability[16] and thus we find no error in the ALJ's crediting of Dr. Cohen's opinion based on his reliance on this study. *See Walker*, 927 F.2d at 184-85; *Orek v. Director, OWCP*, 10 BLR 1-51, 1-53-55 (1987); Decision and Order at 28. Thus, contrary to Employer's assertions, we affirm the ALJ's permissible determination that Dr. Cohen provided a well-documented and well-reasoned opinion because he sufficiently explained how, despite the non-qualifying values on the 2019 pulmonary function study, the diffusion capacity testing was sufficient to support a finding of total disability given the heavy exertional requirements of Claimant's usual coal mine work. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 28; Claimant's Exhibit 2.

We also reject Employer's contention that the ALJ erred in discrediting the opinions of Drs. Truncale and Spagnolo. Dr. Truncale examined Claimant and prepared an initial report stating "[t]here is no evidence of obstruction" and Claimant's diffusion capacity is "[m]oderately reduced" on the December 9, 2019 pulmonary function study. Employer's Exhibit 1 at 7. He opined Claimant "does not meet criteria for respiratory impairment" based on the non-qualifying pulmonary function tests, specifically stating the 2019 test's FEV1/FVC ratio "DOES NOT MEET the criteria for obstructive lung disease of any cause" and the "Total Lung Capacity, Residual Volume, and RV/TLC were normal, a finding not expected in someone with significant airflow obstruction." *Id.* at 8, 10. He attributed "[a]ny presumed disability" to causes other than exposure to coal mine dust. *Id.* at 11. At his subsequent deposition, Dr. Truncale stated Claimant would be able to return to his last coal mine employment, which required him to "lift and carry . . . 20 to 40 to 60 pounds" or do "moderate to heavy labor" based "on his work experience leaving the coal mine industry

[16] We note that because the study was conducted in conjunction with Dr. Truncale's evaluation of Claimant, Employer could have obtained and submitted any tracings conducted during the 2019 study to substantiate its allegations. *See* Employer's Exhibit 5.

and working lifting engines and working on his lawn maintenance."[17] *Id.* at 21. He also opined that the diffusion capacity is invalid and the study is "inconsistent" with the exercise arterial blood gas study that he stated is more reliable than the diffusion capacity. *Id.* at 24.

Employer argues that because Dr. Truncale opined Claimant was able to perform up to heavy labor, the ALJ erred in discrediting his opinion that Claimant has the respiratory capacity to perform his usual coal mine job. Employer's Brief at 23. We disagree. Dr. Truncale testified that Claimant's usual coal mine work required him to lift and carry between twenty and sixty pounds. However, the ALJ found, and we have affirmed, Claimant's work as a continuous miner operator required him to lift and carry seventy-five to one hundred pounds. Decision and Order at 12; Director's Exhibits 5, 21, Hearing Transcripts at 13-14. Thus, we affirm the ALJ's rational determination that Dr. Truncale's opinion is entitled to little weight because it is based on an inaccurate understanding of the exertional requirements of Claimant's usual coal mine work. *See Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991); *Walker*, 927 F.2d at 184-85; Decision and Order at 26. In addition, because we have rejected Employer's arguments regarding the reliability of the diffusion capacity, we also affirm the ALJ's discrediting of Dr. Truncale's deposition opinion that the 2019 diffusion capacity results are invalid and do not demonstrate Claimant is able to perform his usual coal mine employment. Decision and Order at 26. We therefore affirm the ALJ's finding that Dr. Truncale's opinion is poorly reasoned and entitled to little weight. *Id.*

Similarly, we reject Employer's contention that the ALJ failed to adequately explain her finding that Dr. Spagnolo's opinion is poorly reasoned and entitled to little weight. Employer's Brief at 25-27. In his report, Dr. Spagnolo stated:

> [Claimant's] lung tests show no evidence of an obstructive lung defect. Further, the total lung capacity is normal in 2019 and rules out a restrictive lung impairment. [Claimant's] slightly reduced FVC, FEVl and DLCO are secondary to his obesity. This is confirmed by the chest x-ray findings of low lung volumes and bronchovascular crowding at the lung bases.

Employer's Exhibit 2 at 9. At his deposition, he reiterated that Claimant "has a normal lung capacity," the pulmonary function studies show "no evidence of airflow obstruction,"

[17] Dr. Truncale testified Claimant stated that from 1988 until 2008, "he worked building fire trucks and mounting engines on frames," and from 2008 to 2017 he "worked on grounds . . . trimming trees, hedges, and weed whacking and riding a mower." Employer's Exhibit 5 at 9-10.

and the arterial blood gas studies showed "no problem with diffusion or . . . any sort of difficulty with getting gas exchanged in the lung." Employer's Exhibit 6 at 25-27. Dr. Spagnolo testified that the diffusion capacity measure "is a great test - difficult to do - but unfortunately, not very specific;" he concluded it should only be given "little weight" because a diagnosis should never be made from one single value from any test and Claimant's reduced capacity could be due to multiple reasons, including obesity and heart disease. *Id.* at 25-27, 29-30. Contrary to Employer's assertion, the ALJ considered the entirety of Dr. Spagnolo's opinion but permissibly found it poorly reasoned because he failed to adequately explain how Claimant can still perform a "heavy" level of exertion despite Claimant's "slightly reduced" FVC and FEV1 on pulmonary function testing as well as his "slightly reduced" DLCO. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Hicks*, at 533; *Akers*, 131 F.3d at 441; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Scott*, 60 F.3d at 1142; Decision and Order at 27.

As we have affirmed the ALJ's crediting of Dr. Cohen's opinion establishing Claimant has a totally disabling respiratory impairment and her discrediting of the contrary opinions of Drs. Truncale and Spagnolo, we affirm the ALJ's determination that Claimant established total disability based on the medical opinion evidence at 20 C.F.R. §725.204(b)(2)(iv).[18] Decision and Order at 30.

In weighing the evidence as a whole, the ALJ explained that the absence of qualifying pulmonary function studies and blood gas studies does not undermine the medical opinion evidence and therefore concluded Claimant established total disability at 20 C.F.R. §718.204(b)(2). Decision and Order at 30. Although Employer contends the ALJ failed to explain her findings given "the overwhelming weight of the objective studies, which do not demonstrate a disabling respiratory impairment, as corroborated by the opinions of Drs. Truncale and Spagnolo," we hold that the ALJ permissibly explained her

[18] As Dr. Cohen's opinion is sufficient to establish total disability, we need not address Employer's arguments concerning the ALJ's weighing of Dr. Go's opinion as any error would be harmless. *See Johnson v. Jeddo-Highland Coal Co*., 12 BLR 1-53, 1-55 (1988); *Larioni*, 6 BLR at 1-1278; Decision and Order at 28-30; Employer's Brief at 27-29.

findings, as discussed above, in accordance with the Administrative Procedure Act.[19] 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 30. We therefore affirm the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and established a change in the applicable condition of entitlement. *See* 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.305(b)(1)(i), 725.309(c); *see also Muncy*, 25 BLR at 1-27.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis[20] 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 disproved the existence of clinical pneumoconiosis but failed to establish Claimant does not have legal pneumoconiosis arising out of coal mine employment or that he is totally disabled due to pneumoconiosis. Decision and Order at 31-37.

Employer asserts the ALJ erred in finding it did not rebut the existence of legal pneumoconiosis and in not addressing total disability causation under 20 C.F.R. §718.204(c). Employer's Brief at 29-34.

[19] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[20] "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).

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)(2)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the opinions of Drs. Truncale and Spagnolo, but the ALJ found neither one sufficiently reasoned to meet Employer's burden to disprove legal pneumoconiosis. Decision and Order at 33. Employer argues the ALJ erred in discrediting their opinions. We disagree.

Dr. Truncale opined Claimant does not have chronic obstructive pulmonary disease (COPD) or obstructive lung disease of any kind based on the pulmonary function studies. Employer's Exhibit 1 at 8. As the ALJ stated, Dr. Truncale disagreed with Dr. Prakash's opinion that Claimant has chronic bronchitis, noting Claimant "last worked in a coal mine more than 30 years ago and only recently subjectively complained of cough and mucus production." Decision and Order at 35; Employer's Exhibit 1 at 9. The ALJ permissibly discredited Dr. Truncale's rationale as contrary to the regulations which recognize that pneumoconiosis is a "latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be latent and progressive may be discredited); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-49-52 (2023); Decision and Order at 35, *citing* 20 C.F.R. §718.201(c)(1); 65 Fed. Reg. 79920, 79971 (Dec. 20, 2000) ("[I]t is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period."). We also see no error in the ALJ's conclusion that, by commenting on the length of time since Claimant's cessation to coal dust exposure, Dr. Truncale, at least in part, relied on an impermissible factor in concluding that Claimant does not suffer from legal pneumoconiosis. *Epling*, 783 F.3d at 506; Decision and Order at 35, *citing Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488 (6th Cir. 2012) (finding a physician "relied on an impermissible factor" when commenting on the period of time since the miner's "coal mine employment ceased" as "inconsistent with the regulations that recognize that pneumoconiosis 'may first become detectable only after the cessation of coal mine dust exposure'"); *Island Creek Coal Co. v. Dykes*, 611 F. App'x 119, 122 (4th Cir. 2015) ("Although the Preamble does not state that pneumoconiosis is always progressive, the Department retained its regulatory provisions specifying that pneumoconiosis is latent and progressive.").

In addition, the ALJ noted both Dr. Truncale and Dr. Spagnolo acknowledged the possibility that Claimant has asthma but opined it is not legal pneumoconiosis because they assert coal mine dust exposure does not cause or aggravate asthma. Employer's Exhibits 1 at 9, 2 at 9, 6 at 30. The ALJ permissibly found their rationale unpersuasive since the preamble to the revised 2001 regulations[21] recognizes asthma as a form of chronic obstructive pulmonary disease that can constitute legal pneumoconiosis if it is caused or aggravated by coal mine dust exposure. *See Looney*, 678 F.3d at 314-16; *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 861 (D.C. Cir. 2002); Decision and Order at 35-36, *citing* 65 Fed. Reg. at 79,920, 79,939.

Moreover, Dr. Spagnolo stated that Claimant's "clinical respiratory symptoms, physical examinations, medical history, and testing are most consistent with a diagnosis of long-standing asthma, obesity and cardiovascular disease" and not coal mine dust exposure. Decision and Order at 30, *quoting* Employer's Exhibit 2 at 9. The ALJ permissibly found Dr. Spagnolo's opinion focused on the "primary cause" of Claimant's impairment but did not adequately explain why Claimant's more than fifteen years of coal mine dust exposure did not significantly contribute to or substantially aggravate Claimant's respiratory impairment. Decision and Order at 36; *see Looney*, 678 F.3d at 314-16; *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441.

As the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the explanations given by the experts for their diagnoses and to assign those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 391, 324 (4th Cir. 2013); *Looney*, 678 F.3d at 314-15. The Board cannot reweigh the evidence or substitute its inferences for those of the ALJ. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's finding that the opinions of Drs. Truncale and Spagnolo do not satisfy Employer's burden to disprove the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 36-37. Because Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant did not have pneumoconiosis, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

[21] An ALJ may evaluate expert opinions in conjunction with the Department of Labor's discussion of the prevailing medical science set forth in the preamble to the revised 2001 regulations. *A & E Coal Co. v. Adams*, 694 F.3d 798, 801 (6th Cir. 2012); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *see also A & E Coal Co. v. Adams*, 694 F.3d 798, 801 (6th Cir. 2012).

Total Disability Causation

The ALJ did not address whether Employer could rebut the Section 411(c)(4) presumption by establishing that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis under 20 C.F.R. §718.305(d)(1)(ii). Employer's Brief at 34. Employer does not advance any arguments why the evidence supports rebuttal under 20 C.F.R. §718.305(d)(1)(ii) and merely asserts the ALJ did not address the "disability causation issue" under 20 C.F.R. §718.204(c). *Id.* The Director correctly asserts the ALJ was not required to address disability causation under 20 C.F.R. §718.204(c) because Claimant invoked the Section 411(c)(4) presumption under 20 C.F.R. §718.305 and therefore the burden of proof shifted to Employer to disprove this element of entitlement.

Moreover, we consider the ALJ's error to be harmless, and it therefore does not require remand. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni*, 6 BLR at 1-1278. Employer has not alleged any "specific and persuasive reasons" for concluding Drs. Truncale's and Spagnolo's opinions on disability causation are independent of their erroneous opinions that Claimant is not totally disabled and does not have legal pneumoconiosis, which the ALJ rejected. *Epling*, 783 F.3d at 504-05 (physician who fails to diagnose pneumoconiosis, contrary to the ALJ's finding, cannot be credited on rebuttal of disability causation absent specific and persuasive reasons); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 36-37.

We therefore affirm the ALJ's findings that Employer did not rebut the Section 411(c)(4) presumption. Decision and Order at 21-22. Thus, we affirm the award of benefits. *Id.* at 37.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring.

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge