U.S. Department of Labor

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

BRB No. 24-0034 BLA

JAMES P. POLLY)
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Claimant-Respondent)
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v.)
)
BLACK ENERGY, INCORPORATED)
)
and)
)
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA / AIG)
)
Employer/Carrier-Petitioners)
)
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 01/30/2025

DECISION and ORDER

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

Sarah Y. M. Himmel and Joseph N. Stepp (Two Rivers Law Group P.C.), Christiansburg, Virginia, for Employer and its Carrier.

John Earl Hunt, Allen, Kentucky, for Claimant.

Before: GRESH, Chief Administrative Appeals Judges, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2021-BLA-05657) rendered on a subsequent claim[1] filed on September 3, 2019, 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 twenty-five years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus, he found Claimant established a change in an applicable condition of entitlement,[2] 20 C.F.R. §725.309(c), and invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and therefore awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment, and thereby established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response.

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[1] Claimant filed one prior claim on October 15, 2015. Director's Exhibit 1 at 130-34. The district director denied the claim on June 9, 2016, for failure to establish a totally disabling respiratory or pulmonary impairment. *Id.* at 12-14.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless they find "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(c)(1); *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's prior claim was denied for failure to establish a totally disabling respiratory or pulmonary impairment, he had to submit new evidence establishing this element of entitlement to obtain review of the merits of the current claim. *Id.*; *see White*, 23 BLR at 1-3.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if they establish 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(b).

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.[4] 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).

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. *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).

The ALJ found Claimant established total disability based upon the medical opinion evidence and in consideration of the evidence as a whole.[5] Decision and Order at 25-26. Employer contends the ALJ erred in weighing the pulmonary function studies and medical opinions. Employer's Brief at 9-42. For the following reasons, we affirm the ALJ's findings.

Pulmonary Function Studies

The ALJ considered four pulmonary function studies conducted on October 3, 2019, November 4, 2019, November 6, 2019, and September 29, 2022. Decision and Order at 11-14. He accurately noted that none of the studies produced qualifying[6] values either pre-

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 35; Director's Exhibit 5 at 1-2.

[5] The ALJ found the pulmonary function and arterial blood gas studies do not establish total disability 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 11-15.

[6] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i). Nevertheless, a medical opinion can support a finding of total disability despite non-qualifying objective

or post-bronchodilator and therefore found they do not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii). *Id.*; *see* Director's Exhibits 17 at 6, 40 at 9; Claimant's Exhibits 5, 21. Employer does not challenge that finding; rather, it contends the ALJ erred in finding three of the studies are valid and reliable, which in turn affected his weighing of the medical opinions that relied on those studies.

When considering pulmonary function study evidence, the ALJ must determine whether the studies are in substantial compliance with the quality standards.[7] 20 C.F.R. §§718.101(b), 718103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). "In the absence of evidence to the contrary, compliance with the [regulatory quality standards] shall be presumed." 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

Considering the opinions of Drs. Chavda, Fino, Vuskovich, and Gaziano, as well as comments made by technicians who administered the studies, the ALJ found each of the studies valid and probative of whether Claimant is total disabled.[8] Decision and Order at 12-14.

October 3, 2019 Pulmonary Function Study

The October 3, 2019 pulmonary function study was administered as part of the Department of Labor-sponsored complete pulmonary examination of Claimant. The technician who administered the study noted Claimant demonstrated good effort and cooperation. Director's Exhibit 17 at 11. Dr. Gaziano reviewed the study for validation purposes and checked a box indicating "[v]ents are acceptable[.]" Director's Exhibit 22.

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testing results. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); 20 C.F.R. §718.204(b)(2)(iv).

[7] An ALJ must consider a reviewing physician's opinion regarding a miner's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

[8] As Employer does not challenge the ALJ's finding the November 4, 2019 pulmonary function study produced valid and reliable results, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13.

Dr. Chavda opined the study produced valid results, Claimant's Exhibit 25 at 2, while Dr. Vuskovich opined the study was invalid, stating:

> Configurations of [Claimant's] flow volume loops and volume time tracings showed that within a reasonable degree of medical certainty [Claimant] did not put forth the effort required to generate valid FVC-FEV1 results. His initial efforts were not maximum efforts which artificially lowered his FEV1 results. His deep breath efforts were variable. Not taking an initial deepest breath possible artificially lowered his pre bronchodilator FVC-FEV1 results[.]

Employer's Exhibit 8 at 1.

The ALJ found the opinions of Drs. Gaziano and Chavda, together with the comments by the technician who administered the study, outweigh Dr. Vuskovich's invalidation of the study. Decision and Order at 12-13. He permissibly found Dr. Vuskovich's opinion unpersuasive as the physician did not explain what aspects or characteristics of the loops and tracings led to his conclusions that Claimant's efforts during the study were submaximal, artificially low, and variable. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989).

Employer argues the ALJ erred in discounting Dr. Vuskovich's opinion, noting the regulations describe three ways in which submaximal effort can be demonstrated. It further contends the study is invalid because it "did not exhibit any plateauing in [its] flow loops, the peak did not last for a minimum of 2 seconds, and the breath did not last for a minimum of 7 seconds." Employer's Brief at 26-27; *see* 20 C.F.R. Part 718 Appendix B(2)(ii). However, Employer has not identified where Dr. Vuskovich himself opined that those alleged deficiencies were present with the October 3, 2019 study, and an ALJ cannot substitute his opinion for that of a medical expert by interpreting the study himself. *See Schetroma v. Director*, OWCP, 18 BLR 1-19, 1-22 (1993); *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). Thus we reject Employer's argument that the ALJ erred in weighing Dr. Vuskovich's opinion.[9]

[9] It is Employer's burden, as the party challenging the validity of the October 3, 2019 study, to establish the study produced invalid or unreliable results. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984). Because the ALJ permissibly discredited the only opinion supportive of Employer's burden and credited the validating opinions of Drs. Gaziano and Chavda, we decline to address Employer's argument that the ALJ erred in

Because the ALJ permissibly discredited Dr. Vuskovich's opinion and relied upon the opinions of Drs. Chavda and Gaziano validating the study, we affirm his finding that the October 3, 2019 study produced valid and reliable results. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

November 6, 2019 Pulmonary Function Study

Claimant's treating physician, Dr. Alam, administered the November 6, 2019 pulmonary function study. Claimant's Exhibit 5. The technician who conducted the test observed that Claimant gave good effort and cooperation. *Id.* Dr. Dahhan opined, however, that the study was invalid due to inconsistent effort, premature termination, and lack of full exhalation. Employer's Exhibit 10 at 36. Dr. Fino also opined the study was not technically valid because of a premature termination of exhalation and a lack of reproducibility. Employer's Exhibit 11 at 1. Finally, Dr. Vuskovich opined the study was not valid because only one trial was performed while three are required. Employer's Exhibit 7.

The ALJ gave Dr. Vuskovich's opinion little weight, noting that while the regulatory quality standards require a test be accompanied by three trials and tracings, the standards do not apply to studies, like this one, that are administered during treatment rather than for the purposes of litigation. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000); Decision and Order at 14. Such tests may constitute evidence of a miner's respiratory condition if the ALJ determines the studies can reliably establish total disability. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000) ("Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator must still be persuaded the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue."). The ALJ gave the opinions of Drs. Dahhan and Fino little weight because they did not provide specific findings for their conclusions and gave more weight to the firsthand opinion of the technician who administered the test that Claimant gave good effort. Decision and Order at 14. Thus he found the November 6, 2019 pulmonary function study reliable. *Id.*

We reject Employer's initial contention that the November 6, 2019 pulmonary function study was administered for purposes of litigation rather than for treatment. Employer's Brief at 28-29. Employer's argument is based on a single line noting "Advice to [follow up] DOL case" in the treatment notes from that visit.[10] Employer's Brief at 29;

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also crediting the observations of the technician who administered the study. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 27-28.

[10] The November 6, 2019 visit is not the only visit labeled "consult." *See* Claimant's Exhibit 7 at 5 (unpaginated). An earlier June 25, 2015 visit is also labeled this way. *Id.* at

Claimant's Exhibit 7 at 8 (unpaginated). Nevertheless, the study was part of Claimant's visit with his longstanding treating physician which also included the administration of numerous other tests, including a complete blood count (CBC), a comprehensive metabolic panel (CMP), an electrocardiogram (EKG), and counseling on personal health issues such as dietary management and activity/exercise counseling. *Id.* There is nothing in the treatment notes from this visit that distinguishes it as different from any of Claimant's other visits to Dr. Alam for treatment of his various ailments, and the ALJ reasonably concluded a single line from a treating physician to his patient advising him to follow up on his benefits case does not transform a treatment visit into a consultation for purposes of litigation. *See* Decision and Order at 14. Thus, the ALJ rationally found the November 6, 2019 pulmonary function study was developed for treatment and not subject to the quality standards. *Id.*

Moreover, the ALJ permissibly credited the observations of the technician who administered the test while discrediting Drs. Dahhan's and Fino's conclusions as inadequately explained. *See Revnack v. Director, OWCP*, 7 BLR 1-771 (1985) (more weight may be given to the first-hand observations of technicians who administered the studies than to physicians who reviewed the tracings). It is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185. 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). Thus, we affirm the ALJ's finding the November 6, 2019 pulmonary function study reliable.

September 29, 2022 Pulmonary Function Study

Claimant's treating physician, Dr. Alam, also administered the September 29, 2022 pulmonary function study as part of Claimant's treatment. Claimant's Exhibit 21. The technician who conducted the test noted Claimant gave good effort and cooperation. *Id.* Dr. Fino opined, however, that the study was invalid due to a lack of maximum effort. Employer's Exhibit 11 at 16. The ALJ gave little weight to Dr. Fino's opinion because he did not provide any specific findings to support his conclusions and gave more weight to

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1 (unpaginated). Furthermore, the treatment notes from visits labeled "consult" and those from visits labeled "office visit" are formatted identically. Claimant's Exhibit 7. They all show similar histories taken, similar reviews of systems, similar assessments, and similar physical examinations performed. *See id.* Thus, Employer has not explained how the different labeling proves its contention that the November 6, 2019 visit was a consultation for purposes of litigation rather than a visit for treatment. Employer's Brief at 28-29.

the firsthand observations of the technician who administered the test. Decision and Order at 14. Thus he found the September 29, 2022 pulmonary function study reliable. *Id.*

Contrary to Employer's argument, the ALJ did not err in crediting the observations of the technician who administered the test and discrediting Dr. Fino's inadequately explained opinion. *See Revnack*, 7 BLR at 1-771; Employer's Brief at 29-30. Employer's argument amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Thus, we affirm the ALJ's finding the September 29, 2022 pulmonary function study is reliable.

Medical Opinions

The ALJ next considered the opinions of Drs. Sikder, Alam, and Chavda that Claimant has a totally disabling respiratory or pulmonary impairment, and the contrary opinions of Drs. Fino and Dahhan. Decision and Order at 15-25. He found the opinions of Drs. Sikder, Alam, and Chavda reasoned and documented and entitled to probative weight, and those of Drs. Dahhan and Fino entitled to little weight because both physicians failed to adequately assess whether Claimant is totally disabled in spite of his non-qualifying objective testing results. *Id*.

Reliance on Diffusing Capacity of the Lung for Carbon Dioxide (DLCO) as a Measure of Total Disability

Employer initially argues the ALJ erred in crediting the opinions of Drs. Chavda and Sikder to the extent they opined Claimant is disabled based upon his diffusing capacity measurements (DLCO). Employer's Brief at 11-24. It contends there is insufficient evidence of record to demonstrate that DLCO measurements are medically acceptable and relevant to establishing total disability, and therefore asserts the opinions of Drs. Chavda and Sikder are not credible. *Id*. We disagree.

Medical opinion evidence can establish total disability "if a physician exercising reasoned medical judgment, *based on medically acceptable clinical and laboratory diagnostic techniques*," concludes a claimant is totally disabled. 20 C.F.R. §718.204(b)(1), (b)(2)(iv) (emphasis added). The regulations permit parties to submit "[t]he results of any medically acceptable test or procedure reported by a physician . . . which tends to demonstrate . . . a respiratory or pulmonary impairment[.]" 20 C.F.R. §718.107(a). The party submitting the test or procedure has the burden to "demonstrate that the test or procedure is medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits." 20 C.F.R. §718.107(b).

Drs. Sikder and Chavda opined Claimant is disabled based, in part, on the DLCO measurements obtained as part of Claimant's pulmonary function studies. *See* Director's

Exhibits 17 at 4; 26; 29; Claimant's Exhibit 25 at 2-3, 7-8 (unpaginated). The ALJ therefore considered whether Claimant demonstrated that a DLCO is medically acceptable and relevant to establishing a totally disabling respiratory or pulmonary impairment. Decision and Order at 17.

In his report, Dr. Chavda explained the DLCO is used as a metric to assess disability under the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides), as well as the Social Security Administration's (SSA) standards for demonstrating total disability. Claimant's Exhibit 25 at 7-8 (unpaginated); *see* 20 C.F.R. Part 404 Subpart P Appendix 1, 3.02(C)(1) (standards for demonstration of chronic impairment of gas exchange based upon single-breath DLCO measurements). He attached an excerpt from the AMA Guides with his report, which included a section titled "Permanent Impairment Due to Respiratory Disorders" laying out impairment classifications based upon comparison of measured and predicted DLCO results, among other measurements. *Id*. at 9-20.

The ALJ considered Dr. Chavda's report and found it "strongly supports a finding that the DLCO is a medically acceptable diagnostic test." Decision and Order at 17. He also noted the United States Court of Appeals for the Fourth Circuit has stated the DLCO may be a valid basis for a finding of total disability and noted cases where the Board found ALJs erred by failing to consider medical opinions that a claimant was disabled based upon the DLCO. *Id*. Further, he found there was no contrary evidence in the record weighing against the medical acceptability and relevance of the DLCO as a measurement of total disability. *Id*. He thus concluded "the DLCO is a medically acceptable test and is relevant to assessing total disability[.]" *Id*.

Employer contends that, to establish a test is medically acceptable and relevant, Claimant must explain how it can reflect pulmonary or respiratory disability, what standard(s) must be followed for accurately measuring an individual's disability, and how it relates to other forms of evidence weighing on disability. Employer's Brief at 12-17. It argues Dr. Chavda's report and the attached materials do not contain this information and therefore do not constitute substantial evidence that the DLCO is medically acceptable and relevant to assessing total disability. *Id*.

Employer's argument finds no support in applicable law. The regulations clearly state Claimant need only establish the DLCO is medically acceptable and relevant to establishing an element of entitlement – total disability, in this case. 20 C.F.R. §718.107(b); *see Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-132-33 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-1 (2007) (en banc) (Under 20 C.F.R. §718.107(b), the ALJ must determine "whether the proponent of the [test] has established that it is medically acceptable and relevant to entitlement."); *see also* 79 Fed. Reg. 21,606, 21608 (Apr. 17,

2014) ("The submitting party must demonstrate the medical acceptability of the test or procedure and its relevance to the claim's adjudication."); 62 Fed. Reg. 3338, 3343 (Jan. 22, 1997) ("[T]he party proffering the evidence must establish both that the evidence is based on medically acceptable tests or procedures and that the evidence is relevant to determining the medical issues in a benefits claim."). We thus reject Employer's unsupported interpretation of "medically acceptable and relevant."

Furthermore, as the trier-of-fact, the ALJ has the discretion to assess the credibility of the medical evidence and assign it weight; the Board may not reweigh the evidence or substitute its own inferences for the ALJ's. *See Cumberland River Coal Co. v. Banks*, 609 F.3d 477, 489 (6th Cir. 2012); *Anderson*, 12 BLR at 1-113. Dr. Chavda's opinion and the attached materials, on their face, indicate the DLCO is accepted and used by medical experts to determine whether an individual has a totally disabling respiratory impairment. Because the ALJ acted within his discretion by crediting such evidence, and accurately noted there was no contrary evidence of record,[11] substantial evidence supports his finding that Claimant established the DLCO is medically acceptable and relevant to establishing total disability.[12] 20 C.F.R. §718.107(b); *see Martin*, 400 F.3d at 305; Decision and Order at 17.

Employer additionally contends that the opinions of Drs. Sikder and Chavda should be discredited on the grounds that Claimant's DLCO measurements do not meet the SSA standards for measuring disability. Employer's Brief at 17-24. Again, we disagree. The general SSA standards for assessing disability based upon DLCO measurements have no bearing on this case, which concerns whether Claimant has the respiratory and pulmonary capacity to perform his previous coal mine work. We note, moreover, that Claimant has

[11] Although Dr. Dahhan discounted Dr. Chavda's reliance on the DLCO as an indicator of disability, the ALJ accurately noted that the only basis Dr. Dahhan provided was the DLCO "is not used as one of the parameters in assessing pulmonary disability by the Department of Labor." Employer's Exhibit 10 at 55; Decision and Order at 20. The ALJ found Dr. Dahhan's opinion unpersuasive, noting the regulations explicitly permit other forms of medically acceptable and relevant evidence to establish entitlement. *See* 20 C.F.R. §§718.107(b), 718.204(b)(2)(iv); Decision and Order at 20.

[12] To the extent Employer argues the ALJ impermissibly shifted the burden of proof by requiring Employer to establish a DLCO is not medically acceptable and relevant, we disagree. Employer's Brief at 17-18. The ALJ found Dr. Chavda's explanation "strongly supports a finding" that a DLCO is medically acceptable and relevant, and then considered that there was no probative evidence contradicting such a finding. Decision and Order at 17.

not submitted his DLCO measurements as affirmative evidence of disability standing alone but has submitted medical opinions from physicians who concluded that he is totally disabled based upon his DLCO and other factors. The ALJ properly considered whether Drs. Sikder and Chavda opined Claimant is totally disabled based upon "reasoned medical judgment" and "medically acceptable clinical and laboratory diagnostic techniques[.]" 20 C.F.R. §718.204(b)(1), (b)(2)(iv). We therefore reject Employer's argument that the ALJ should have discredited the opinions of Drs. Chavda and Sikder base upon their reliance on Claimant's DLCO measurements.

Dr. Sikder's Opinion

Dr. Sikder opined Claimant has a totally disabling impairment based upon the FEV_1 and DLCO values obtained from Claimant's October 29, 2019 pulmonary function study. Director's Exhibits 17 at 4; 26; 29. The ALJ found Dr. Sikder based her opinion on an accurate account of the exertional requirements of Claimant's last coal mine employment, and objective testing results. Decision and Order at 17. He thus found her opinion entitled to probative weight. *Id.*

Employer argues the ALJ erred in crediting Dr. Sikder's opinion because she considered inaccurate results from Claimant's October 29, 2019 pulmonary function study. Employer's Brief at 30-31. We disagree.

In her initial report, Dr. Sikder based her opinion that Claimant is totally disabled, in part, on the FEV_1 results from the October 3, 2019 pulmonary function study, but only noted the lowest FEV_1 measurement from the study. *See* Director's Exhibit 17 at 4, 6, 8, 10. However, in a supplemental report, Dr. Sikder addressed the higher FEV_1 results from the October 3, 2019 study, noting the four best efforts ranged from 2.44 to 2.52 liters, while reiterating her opinion that Claimant is totally disabled based upon these pulmonary function study results. Director's Exhibit 29.

The ALJ acknowledged Dr. Sikder seemed to consider only the lowest FEV_1 value in her initial report but, "[g]iven that Dr. Sikder eventually considered the higher FEV_1 results," permissibly found "no reason to discredit her opinion[.]" Decision and Order at 16; *see Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185. Employer argues the ALJ erroneously "made the assumption that Dr. Sikder actually considered the correct values[.]" Employer's Brief at 31. However, it is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility. *See Morrison*, 644 F.3d at 478 (6th Cir. 2011); *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185. We see no error in the ALJ's inference or his decision to credit Dr. Sikder's opinion.

Dr. Chavda's Opinion

Dr. Chavda noted Claimant worked as a roof bolter, scoop operator, and section foreman in a 50-inch coal seam. Claimant's Exhibit 25 at 2 (unpaginated). He opined Claimant is totally disabled and unable to return to such work based on the FEV_1 and DLCO results from Claimant's October 3, 2019 and November 4, 2019 pulmonary function studies, though he acknowledged the FEV_1 results were non-qualifying under the DOL regulatory values. *Id*. at 2-3, 6-7 (unpaginated). The ALJ found Dr. Chavda's opinion reasoned and documented and entitled to probative weight, noting the physician based his opinion on the objective testing results of record and "was able to compare [Claimant's] level of impairment with the physical requirements of his usual coal mine work." Decision and Order at 25.

Employer initially restates its argument that the October 3, 2019 pulmonary function study produced invalid results and argues Dr. Chavda's opinion should be discredited for relying on the study. Employer's Brief at 33. Because we have already rejected its argument that the October 3, 2019 study produced invalid results, we also reject its argument concerning Dr. Chavda's opinion.

Employer also argues Dr. Chavda's opinion is not credible because the pulmonary function studies he cited produced non-qualifying results. Employer's Brief at 35. Contrary to Employer's argument, it is well-established that a medical opinion can support a finding of total disability despite non-qualifying objective testing results. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); 20 C.F.R. §718.204(b)(2)(iv).

Employer further argues Dr. Chavda impermissibly based his opinion on non-respiratory factors because he considered Claimant's height. Employer's Brief at 35-36. Employer's contention is not supported by the evidence of record. As the ALJ accurately found, Dr. Chavda based his total disability opinion on Claimant's FEV_1 and DLCO pulmonary function study results and referenced Claimant's height in discussing whether he had the respiratory capacity to return to his usual coal mine work. Decision and Order at 24-25. Dr. Chavda explained that because Claimant is seventy-three inches tall but worked in a 50-inch coal seam, he would be required to bend down while working, which would "compress his chest and spine[,]" and "further reduce his lung capacity[,]" which would "put significant restriction in his coal mine work." Claimant's Exhibit 25 at 6-7 (unpaginated). Because Dr. Chavda did not rely on non-respiratory or pulmonary factors to opine Claimant is totally disabled, we reject Employer's argument.

Employer further argues the ALJ erred in crediting Dr. Chavda's opinion because the physician relied upon Claimant's DLCO values. Employer's Brief at 36-40. It reiterates its arguments that Dr. Chavda's opinion is not credible because he relied upon

the DLCO and Claimant's DLCO results do not meet the SSA disability standards. Employer's Brief at 36-37, 38-40. As we have already rejected these arguments in the context of the ALJ's finding that Claimant established the DLCO is medically acceptable and relevant to establishing total disability, we need not consider them again.[13]

Finally, Employer argues the ALJ should have discredited Dr. Chavda's opinion because he did not address the reversibility of impairment seen in Claimant's pulmonary function study results upon the administration of bronchodilators. Employer's Brief at 33-35. It further argues Dr. Chavda's opinion that Claimant is disabled based on his DLCO results is conclusory and thus not credible. Employer's Brief at 37. To the contrary, Dr. Chavda opined Claimant has chronic obstructive pulmonary disease in the form of emphysema which caused his low diffusing capacity, and that low diffusing capacity would exacerbate Claimant's symptoms of shortness of breath and contribute to overall insufficient pulmonary capacity to perform his usual coal mine work. Claimant's Exhibit 25 at 2-3, 6-7 (unpaginated). Dr. Chavda explained why he opined Claimant would be unable to return to his usual coal mine work based on the objective test results he considered; thus, the ALJ acted within his discretion in finding Dr. Chavda's opinion reasoned, documented, and entitled to probative weight. *See Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 25. Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

Dr. Alam's Opinion

Dr. Alam was Claimant's treating physician from June 2015 to October 2022. *See* Director's Exhibits 33, 35, 36, 39; Claimant's Exhibits 7, 22, 23. He opined Claimant was totally disabled and did not have the respiratory capacity to perform the work of a coal miner. Director's Exhibit 31; Claimant's Exhibits 6, 8. Although Dr. Alam did not discuss the specific duties or exertional requirements of Claimant's coal mine work, he completed a medical assessment documenting Claimant's physical limitations. Claimant's Exhibit 6. He indicated Claimant is disabled from a pulmonary standpoint and cannot lift or carry any

[13] We also reject Employer's argument that the ALJ was required to consider whether the arterial blood gas study evidence contradicted Dr. Chavda's opinion that Claimant is disabled based upon his DLCO measurements. Employer's Brief at 37-38. Employer has not explained what medical evidence, if any, supports its contention that the two categories of evidence weigh against one another. Furthermore, Dr. Chavda explicitly opined Claimant was disabled based upon his low DLCO results while acknowledging Claimant's arterial blood gas studies "do not show disabling impairment." Claimant's Exhibit 25 at 3 (unpaginated).

amount of weight or crawl but could stand or walk for fifteen to thirty minutes and occasionally stoop. *Id.*

The ALJ found Claimant's last coal mine jobs required heavy manual labor, lifting and carrying over forty pounds, and extended periods of walking, crawling, and stooping. Decision and Order at 11. He properly considered the pulmonary limitations identified by Dr. Alam, in conjunction with the physical requirements of Claimant's usual coal mine job, and permissibly concluded from the limitations Dr. Alam found that Claimant is unable to perform the duties of his last coal mine employment and, thus, is totally disabled. *Manning Coal Corp. v. Wright*, 257 Fed. App'x 836, 842, 2007 U.S. App. LEXIS 17780 (6th Cir. Jul. 20, 2007), *citing Poole v. Freeman United Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); Decision and Order at 24.

Furthermore, we see no error in the ALJ's finding Dr. Alam's opinion is reasoned and supportive of a finding of total disability despite the physician classifying Claimant's impairment as moderate. *See* Employer's Brief at 40; Decision and Order at 24. Again, it is well established total disability can be demonstrated with a reasoned medical opinion even in the absence of qualifying pulmonary function or arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett*, 227 F.3d at 577 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably conclude that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *see also Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). Thus, the ALJ permissibly found Dr. Alam's opinion well-reasoned because the doctor adequately explained why Claimant is totally disabled despite his non-qualifying objective test results showing a "moderate" impairment.[14] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 24.

Consequently, we affirm the ALJ's crediting of the opinions of Drs. Alam, Sikder, and Chavda on total disability as his findings are supported by substantial evidence.

Drs. Fino and Dahhan

[14] Because we have already rejected Employer's argument that the ALJ erred in finding the November 6, 2019 and September 29, 2022 pulmonary function studies produced reliable results, we also reject its argument that Dr. Alam's opinion is based on invalid pulmonary function studies. Employer's Brief at 41.

Dr. Fino opined Clamant has a moderate and completely reversible obstructive impairment consistent with asthma. Employer's Exhibit 11 at 26. He concluded Claimant "is neither partially nor totally disabled from returning to his last mining job or a job requiring similar effort." *Id*. at 27. Dr. Dahhan opined Claimant has a mild reversible obstructive impairment which is not severe enough to be disabling. Employer's Exhibit 10 at 13-14, 18-19, 31, 34, 38-39, 47, 55. He based his opinion on Claimant's pulmonary function study results, which he noted were non-qualifying. *Id*. at 13-14, 38, 47.

In a supplemental report, Dr. Dahhan stated Dr. Alam diagnosed total disability based upon DLCO results "even though the valid spirometry showed no evidence of pulmonary disability and the values were all above disability standards. [Claimant] has no exercise induced hypoxemia that is usually present if the patient has significant diffusion impairment severe enough to result in pulmonary disability." Employer's Exhibit 10 at 47; *see also id*. at 55. He acknowledged Dr. Chavda's reference to the AMA Guide's use of DLCO for determining disability but stated "[DLCO] is not used as one of the parameters in assessing pulmonary disability by the [DOL]." *Id*. at 55.

The ALJ permissibly assigned little weight to the opinions of Drs. Fino and Dahhan because both physicians based their opinions on Claimant's non-qualifying test results but failed to explain whether the respiratory impairments they acknowledged Claimant has would render him unable to perform his usual coal mine work. *See Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Cornett*, 227 F.3d at 577-78 (Medical opinions may be based upon non-qualifying objective testing, and "even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties, depending on the exertional requirements of the miner's usual coal mine employment.").

Employer argues the ALJ failed to consider that Drs. Fino and Dahhan opined Claimant's obstructive impairment is fully reversible with bronchodilators, which Employer contends indicates Claimant is not totally disabled. Employer's Brief at 42-43. We disagree, as the ALJ noted this aspect of Dr. Fino's opinion, but permissibly found the rationale unpersuasive because the use of a bronchodilator does not provide an adequate assessment of a miner's disability. *See* 45 Fed. Reg. 13, 678, 13682 (Feb. 29, 1980) (use of a bronchodilator does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); Decision and Order at 21.

Thus, we affirm the ALJ's finding that the opinions of Drs. Fino and Dahhan are entitled to little weight. Decision and Order at 19-21. We further affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25.

As Employer raises no additional arguments, we further affirm the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment based upon the medical opinion evidence and in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 26. We therefore affirm his finding Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and invoked the Section 411(c)(4) presumption. Decision and Order at 26. We further affirm, as unchallenged, his finding that Employer failed to rebut the presumption. 20 C.F.R. §718.305(d); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 33, 35-37. We therefore affirm the award of benefits.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge