U.S. Department of Labor

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

BRB No. 25-0095 BLA

LEE V. KING	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KENTUCKY HARLAN COAL COMPANY, INCORPORATED	)	
	)	**NOT-PUBLISHED**
and	)	
	)	
SAFETY NATIONAL CASUALTY CORPORATION	)	DATE ISSUED: 01/29/2026
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

Joseph E. Wolfe, Donna E. Sonner, and Cameron Blair (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Awarding Benefits (2023-BLA-05137) rendered on a claim filed on June 14, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 11.37 years of qualifying coal mine employment and thus found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, she determined Claimant established clinical pneumoconiosis arising out of coal mine employment and legal pneumoconiosis, and total disability due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.204. Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis and total disability due to pneumoconiosis.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 11.37 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See*

Entitlement Under 20 C.F.R. Part 718

To be entitled to benefits under the Act without the benefit of a statutory presumption, Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must establish he suffers from a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held a claimant satisfies this standard by establishing his lung disease or impairment was caused "in part" by coal mine employment. *See Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-600 (6th Cir. 2014).

The ALJ found Claimant established both clinical and legal pneumoconiosis.[4] 20 C.F.R. §718.202(a); Decision and Order at 25-33. Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis.

The ALJ considered the medical opinions of Drs. Nader, Marks, and Tuteur. Decision and Order at 29-31. Drs. Nader and Marks diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) and emphysema related to coal mine dust exposure and cigarette smoking. Director's Exhibit 12; Claimant's Exhibits 2, 3, 6. Dr. Tuteur opined Claimant does not have legal pneumoconiosis but has COPD unrelated to coal mine dust exposure and due to cigarette smoking. Employer's Exhibit 1 at 15.

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 6-7.

[4] We affirm the ALJ's finding that Claimant established clinical pneumoconiosis arising out of coal mine employment as this finding is unchallenged on appeal. 20 C.F.R. §§718.202(a), 718.203(b); *Skrack*, 6 BLR at 1-711; Decision and Order at 27-29, 32-33.

The ALJ found the opinions of Drs. Nader and Marks well-reasoned, documented, and entitled to significant weight. Decision and Order at 29-31. Conversely, she found Dr. Tuteur's opinion inadequately explained and inconsistent with the medical science set forth in the preamble to the 2001 revised regulations. *Id.* at 30-31. Thus she determined the medical opinions establish legal pneumoconiosis. *Id.* at 28.

We reject Employer's assertion that the ALJ erred in discrediting Dr. Tuteur's opinion on legal pneumoconiosis. Employer's Brief at 5-6. In assessing the etiology of Claimant's COPD, Dr. Tuteur compared statistical data addressing the relative risk of COPD among smokers who never mined to the risk for non-smoking miners and, applying this statistical data, concluded Claimant's COPD is due to smoking not coal mine dust. Employer's Exhibit 1 at 7. The ALJ found Dr. Tuteur's conclusion is predicated on his belief that cigarette smoke causes COPD more frequently than coal mine dust exposure. Decision and Order at 30; Employer's Exhibit 1 at 7. But the ALJ recognized the preamble states "nonsmoking coal miners develop moderate obstruction at roughly the same rate as smokers with no mining exposure, through similar mechanisms" and "there is a cumulative or additive effect between coal dust inhalation and smoking." Decision and Order at 30-31; *see* 65 Fed. Reg. at 79,920, 79,940 ("Even in the absence of smoking, coal mine dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis."). Thus, the ALJ permissibly found Dr. Tuteur's opinion unpersuasive as it is premised upon conclusions that are antithetical to the regulations and the preamble. *See A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007).

Dr. Tuteur also noted "the first available numerical data are from March, 2013," twenty-eight years after Claimant ceased working in the coal mines, "and they are within essentially normal limits." Employer's Exhibit 1 at 4. Thus, the ALJ also permissibly discredited Dr. Tuteur's reasoning as contrary to the regulations recognizing pneumoconiosis "as 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); *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); Decision and Order at 31.

Nor is there merit to Employer's assertion that the ALJ erred in finding the opinions of Dr. Nader and Dr. Marks sufficient to establish the existence of legal pneumoconiosis. Employer's Brief at 4-5. Dr. Nader diagnosed Claimant with COPD with emphysema based on symptoms of chronic cough, wheezing, shortness of breath, and mucous expectoration. Director's Exhibit 12 at 4; Claimant's Exhibit 6 at 18. He explained "[eleven] years" of coal mine dust exposure is "a significant contributing and aggravating

factor" to Claimant's disabling COPD and emphysema and diagnosed legal pneumoconiosis based on Claimant's x-ray interpretation, pulmonary function and arterial blood gas studies, and physical examination. Claimant's Exhibit 6 at 19.

Similarly, Dr. Marks diagnosed legal pneumoconiosis in the form of COPD and chronic bronchitis attributable to Claimant's coal mine employment and cigarette smoking histories. Claimant's Exhibit 3 at 7. He explained Claimant's years of coal mine work and thirty-five pack-year smoking history are additive causal factors that resulted in his chronic bronchitis and COPD. *Id.* Dr. Marks also relied on Claimant's symptoms of wheezing, cough, and dyspnea on exertion and diagnosed a severe disabling pulmonary impairment based on moderate ventilatory defect, air trapping, and impaired diffusion capacity shown on Claimant's pulmonary function study and a significantly reduced arterial blood gas study. *Id*.

In weighing the opinions of Drs. Nader and Marks,[5] the ALJ summarized the objective testing each doctor relied on to diagnose legal pneumoconiosis. Decision and Order at 18-23, 29-30. Because the ALJ properly examined the validity of Dr. Nader's and Dr. Marks's reasoning on the issue of legal pneumoconiosis based on the objective studies each physician conducted and the underlying bases for their conclusions, as required, she permissibly found their opinions better reasoned and documented than the contrary opinion of Dr. Tuteur. *See Groves*, 761 F.3d at 598-99; *Young*, 947 F.3d at 407; *see also Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 29-31.

Employer's additional argument, that Dr. Nader and Dr. Marks did not adequately explain their opinions or set forth how their findings and the objective tests demonstrate a respiratory impairment consistent with legal pneumoconiosis, amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. As the ALJ acted within her discretion in crediting the opinions of Drs. Nader and Marks, opinions that satisfy Claimant's burden to affirmatively establish the existence of legal

[5] The ALJ correctly noted Dr. Marks provided two narrative medical reports reflecting his physical examinations and objective tests administered to Claimant on February 1, 2023, and February 3, 2023. Decision and Order at 21 n.105; Claimant's Exhibits 2, 3. She found that "while it is unclear why Dr. Marks examined Claimant twice within three days," both reports are independent pulmonary evaluations based on physical examinations, pulmonary function studies and arterial blood gas studies administered on both dates. Decision and Order at 21 n.105. Noting that Dr. Marks provided substantially similar analyses and conclusions in both reports, the ALJ based her discussion and findings on Dr. Marks's most recent February 3, 2023 report. *Id.*; Claimant's Exhibit 3.

pneumoconiosis, we affirm her finding that Claimant established the existence of legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order at 29-33.

Total Disability

Claimant must establish that he suffers a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[6] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the medical opinions and in consideration of the evidence as a whole.[7] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 17-25.

Employer argues the ALJ erred in finding the medical opinions of Drs. Nader and Marks support a finding of total disability. Employer's Brief at 2-4. We disagree.

Before considering whether the medical opinion evidence supports a finding of total disability, the ALJ determined the exertional requirements of Claimant's usual coal mine employment.[8] Decision and Order at 10. She found Claimant's usual coal mine work was as a repairman and electrician which required heavy manual labor because he was required

[6] A "qualifying" pulmonary function study or arterial blood gas study yields values equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies, 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 13-17.

[8] A miner's usual coal mine employment is the most recent job he performed regularly and over a substantial period of time. *See Pifer v. Florence Mining* Co., 8 BLR 1-153, 1-155 (1985); *Daft v. Badger Coal Co*., 7 BLR 1-124, 1-127 (1984); *Shortridge v. Beatrice Pocahontas Coal Co*., 4 BLR 1-534, 1-539 (1982).

to operate a continuous miner, perform rock dusting, lift loads weighing 50 to 100 pounds multiple times per day, and carry equipment weighing 30 pounds all day. *Id.* We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ then considered the opinions of Drs. Nader, Marks, and Tuteur on the issue of total disability. Decision and Order at 18-24. Drs. Nader and Marks opined Claimant is totally disabled, whereas Dr. Tuteur opined he is not. Director's Exhibit 12; Claimant's Exhibits 2, 3, 6; Employer's Exhibit 1. The ALJ found the opinions of Drs. Nader and Marks reasoned and documented and entitled to great weight. Decision and Order at 18-24. She found the contrary opinion of Dr. Tuteur entitled to reduced weight because his explanation is conclusory and conflates the issues of total disability and disability causation.[9] *Id*. at 23-24. Therefore she found the medical opinions support a finding of total respiratory disability.

Employer asserts the ALJ erred in crediting Dr. Nader's opinion because it is based primarily on Claimant's qualifying pulmonary function testing while the ALJ determined the preponderance of the pulmonary function study evidence failed to demonstrate total disability. Employer's Brief at 2-3. We disagree.

Dr. Nader performed the Department of Labor-sponsored complete pulmonary evaluation of Claimant consisting of a physical examination; work, medical, and social histories; a chest x-ray; pulmonary function and arterial blood gas studies; and an EKG. Director's Exhibit 12. He recognized Claimant's work as an electrician, roof bolter, and mechanic required him to repair machinery, rock dust, shovel belts, and lift equipment weighing 50 to 100 pounds in 48-inch coal seams. Director's Exhibit 12 at 6. Further, he noted Claimant reported symptoms of chronic cough with production of white to brown sputum, daily mucus expectoration, daily wheezing, dyspnea on inclines, and paroxysmal nocturnal dyspnea. *Id.* at 8. He found a "significant impairment" based on the valid, qualifying pulmonary function study he conducted on October 12, 2021,[10] and "significant

[9] Although Employer contends the ALJ selectively analyzed the opinions of Drs. Tuteur and Marks, arguing the ALJ discounted Dr. Tuteur's opinion as conclusory while failing to recognize Dr. Marks's opinion "was equally conclusory," Employer does not challenge the ALJ's specific finding that Dr. Tuteur's opinion on the issue of total disability is conclusory; thus, we affirm her determination. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23-24; Employer's Brief at 3-4.

[10] Dr. Gaziano reviewed the October 12, 2021 pulmonary function study for the Department of Labor and opined the "vents are acceptable." Director's Exhibit 11.

hypoxemia at rest" based on the qualifying arterial blood gas study he administered the same day. *Id.* at 4-5. Thus, he opined Claimant is totally disabled from a pulmonary standpoint to perform his usual coal mine work as an electrician or repairman. *Id.* at 4-5.

Moreover, Dr. Nader reviewed subsequent non-qualifying pulmonary function and arterial blood gas studies and noted that although this most recent testing did not meet disability standards, it revealed abnormal results consistent with disabling hypoxemia. Claimant's Exhibit 6 at 14-17. He thus reiterated his opinion that Claimant could not perform his usual coal mining work. *Id.*

The ALJ noted Dr. Nader stated that typically he relies on pre-bronchodilator pulmonary function study values in assessing whether a miner is disabled because these values reflect "the usual state of a patient" and indicate "what [a miner] can do without treatment." Decision and Order at 19; Claimant's Exhibit 6 at 13. She found Dr. Nader explained that even though later pulmonary function study results were non-qualifying, this did not demonstrate an "improvement" but rather "a variability" in Claimant's FEV_1 and FEV_1/FVC testing results on any given day. Decision and Order at 20; Claimant's Exhibit 6 at 13-14, 41-42. In addition, she noted Dr. Nader similarly opined that even though Claimant's later arterial blood gas studies produced non-qualifying results, this change represented a "deviation of numbers" based on whether Claimant is experiencing "good days or bad days." Decision and Order at 20; Claimant's Exhibit 6 at 16. Contrary to Employer's assertion, therefore, the ALJ acted within her discretion in finding Dr. Nader's opinion well-reasoned and documented as it is based on the objective testing he conducted as well as additional testing, Claimant's reported symptoms, and the exertional requirements of Claimant's usual coal mine work. *See Young*, 947 F.3d at 407; *Groves*, 761 F.3d at 598-99; *Crisp*, 866 F.2d at 185; Decision and Order at 18-21, 24. Further, she permissibly found Dr. Nader adequately explained how, given the "variabilities" in the objective testing results, he concluded Claimant could not perform the heavy manual labor his previous coal mine employment required and, therefore, his opinion is worthy of greater weight. *See Morrison*, 644 F.3d at 478; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 18-21, 24.

Employer also argues the ALJ erred in crediting Dr. Marks's opinion because he relied on non-qualifying pulmonary function and arterial blood gas studies and did not explain how Claimant's symptoms and objective tests demonstrate that Claimant is disabled. Employer's Brief at 3. We disagree.

Contrary to Employer's contention, even if total disability cannot be established with qualifying pulmonary function tests or arterial blood gas studies at 20 C.F.R. §718.204(b)(2)(i), (ii), "total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory

diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents" him from performing his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer 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). Therefore, the ALJ could conclude that Dr. Marks gave a reasoned medical opinion that Claimant is totally disabled notwithstanding non-qualifying objective tests.

Next, we reject Employer's argument that Dr. Marks's opinion is unexplained. Employer's Brief at 3. Dr. Marks based his opinion on the February 3, 2023 pulmonary function study, which demonstrated "moderate obstructive ventilatory defect, air trapping, and decreased diffusion capacity." Claimant's Exhibit 3 at 7. He also observed Claimant's resting arterial blood gas study on February 3, 2023, showed a significant decrease due to hypoxemia. *Id.* Dr. Marks opined Claimant's "progressive symptoms including shortness of breath, wheeze, cough, and sputum production," along with the physiologic findings on the objective tests, evidenced Claimant's significant limitations and exercise intolerance preventing him from performing the physical demands required by his coal mine job as a repairman and a mechanic. *Id*. at 8. Thus, the ALJ permissibly found Dr. Marks adequately explained how the objective testing was indicative of a disabling respiratory impairment and prevented Claimant from performing the heavy work requirements of his usual coal mine work as an electrician and repairman. *See Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 21-24.

As the ALJ permissibly found the opinions of Drs. Nader and Marks well-reasoned and Dr. Tuteur's opinion not well-reasoned, we affirm her finding that the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 24. Further, we affirm the ALJ's conclusion that the evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 25.

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Groves*, 761 F.3d at 600-01. The ALJ credited the opinions of

Drs. Nader and Marks that Claimant's totally disabling respiratory impairment is due to legal pneumoconiosis over the contrary opinion of Dr. Tuteur. 20 C.F.R. §718.204(c); Decision and Order at 33-35.

We disagree with Employer's argument that the ALJ erred in discrediting Dr. Tuteur's opinion regarding the cause of Claimant's total disability. Employer's Brief at 4-6. The ALJ permissibly discredited Dr. Tuteur's opinion because he failed to diagnose legal pneumoconiosis and a totally disabling impairment when the ALJ found Claimant established the presence of both. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (physician's opinion that "did not properly diagnose pneumoconiosis can carry, at most, little weight"); *Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 185 (4th Cir. 2014); Decision and Order at 35.

The ALJ permissibly relied on the opinions of Dr. Nader and Dr. Marks to conclude Claimant's totally disabling pulmonary impairment is due to legal pneumoconiosis. Decision and Order at 34-35. For the same reasons she credited the opinions of Dr. Nader and Dr. Marks on legal pneumoconiosis, the ALJ permissibly credited their opinions regarding the etiology of Claimant's disabling respiratory impairment. *See Groves*, 761 F.3d at 600-01 (claimant must prove by a preponderance of the evidence that pneumoconiosis was a substantially contributing cause of his totally disabling respiratory impairment); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003); Decision and Order at 34-35. Employer's arguments that the ALJ's weighing of these opinions was erroneous amount to a request to reweigh the evidence which the Board may not do. *See Mays*, 176 F.3d at 764; *Anderson*, 12 BLR at 1-113; *Consolidation Coal Co. v. Held*, 314 F.3d 184, 189 (4th Cir. 2002).

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability due to pneumoconiosis through the opinions of Drs. Nader and Marks. 20 C.F.R. §718.204(c); Decision and Order at 33-35. We therefore affirm the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge