

U.S. Department of Labor

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



BRB No. 25-0216 BLA

FELECIA V. WILLIAMS

Claimant-Respondent

v.

PEABODY SOUTHEAST MINING, LLC

Employer-Petitioner

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 07/15/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lystra A. Harris,
Administrative Law Judge, United States Department of Labor.

Paisley Newsome (Maples Tucker & Jacobs LLC), Birmingham, Alabama,
for Claimant.

Paul E. Frampton (Bowles Rice LLP), Charleston, West Virginia, for
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2021-BLA-05994) rendered on a subsequent claim¹ filed on January 31, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation of eleven years of underground coal mine employment and thus found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).² Considering entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant established clinical pneumoconiosis, but not legal pneumoconiosis,³ and a totally disabling respiratory or pulmonary impairment due to clinical pneumoconiosis. 20 C.F.R. §§718.202(a),

¹ Claimant's prior claim, filed in 2017, was denied as abandoned. Director's Exhibit 74. A denial by reason of abandonment is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c). 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 she finds that "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); *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's prior claim was denied as abandoned, she had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of her current claim. *White*, 23 BLR at 1-3; Director's Exhibit 74.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if she 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); 20 C.F.R. §718.305.

³ "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" 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).

718.204(b)(2), (c). She therefore found Claimant established entitlement and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established clinical pneumoconiosis and that she is totally disabled due to the disease. It also contends the ALJ erred in finding Claimant's adult daughter is her dependent for purposes of augmentation of benefits. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.⁴

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.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Entitlement to Benefits 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 (it 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 one of these elements 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).

Clinical Pneumoconiosis

Claimant may establish the existence of clinical pneumoconiosis by x-rays, autopsies or biopsies, operation of one of the presumptions described in 20 C.F.R.

⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established eleven years of underground coal mine employment and thus cannot invoke the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, as Claimant performed her coal mine employment in Alabama. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13; Director's Exhibit 2.

§§718.304 or 718.305, or a physician's opinion.⁶ 20 C.F.R. §718.202(a)(1)-(4). The ALJ must consider all relevant evidence and weigh the evidence as a whole to determine if it establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Dixie Fuel Co. v. Director, OWCP [Hensley]*, 700 F.3d 878, 881 (6th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000).

The ALJ determined the x-ray evidence, computed tomography (CT) scan evidence, and medical opinion evidence support a finding of clinical pneumoconiosis, while Claimant's treatment records do not.⁷ Decision and Order at 23, 26-27, 30. Weighing the evidence together, she found the evidence establishes clinical pneumoconiosis.⁸ *Id.* at 30.

X-ray Evidence

The ALJ considered eleven interpretations of five x-rays dated February 26, 2019, September 17, 2019, December 9, 2019, April 30, 2021, and June 10, 2021. Decision and Order at 20-23. Initially, the ALJ found each interpreting physician to be entitled to equal weight based on their credentials, as each is dually-qualified as a B reader and Board-certified radiologist. *Id.* at 23. The x-rays dated September 17, 2019, December 9, 2019, April 30, 2021, and June 10, 2021, each had one positive and one negative reading. Director's Exhibit 26; Claimant's Exhibits 1, 2, 14, 15; Employer's Exhibits 5, 6. The ALJ found readings of these x-rays to be in equipoise. Decision and Order at 23. The February 26, 2019 x-ray was interpreted as positive for pneumoconiosis by Drs. Ahmed and Smith and negative by Dr. Godwin. Director's Exhibits 13, 28; Claimant's Exhibit 3. Thus, the ALJ found the preponderance of the interpretations of the February 26, 2019 x-ray to be

⁶ As noted above, Claimant does not have sufficient coal mine employment to invoke the Section 411(c)(4) presumption and, while not specifically addressed by the ALJ, there is no evidence of complicated pneumoconiosis or large opacities to invoke the irrebuttable Section 411(c)(3) presumption. 20 C.F.R. §§718.304, 718.305; *see* Decision and Order at 3, 20-30. Thus, neither of the presumptions apply.

⁷ A transbronchial lung biopsy is noted in Claimant's treatment records, and its results are discussed in some of the medical opinions. Decision and Order at 28; Director's Exhibit 27; Claimant's Exhibit 9; Employer's Exhibits 2, 3, 10. However, as the ALJ indicates, no biopsy evidence was designated for consideration at 20 C.F.R. §718.202(a)(2). Decision and Order at 23; Employer's Evidence Summary Form; Claimant's Evidence Summary Form.

⁸ The ALJ found Claimant failed to establish the presence of legal pneumoconiosis. Decision and Order at 33. Claimant has not challenged this finding; thus, it is affirmed. *See Skrack*, 6 BLR at 1-711.

positive for pneumoconiosis. Decision and Order at 23. Weighing the x-rays together, she found they support a finding of clinical pneumoconiosis. *Id.*

Employer argues that the ALJ erred in weighing the x-ray evidence. Specifically, it contends the ALJ failed to consider all the x-ray B readings of record, as she did not consider Dr. Goldstein's reading of the September 17, 2019 x-ray. Employer's Brief at 4-5. It also argues the ALJ did not consider Dr. Godwin's "superior" credentials and failed to conduct a substantive analysis of the readings. *Id.* at 5-6. We disagree.

Initially, we reject Employer's argument that the ALJ erred in declining to weigh Dr. Goldstein's interpretation of the September 17, 2019 x-ray with the other designated x-ray readings. Neither party designated Dr. Goldstein's interpretation of this x-ray as initial or rebuttal evidence. *See* Employer's Evidence Form; Claimant's Evidence Form. Rather, the interpretation was contained within Director's Exhibit 25, which Employer designated as a treatment record. Employer's Evidence Summary Form. Further, as Claimant correctly contends, had the ALJ weighed Dr. Goldstein's interpretation with the x-ray evidence, it would have exceeded the evidentiary limitations. 20 C.F.R. §724.414; Employer's Evidence Summary Form; Claimant's Response at 13. Thus, the ALJ appropriately addressed Dr. Goldstein's interpretation of the September 17, 2019 x-ray in her discussion of Claimant's treatment records. Decision and Order at 28.

In addition, the ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, considering the physicians' qualifications, their specific interpretations, and the number of readings of each film. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); Decision and Order at 20-23. Contrary to Employer's argument, the ALJ was not required to give greater weight to Dr. Godwin's readings based on additional, "superior" qualifications and instead permissibly assigned equal weight to the physicians as dually-qualified. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc); *Worach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). Further, while Dr. Ahmed provided different descriptions of the opacities than those Drs. Smith and Alexander identified,⁹ each interpreted the x-rays as positive for pneumoconiosis with a

⁹ The International Labour Organization (ILO) x-ray classification form allows a radiologist or physician to identify any parenchymal abnormalities consistent with pneumoconiosis. 20 C.F.R. §718.102 (standards for x-rays), incorporating by reference Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised Edition 2011 (ILO Guidelines); Form CM-933, question 2A. If the radiologist or physician indicates there are such abnormalities, he or she should identify the profusion, affected zones of the lung, shape (rounded or irregular), and size of any small opacities. ILO Guidelines at 3-6; Form CM-933, question 2B. With respect to size and

profusion of either 1/0 or 1/1. Director's Exhibit 22; Claimant's Exhibits 1-3, 14-15. Consequently, the ALJ was not required to find the differing descriptions of the size, shape, or appearance of the opacities detracted from the doctors' positive readings of the x-rays. *See Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5 (1999) (en banc).

As the ALJ permissibly weighed the conflicting x-ray evidence, we affirm her determination that the x-ray evidence supports a finding of clinical pneumoconiosis. 20 C.F.R. §718.201(a)(1); Decision and Order at 23.

CT Scan Evidence

The ALJ considered six readings of three CT scans dated November 24, 2020, June 14, 2021, and June 6, 2022. Decision and Order at 24-26. Dr. Smith interpreted the November 24, 2020 CT scan as consistent with pneumoconiosis, with opacities in all lung zones, findings suggestive of focal dust emphysema, and atelectatic change in the lung bases. Claimant's Exhibit 6. But Dr. Godwin found "no profusion of small opacities to indicate coal workers' pneumoconiosis" on the November 24, 2020 CT scan and noted "basal lung bands" possibly from aspiration or infection. Employer's Exhibit 9. Dr. Miller interpreted the June 14, 2021 CT scan as compatible with pneumoconiosis and also noted atelectasis or scarring in the lung bases. Claimant's Exhibit 7. Dr. Godwin again found "no profusion of small opacities" and thus no evidence of pneumoconiosis on the June 14, 2021 CT scan and also noted "basal lung bands." Employer's Exhibit 7. Finally, Dr. Smith read the June 6, 2022 CT scan as consistent with pneumoconiosis, with small opacities "mainly involving the upper and posterior lung zones" but also in remaining areas, bilaterally. Claimant's Exhibit 8. He also noted atelectasis in the lung bases. *Id.* Dr. Godwin again indicated there was no pneumoconiosis on the June 6, 2022 CT scan but there were basal lung bands. Employer's Exhibit 8.

The ALJ found Drs. Smith's and Miller's readings more persuasive than Dr. Godwin's readings given their findings of pneumoconiosis are corroborative, in contrast to Dr. Godwin's readings, which are the only negative readings of record. Decision and Order at 26. She also found it "suspect" that Dr. Godwin observed no small opacities at all given the positive x-ray evidence and Claimant's documented diagnosis of sarcoidosis in her

shape, a radiologist or physician may mark small, rounded opacities via the three size ranges denoted by the letters p, q, and r representing increasing size, or small, irregular opacities denoted by the letters s, t, and u representing increasing size. *Id.* Drs. Smith and Alexander noted size "p" opacities, while Dr. Ahmed noted "s" and "t" opacities. *Compare* Director's Exhibit 22; Claimant's Exhibits 1, 3, 14, 15 *with* Claimant's Exhibit 2.

treatment records. *Id.* Thus, the ALJ found the CT scan evidence supports a finding of clinical pneumoconiosis. *Id.*

Employer contends that the ALJ discredited Dr. Godwin's readings for failing to diagnose sarcoidosis when the other interpreting physicians also did not diagnose the disease. Employer's Brief at 14. Employer is correct that the ALJ noted Claimant's diagnosis of sarcoidosis when finding Dr. Godwin's readings undermined, while not doing the same for the other physicians who also did not note sarcoidosis. Decision and Order at 26. But Employer is wrong as to the reason the ALJ discredited Dr. Godwin's readings: she found Dr. Godwin's readings undermined because he specified that he observed no small opacities at all, counter to the other readers, whether sarcoidosis or pneumoconiosis.¹⁰ Decision and Order at 26. Credibility determinations are within the discretion of the ALJ as the fact-finder. *See U.S. Steel Mining Co. v. Director, OWCP [Jones]*, 386 F.3d 977, 992 (11th Cir. 2004); *Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460 (11th Cir. 1989). As the ALJ's determinations are supported by substantial evidence, we affirm them.¹¹ *Jones*, 386 F.3d at 992; *Bradberry v. Director, OWCP*, 117 F.3d 1361, 1364-65 (11th Cir. 1997). Thus, we also affirm the ALJ's finding that the CT scan evidence supports a finding of clinical pneumoconiosis. Decision and Order at 26.

Medical Opinion Evidence

The ALJ next considered the medical opinions of Drs. Basheda, Tuteur, Wille, and Barney. Decision and Order at 26-27. Dr. Barney opined Claimant has clinical pneumoconiosis based on the x-ray interpretation obtained during his examination. Director's Exhibit 13. Dr. Basheda opined that Claimant does not have clinical pneumoconiosis but rather has sarcoidosis and changes due to pulmonary embolism. Director's Exhibit 27. Dr. Tuteur similarly opined Claimant does not have clinical pneumoconiosis but has sarcoidosis and changes due to pulmonary embolism and

¹⁰ Employer also argues that Dr. Godwin's readings are more consistent with Claimant's treatment records than those of Drs. Smith and Miller, as Dr. Godwin noted atelectasis and scarring, consistent with Claimant's pulmonary emboli and sarcoidosis indicated in her treatment records. Employer's Brief at 13. We note, however, that Drs. Smith and Miller also noted changes of atelectasis in the lung bases. Claimant's Exhibits 6-8.

¹¹ Employer also argues the ALJ erred in crediting or discrediting the evidence based on her findings regarding the chest x-ray evidence, which it contends is erroneous. Employer's Brief at 14. However, we have affirmed the ALJ's weighing of the x-ray evidence.

aspiration. Employer's Exhibits 2, 10. Dr. Wille, Claimant's treating physician, indicated Claimant has an "underlying lung condition, which seems exacerbated by workplace exposures." Claimant's Exhibit 13.

The ALJ found Drs. Basheda's and Tuteur's explanations for finding no pneumoconiosis inconsistent with the radiographic evidence and accorded their opinions little weight. Decision and Order at 26-27. She also found Dr. Wille's opinion not well-documented and vague, and therefore she accorded his opinion "very little weight." *Id.* at 27. On the other hand, she found Dr. Barney's diagnosis of clinical pneumoconiosis consistent with the x-ray and CT scan evidence and accorded his opinion "normal" weight. *Id.* at 26. Thus, based on Dr. Barney's opinion, she concluded that the medical opinion evidence supports a finding of clinical pneumoconiosis. *Id.* at 27.

Employer contends the ALJ erred in finding Drs. Basheda's and Tuteur's opinions undermined. Employer's Brief at 15. We disagree.

Drs. Basheda and Tuteur opined that the pattern of clinical pneumoconiosis is typically bilateral, symmetrical, and begins in the upper lobes, which is inconsistent with the pattern of radiographic changes in Claimant's case, which were primarily in the lower lung zones and showed improvement or "waxing and waning" of nodules. Director's Exhibit 27 at 22-23; Employer's Exhibits 2 at 6; 10 at 17, 42. The ALJ permissibly found the "corroborative" x-ray and CT scan evidence contradicted their opinions by identifying opacities not just in the lower lung zones, but throughout all lung zones.¹² *See U.S. Steel Mining Co. v. Director, OWCP [Jones]*, 386 F.3d 977, 992 (11th Cir. 2004); Decision and Order at 26-27. Further, as the ALJ correctly notes, the regulations do not address or consider the location of nodules in defining pneumoconiosis. Decision and Order at 27; 20 C.F.R. §§718.201, 718.202. Moreover, the ALJ determined that Drs. Basheda's and Tuteur's opinions that the opacities appeared to improve or "wax and wane" were inconsistent with the evidence which demonstrates the existence of opacities in 2019, 2021, and 2022, a finding Employer does not specifically contest. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, we affirm the ALJ's findings that Drs.

¹² Employer attempts to clarify that Drs. Basheda and Tuteur explained the opacities *began* in the lower lung zones, then later developed in the other lung zones; thus, contrary to the ALJ's findings, it asserts they were not inconsistent with the radiographic evidence. Employer's Brief at 15. However, Dr. Basheda stated Claimant's lung nodules "were located in the lower lung zones." Director's Exhibit 27 at 22. Dr. Tuteur similarly indicated that "most of the parenchymal abnormalities that developed are in the lower lung field." Employer's Exhibit 2 at 6.

Basheda's and Tuteur's opinions that clinical pneumoconiosis is not present warrant little weight. Decision and Order at 27.

Employer further contends the ALJ erred in crediting Dr. Barney's opinion that clinical pneumoconiosis is present, as her findings regarding the x-ray and CT scan evidence were erroneous. Employer's Brief at 15 n.2. But we have affirmed the ALJ's findings regarding the radiographic evidence; thus, we reject Employer's argument. We further affirm the ALJ's finding the weight of the x-ray and CT scan evidence supports Dr. Barney's opinion. *See Bradberry*, 117 F.3d at 1364-65; Decision and Order at 26.

Employer also argues the ALJ erred in according weight to Dr. Barney's opinion as it asserts he was unaware of Claimant's health history, including her diagnoses of sarcoidosis and long history of pulmonary embolism. Employer's Brief at 15 n.2. But Employer's argument is a request to reweigh the evidence, which we are not empowered to do.¹³ *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Regardless, even assuming the ALJ should have more thoroughly addressed Dr. Barney's understanding of Claimant's medical history, any alleged error is harmless as his opinion does not undermine the ALJ's finding of pneumoconiosis as supported by the x-ray and CT scan evidence. As the ALJ permissibly rejected the opinions of Drs. Basheda and Tuteur, the medical opinion evidence would not be contrary evidence even if Dr. Barney's opinion were accorded no weight.¹⁴ *See Melnick v. Consol. Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc). Employer therefore does not explain how the "error to which [it] points could have made any difference." *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *see Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Thus, we affirm the ALJ's finding that the medical opinion evidence supports a finding of clinical pneumoconiosis. Decision and Order at 27.

Claimant's Treatment Records and Weighing the Evidence Together

The ALJ considered and summarized Claimant's "copious" treatment records. Decision and Order at 28-30; Director's Exhibit 25; Claimant's Exhibits 9-12; Employer's Exhibit 4. As the ALJ notes, they include records of diagnoses and treatment of pulmonary

¹³ The ALJ noted Employer's contention that Dr. Barney was not aware of all of Claimant's health issues but declined to accord Dr. Barney's opinion less weight on this basis. Decision and Order at 35 n.16.

¹⁴ The parties do not challenge the ALJ's finding that Dr. Wille's opinion regarding pneumoconiosis is not well-documented and vague and thus does not support a finding of clinical pneumoconiosis; thus, it is affirmed. *See Skrack*, 6 BLR at 1-711; Decision and Order at 27.

emboli, asthma, pneumonia, and sarcoidosis, as well as numerous CT scan and x-ray interpretations. Decision and Order at 28-30. The ALJ found these records “do not generally stand for the premise” that Claimant has pneumoconiosis, although there are some records that provide coal mine dust is a possible etiology of Claimant’s pulmonary abnormalities. Decision and Order at 30. Even so, the ALJ found the treatment records do not explain the basis for these conclusions and so found the treatment records do not support a finding of clinical pneumoconiosis. *Id.*

Employer does not specifically challenge these findings but contends the ALJ did not properly consider the treatment records when assessing the other evidence, as Claimant’s treating physicians and radiologists “knew she worked as a miner but never found any pneumoconiosis present” while those who interpreted the x-rays for purposes of litigation were unaware of Claimant’s history of pulmonary emboli and sarcoidosis. Employer’s Brief at 6-7, 12-13. Similarly, it generally contends the ALJ did not weigh all the categories of evidence together but rather considered each category “piecemeal.” *Id.* at 2. We disagree.

While the ALJ first considered each category of evidence, she subsequently weighed all the evidence together as a whole. Decision and Order at 20-30. She found that only Claimant’s treatment records do not specifically support a finding of clinical pneumoconiosis and do not outweigh the supporting evidence. Decision and Order at 30. As addressed above, she also considered Dr. Godwin’s negative readings (the only physician who provided the negative x-ray and CT scan readings of record) along with Claimant’s treatment records and found his readings inconsistent with the treatment records given that he identified no small opacities whatsoever. Decision and Order at 36. Further, while Employer implies the ALJ should have accorded more weight to the treating physicians’ radiographic interpretations, the ALJ permissibly found the absence of a specific diagnosis of pneumoconiosis in the treatment records did not outweigh the evidence in support of a diagnosis of pneumoconiosis, as Claimant’s treating physicians were more likely concerned with her treatment than a diagnosis of an occupational disease. *See Jones*, 386 at 992; *Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine the weight to accord diagnostic testing that is silent on the existence of pneumoconiosis); Decision and Order at 30.

Thus, we affirm the ALJ's finding that Claimant has established clinical pneumoconiosis as supported by substantial evidence.¹⁵ *See Bradberry*, 117 F.3d at 1364-65; Decision and Order at 30.

Total Disability

A miner is totally disabled if her pulmonary or respiratory impairment, standing alone, prevented her from performing her usual coal mine work and comparable gainful work.¹⁶ *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,¹⁷ 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 by the pulmonary function study and medical opinion evidence, and in consideration of the evidence as a whole.¹⁸ 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 8, 18-19.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated February 26, 2019, September 17, 2019, and December 9, 2019. Decision and Order at 7-8; Director's Exhibit 13; Claimant's Exhibits 4, 5. The February 26, 2019 study was qualifying before

¹⁵ We further affirm, as unchallenged, the ALJ's finding that Claimant's clinical pneumoconiosis arose out of her coal mine employment. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.203; Decision and Order at 33.

¹⁶ The ALJ found Claimant's usual coal mine employment was working as a slope worker, which required "heavy labor." Decision and Order at 5. The parties have not challenged this finding; thus, we affirm it. *See Skrack*, 6 BLR at 1-711.

¹⁷ A "qualifying" pulmonary function study or arterial blood gas study yields results 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 yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

¹⁸ The ALJ found Claimant did not establish total disability based on the 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)(ii)-(iii); Decision and Order at 6 n.2; 9.

application of bronchodilators and was non-qualifying after. Director's Exhibit 13. The September 17, 2019 study was qualifying both before and after the application of bronchodilators. Claimant's Exhibit 5. The December 9, 2019 study was non-qualifying before and after the application of bronchodilators. Claimant's Exhibit 4. The ALJ declined to credit the post-bronchodilator tests over the pre-bronchodilator tests and found the two qualifying pre-bronchodilator studies outweighed the single non-qualifying study. Decision and Order at 7-8. Thus, she found the pulmonary function studies support a finding of total disability. *Id.* at 8; 20 C.F.R. §718.204(b)(2)(i).

Employer acknowledges there are qualifying results, but notes Claimant's February 26, 2019 study showed improvement after application of a bronchodilator, which it contends constitutes "contrary evidence." Employer's Brief at 17. It also argues the most recent pulmonary function results are non-qualifying and thus Claimant's impairment is not permanent. *Id.* We disagree.

The ALJ noted the non-qualifying post-bronchodilator results but reasonably declined to credit them over the pre-bronchodilator tests, as results after the use of medication do not provide an "adequate assessment" of impairment. Decision and Order at 8 (quoting 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980)); 20 C.F.R. §718.204(b)(2). In addition, the ALJ permissibly declined to accord more weight to the non-qualifying December 9, 2019 study due to its recency, as it showed improvement in Claimant's condition. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993) (given the progressive nature of pneumoconiosis, an ALJ must resolve conflicting evidence when the miner's condition improves "without reference to their chronological relationship"); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (same); *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50-51 (2023); Decision and Order at 8.

Employer next contends that Dr. Tuteur explained the pulmonary function studies are "questionable" and the ALJ substituted her opinion for that of the expert when rejecting his opinion that the studies could not be relied upon to determine that Claimant has "true" restriction. *Id.* at 17-19. We disagree.

When weighing pulmonary function studies conducted in anticipation of litigation, the ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appx. B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). The quality standards do not apply to pulmonary function studies conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101(b), 718.103; *J.V.S. [Stowers] v. Arch of W. Va.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). However, an ALJ must determine if the results are sufficiently

reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,927-28 (Dec. 20, 2000). 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).

While Employer does not state which pulmonary function studies Dr. Tuteur invalidated, it appears to contend he found all the studies invalid. Employer's Brief at 19. Dr. Tuteur stated they are invalid by "general standards." Employer's Exhibit 10 at 12. He indicated the total lung capacity measurements and alveolar volume were "nearly identical," which he opined is "physiologically impossible." *Id.*

Contrary to Employer's argument, it was within the ALJ's discretion to find Dr. Tuteur's explanations unpersuasive. The ALJ permissibly found that Dr. Tuteur did not explain how the studies were allegedly not in compliance with the regulatory standards and thus his opinion was "difficult to comprehend." Decision and Order at 7; 20 C.F.R. §718.103; 20 C.F.R. Part 718, Appx. B. Further, as the ALJ indicated, those physicians who conducted the studies noted the results were acceptable.¹⁹ Decision and Order at 8; Director's Exhibits 13, 25; Claimant's Exhibit 4.

Thus, contrary to Employer's argument, Dr. Tuteur's opinion that the studies are invalid is contradicted. Employer's Brief at 19. As it is Employer's burden to demonstrate the studies are invalid, and the ALJ permissibly found Dr. Tuteur's opinion unpersuasive, we affirm her determination that the pulmonary function studies are in substantial compliance with the regulations. *See Compton*, 211 F.3d at 211 (ALJ has the discretion to weigh the credibility of the medical opinion evidence and is not required to accept all theories submitted by the medical experts); *Vivian*, 7 BLR at 1-361; Decision and Order at 7-8.

We therefore affirm the ALJ's finding that the pulmonary function studies support total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 8.

¹⁹ Employer argues that "even Dr. Goldstein [who conducted the September 17, 2019 pulmonary function study] did not find the test results show a disability." Employer's Brief at 19 n.3. But whether he found the study disabling is irrelevant to whether the study is sufficiently reliable to make a determination regarding disability. We also note that Dr. Basheda considered the September 17, 2019 study and noted "the flow-volume loop appeared normal," there was "acceptable reproducibility" with the FEV1 and FVC results, and the diffusion measurement was valid. Director's Exhibit 27 at 8. It does not appear he considered the December 19, 2019 study.

Medical Opinion Evidence

The ALJ considered the medical opinion of Drs. Barney and Wille, who found Claimant is totally disabled, and those of Drs. Basheda and Tuteur, who opined she is not. Decision and Order at 9-19; Director's Exhibits 13, 27; Claimant's Exhibit 9; Employer's Exhibits 2, 10.

The ALJ found Dr. Barney's opinion well-reasoned and supported, as he understood Claimant's symptoms and the exertional requirements of her usual coal mine employment, and found it consistent with the pulmonary function studies. Decision and Order at 17. She indicated that while Dr. Wille did not have access to the objective testing, Claimant's well-documented symptoms support his opinion; thus, she determined his opinion is worthy of "some" weight. *Id.* at 18. Finally, the ALJ found Drs. Basheda's and Tuteur's opinions are not well-reasoned, as they did not adequately explain how Claimant could perform her usual coal mine employment, which required heavy manual labor, given her impaired pulmonary function and symptoms. *Id.* Weighing the medical opinion evidence together, she found it supports a finding of total disability. *Id.* at 18-19.

Employer argues the ALJ erred in discrediting Drs. Tuteur's and Basheda's opinions that Claimant is not totally disabled and "missed" that Dr. Goldstein, who obtained one of the pulmonary function studies, also found Claimant is not totally disabled. Employer's Brief at 21-23. It further generally argues that only Dr. Barney found Claimant totally disabled but asserts he did not consider all the evidence. *Id.* at 23. We do not find Employer's arguments persuasive.

Initially, Employer does not challenge the ALJ's finding that Dr. Wille's opinion that Claimant is totally disabled is worthy of some weight; thus, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 18. Further, while Employer asserts Dr. Barney's opinion is worthy of less weight as he did not consider all the objective testing, the ALJ was not required to find his opinion undermined on this basis; rather, the ALJ permissibly found his opinion well-reasoned as supported by his examination and objective testing. *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

In addition, the ALJ acted within her discretion in finding Dr. Tuteur's opinion undermined and inadequately explained. As the ALJ noted, Dr. Tuteur recognized that pulmonary function studies of record met disability standards but found they did not indicate total disability in large part due to his indication that the studies were invalid; however, we have affirmed the ALJ's rejection of his opinion. Decision and Order at 18. Moreover, as the ALJ held, Dr. Tuteur focused on Claimant's non-qualifying arterial blood gas studies in support of his opinion, and arterial blood gas studies measure a different type of impairment than pulmonary function studies. *Id.*; *see Sheranko v. Jones & Laughlin*

Steel Corp., 6 BLR 1-797, 1-798 (1984). Thus, the ALJ permissibly found Dr. Tuteur did not adequately explain why the non-qualifying arterial blood gas studies are contrary to the qualifying pulmonary function studies.²⁰ Decision and Order at 18.

We also find no error in the ALJ's determination that Dr. Basheda's opinion is not well-reasoned. As the ALJ indicated, Dr. Basheda did not specifically address the fact that the pulmonary function studies he considered were qualifying under the regulations and thus did not explain why these studies nevertheless did not render her totally disabled. Decision and Order at 17-18. Employer contends Dr. Basheda was not required to find Claimant totally disabled simply because there was qualifying testing. Employer's Brief at 22. But the ALJ is not required to credit an opinion which does not explain how the objective testing supports its conclusions, which she concluded was the case here. *See Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997) (assertion which does not explain how the doctor reached his opinion does not qualify as a reasoned medical opinion); Decision and Order at 17-18.

Employer next contends Dr. Basheda correctly considered that Claimant's usual coal mine employment required heavy labor; thus, the ALJ erred in discrediting his opinion for failing to compare the evidence to the exertional requirements of Claimant's usual coal mine employment. Employer's Brief at 22-23. The ALJ acknowledged Dr. Basheda's understanding of Claimant's usual coal mine employment, Decision and Order at 17; however, this understanding alone does not render his medical opinion well-reasoned.

Dr. Basheda indicated that Claimant's pulmonary function testing demonstrated a "Class II" impairment of the whole person under American Medical Association guidelines and "mildly" reduced FEV1 and FVC results. Director's Exhibit 27. Thus, as the ALJ indicated, Dr. Basheda recognized an impairment and reduction of pulmonary function measurements. Yet, he did not adequately explain why given this impairment Claimant would be able to perform her usual coal mine employment, which required heavy manual labor.²¹ *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *Cornett v.*

²⁰ Employer further argues the ALJ erred in finding Dr. Tuteur's opinion undermined for failing to compare the exertional requirements of Claimant's usual coal mine employment to the evidence, as Dr. Tuteur knew "full well" that Claimant's last job required heavy labor and explained why she is not totally disabled. Employer's Brief at 23. However, the ALJ permissibly rejected these explanations.

²¹ Dr. Basheda appears to contend this impairment is due to Claimant's obesity and thus, from a "pulmonary objective standpoint," she could perform her last coal mining work. Director's Exhibit 27 at 24. Employer argues that this constitutes "contrary evidence" regarding total disability that the ALJ did not address. Employer's Brief at 21-

Benham Coal, Inc., 227 F.3d 569, 577 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Decision and Order at 17-18. As the ALJ provided permissible bases for finding Dr. Basheda's opinion undermined, they are affirmed. Decision and Order at 18.

Finally, the ALJ did not "miss" Dr. Goldstein's opinion regarding whether Claimant was totally disabled. Decision and Order at 28. Rather, she noted that he provided conclusions regarding pneumoconiosis and total disability. *Id.* at 28 n.14. However, she declined to weigh his opinions regarding these "ultimate issues" with the other medical opinion evidence as his opinion was not designated as a medical opinion and doing so would have exceeded the evidentiary limitations. *Id.*; 20 C.F.R. §725.414(a). Employer has not challenged this finding; thus, we affirm it. *See Skrack*, 6 BLR at 1-711.

Consequently, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 18-19. We further affirm the ALJ's finding that the evidence, when considered together, establishes the presence of a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2); Decision and Order at 19.

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of her 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); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

The ALJ again considered the medical opinions of Drs. Basheda, Tuteur, Wille, and Barney. Decision and Order 34. The ALJ found Drs. Basheda's and Tuteur's opinions

22. But Employer's argument conflates the issues of total disability and causation. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; in a claim being considered without the benefit of a presumption, the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4) or 718.204(c). *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); 20 C.F.R. §718.204(a) ("[i]f . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.").

undermined for failing to opine Claimant has pneumoconiosis or is totally disabled, contrary to her findings. *Id.* Further, she found Dr. Wille’s opinion that Claimant is “unable to work due to shortness of breath with her underlying lung condition, which seems exacerbated by workplace exposures,” to be vague and conclusory. *Id.* (quoting Claimant’s Exhibit 13). Thus, she afforded his opinion “very little weight.” *Id.* She found Dr. Barney’s opinion that pneumoconiosis was a “major” contributor to Claimant’s respiratory impairment to be well-documented and reasoned. *Id.* at 34-35. Weighing the evidence together, the ALJ concluded Claimant established disability causation based on Dr. Barney’s opinion, as supported by Dr. Wille’s opinion. *Id.* at 35.

Employer argues the ALJ erred in assessing the medical opinion evidence. Specifically, it contends the ALJ found Drs. Basheda’s and Tuteur’s opinions undermined “simply because” they concluded Claimant did not have pneumoconiosis and was not totally disabled. Employer’s Brief at 24. Its arguments rely primarily on its contention that the ALJ erred in finding clinical pneumoconiosis and total disability, arguments we have rejected. Further, the ALJ permissibly found their opinions undermined for failing to diagnose clinical pneumoconiosis, contrary to the ALJ’s finding. *See Oak Grove Res., LLC v. Director, OWCP [Ferguson]*, 920 F.3d 1283, 1288-89 (11th Cir. 2019); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); Decision and Order at 34.

While not entirely clear, Employer also apparently contends that because Claimant did not establish legal pneumoconiosis, she is unable to establish disability causation. Employer’s Brief at 24. However, Claimant may establish that her clinical pneumoconiosis substantially contributed to her disabling impairment without a diagnosis of legal pneumoconiosis. *See* 20 C.F.R. §§718.201, 718.204(c). Here, the ALJ found Claimant established total disability due to clinical pneumoconiosis based on Dr. Barney’s well-reasoned and supported opinion. Decision and Order at 34-35. Employer has not specifically challenged the ALJ’s finding that Dr. Barney’s disability causation opinion is credible; thus, it is affirmed. *See Skrack*, 6 BLR at 1-711.

Therefore, we affirm the ALJ’s finding that Claimant has established that her clinical pneumoconiosis is a substantially contributing cause of her totally disabling respiratory impairment. 20 C.F.R. §718.204(c); Decision and Order at 35.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.²²

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

²² Employer also argues the ALJ erred in finding Claimant's adult daughter, Tierra, is a dependent for the purpose of augmentation of benefits. Employer's Brief at 24. But Employer did not raise this contention below, so we decline to address it. *See Edd Potter Coal Co. v. Director, OWCP [Salmons]*, 39 F.4th 202, 210 (4th Cir. 2022); *Joseph Forrester Trucking v. Director, OWCP [Davis]*, 937 F.3d 581, 591 (6th Cir. 2021); Employer's Closing Argument.