



BRB No. 25-0254 BLA

GREGORY E. SAYRE

Claimant-Respondent

v.

MOUNTAINEER RESOURCES,
INCORPORATED

Employer-Petitioner

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 07/21/2026

DECISION and ORDER

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

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long),
Ebensburg, Pennsylvania, for Claimant.

Mary Lou Smith (Howe, Anderson & Smith, P.C.), Washington, D.C., for
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2024-BLA-05617) rendered on a claim filed on October 24, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant established at least twenty-one years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore concluded that Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,¹ 30 U.S.C. §921(c)(4). The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's finding of total disability and that it failed to rebut the Section 411(c)(4) presumption.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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying

¹ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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.

² As Employer does not challenge the ALJ's finding of at least twenty-one years of qualifying coal mine employment, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Tr. at 12.

pulmonary function studies or arterial blood gas studies,⁴ 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 total disability based on the pulmonary function study evidence, medical opinion evidence, and the evidence as a whole.⁵ Decision and Order at 16-21.

Pulmonary Function Studies

The ALJ considered the results of two pulmonary function studies dated August 9, 2023, and January 4, 2024. Decision and Order at 17-18; Director's Exhibit 9; Claimant's Exhibit 3. Both pulmonary function studies produced qualifying values with and without the administration of a bronchodilator. Decision and Order at 17-18. As both the pulmonary function studies yielded qualifying results, the ALJ determined the pulmonary function study evidence supports a finding of total disability. *Id.*

Employer argues the ALJ erred in failing to consider Dr. Rosenberg's opinion that Dr. Werntz's August 9, 2023 pulmonary function study is invalid.⁶ Employer's Brief at 7-8. But as Employer does not dispute the validity of the other qualifying pulmonary function study, any such error is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (dismissing error as harmless when appellant fails to explain how "error to which he points

⁴ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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).

⁵ The ALJ found the arterial blood gas study evidence does not support a finding of total disability 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 18-19.

⁶ Employer also argues "the earlier pulmonary function studies are relevant evidence on the issue of the existence of a respiratory impairment and were erroneously omitted from the ALJ's consideration." Employer's Brief at 7. However, as Employer fails to identify what pulmonary function studies were omitted from consideration or explain its contention, we decline to consider it. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120 (1987) (unless the party identifies errors and briefs its allegations of error in terms of the relevant law and evidence, the Board has no basis for review); *see also* Employer's Evidence Summary Form; Claimant's Evidence Summary Form.

could have made any difference”); 20 C.F.R. §718.103(c) (“no results of a pulmonary function study shall constitute evidence of the *presence or absence* of a respiratory or pulmonary impairment” unless conducted in accordance with the regulatory requirements) (emphasis added). We thus affirm the ALJ’s finding that the pulmonary function evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 18.

Medical Opinions

Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant’s usual coal mine work as a welder. Decision and Order at 20. Relying on the Dictionary of Occupational Titles, he found Claimant’s usual coal mine work required “medium” exertional labor. Decision and Order at 20 n.17. As this finding is unchallenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ considered the medical opinions of Drs. Werntz, Fino, and Rosenberg. Decision and Order at 19-21; Director’s Exhibit 9; Claimant’s Exhibit 3; Employer’s Exhibit 1. Dr. Werntz opined Claimant is totally disabled and lacks the respiratory capacity to perform his usual coal mine employment given his disabling spirometry and gas exchange abnormalities. Director’s Exhibit 9. Dr. Fino indicated Claimant has “severe” obstruction, reduced diffusing capacity, and oxygen desaturation with exertion. Claimant’s Exhibit 3 at 7. Dr. Rosenberg similarly noted “severe” airflow obstruction, gas exchange abnormalities, and “severely reduced” diffusion capacity. Employer’s Exhibit 1 at 5. The ALJ determined Drs. Fino and Rosenberg did not specifically address whether Claimant could perform his last coal mining job. Decision and Order at 21. Further, the ALJ found Dr. Werntz’s opinion entitled to “great weight” as well-reasoned and supported by the pulmonary function study evidence. *Id.* The ALJ gave no weight to the opinions of Drs. Fino and Rosenberg for failing to provide opinions on the issue. *Id.* Thus, the ALJ found the medical opinion evidence supports a finding of total disability based on Dr. Werntz’s opinion. *Id.*

Employer argues the ALJ erred in crediting Dr. Werntz’s opinion, as it asserts it is based on an invalid pulmonary function study and an erroneous view of Claimant’s usual coal mining work. Specifically, Employer asserts Dr. Werntz believed Claimant’s usual coal mining work was an outside mechanic, requiring him to lift parts up to fifty pounds and change rollers up to seventy-five pounds, whereas the ALJ determined Claimant’s

usual coal mining work as a welder for Employer required medium exertion.⁷ Employer's Brief at 8. We disagree.

The ALJ permissibly found Dr. Werntz's opinion well-reasoned and well-documented because it is supported by the qualifying objective medical testing.⁸ *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Church v. Eastern Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996); Decision and Order at 21. While the ALJ did not specifically address Dr. Rosenberg's contention that the pulmonary function study Dr. Werntz obtained is invalid, even if he had credited Dr. Rosenberg's opinion and thus found Dr. Werntz's opinion undermined, such error is harmless as Dr. Werntz's opinion is not contrary to the pulmonary function study evidence. *See* 20 C.F.R. §718.204(b)(2) ("In the absence of contrary probative evidence, evidence which meets the standard[] of paragraph[] (b)(2)(i) . . . of this section shall establish a miner's total disability."). Further, as the ALJ permissibly found Drs. Fino's and Rosenberg's opinions undermined,⁹ the medical opinion evidence would not be contrary evidence even if Dr. Werntz's opinion were accorded no weight. *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*, 556 U.S. at 413; *see Larioni*, 6 BLR at 1-1278.

Employer raises no challenge regarding the weighing of the evidence regarding total disability together; therefore, we affirm the ALJ's determination that Claimant established total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 19-21. We thus also

⁷ As Employer does not challenge the ALJ's weighing of Drs. Fino's and Rosenberg's opinions, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 20-21.

⁸ Dr. Werntz noted Claimant's exertional requirements involved lifting and carrying objects slightly heavier than what Employer contends constitutes "medium labor." While Dr. Werntz noted Claimant was required to lift up to seventy-five pounds, Employer contends medium labor involves lifting no more than fifty pounds. Director's Exhibit 9; Employer's Brief at 8. But Employer does not explain how this difference undermines Dr. Werntz's opinion, even assuming the pulmonary function studies were non-qualifying. Notably, Employer ignores Dr. Werntz's explanation that he would consider Claimant's exertional requirements to be in the "upper end of the moderate aerobic demand category." Director's Exhibit 9 at 5.

⁹ We note that Drs. Fino's and Rosenberg's opinions, recognizing Claimant's "severe" obstruction, do not weigh against a finding of total disability. Claimant's Exhibit 3; Employer's Exhibit 1.

affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 21.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis¹⁰ or “no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201.” 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.¹¹ Decision and Order at 7-15.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment “significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered three medical opinions regarding the presence of legal pneumoconiosis. Decision and Order at 11-15; Director’s Exhibit 9; Claimant’s Exhibit 3; Employer’s Exhibit 1. Dr. Werntz opined that Claimant has legal pneumoconiosis in the form of a mixed restrictive and obstructive impairment on spirometry and a gas exchange impairment, which he attributed to Claimant’s coal mine dust exposure. Director’s Exhibit 9. Dr. Fino opined he could not exclude coal mine dust as contributing to Claimant’s obstructive lung disease. Claimant’s Exhibit 3. Dr. Rosenberg concluded that Claimant’s obstruction is unrelated to coal mine dust but could be due to his welding exposures or asthma. Employer’s Exhibit 1. The ALJ found Dr. Rosenberg’s opinion entitled to no

¹⁰ “Legal pneumoconiosis” includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes “any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §718.201(b). “Clinical pneumoconiosis” consists of “those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment.” 20 C.F.R. §718.201(a)(1).

¹¹ The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 9-11.

weight as inadequately explained. Decision and Order at 15. As Dr. Rosenberg’s opinion is the only opinion to potentially support rebuttal, the ALJ found Employer failed to rebut the presence of legal pneumoconiosis. *Id.*

Employer argues the ALJ erred in discrediting Dr. Rosenberg’s opinion.¹² Employer’s Brief at 8-11. We disagree.

Employer contends the ALJ erred in finding that Dr. Rosenberg’s opinion regarding Claimant’s asthma is inconsistent with the preamble to the 2001 amended regulations, as it contends “the Preamble does not require a conclusion that asthma is necessarily related to coal dust exposure.” Employer’s Brief at 10. While, as Employer contends, the preamble does not require a finding that asthma or chronic obstructive pulmonary disease (COPD) is caused by coal mine dust exposure, Claimant has invoked the Section 411(c)(4) presumption. Thus, it is presumed that Claimant’s lung disease is legal pneumoconiosis and it is Employer’s burden to affirmatively prove it is not. *See W. Va. CWP Fund v. Director, OWCP [Smith]*, 880 F.3d 691, 699 (4th Cir. 2018).

As the ALJ noted, Dr. Rosenberg opined that it is possible that Claimant’s obstruction is due to asthma. Employer’s Exhibit 1 at 6. While he states that Claimant’s prior exposures from welding could “[o]bviously” aggravate his asthma, he does not provide any explanation regarding whether coal mine dust could do so. *Id.* Thus, the ALJ permissibly found that Dr. Rosenberg failed to explain how he ruled out coal dust exposure as contributing to or aggravating Claimant’s disabling COPD and asthma. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-320 (2022) (ALJ acted within her discretion in finding physician’s opinion unpersuasive because he did not sufficiently explain why Claimant’s coal mine dust exposure “did not substantially exacerbate” his obstructive lung disease); *Compton*,

¹² Employer also contends the ALJ erred in crediting Dr. Werntz’s opinion. Employer’s Brief at 9-10. The ALJ found Dr. Werntz’s opinion that Claimant has legal pneumoconiosis is entitled to “great weight;” however, he also correctly indicated that Dr. Werntz’s opinion does not assist Employer in its burden to rebut the presumption of legal pneumoconiosis. Decision and Order at 14. Thus, we need not address Employer’s contentions of errors regarding Dr. Werntz’s opinion. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the “error to which [it] points could have made any difference”); Decision and Order at 14. The ALJ also gave “great weight” to Dr. Fino’s opinion. Decision and Order at 14. As Employer does not challenge the ALJ’s crediting of Dr. Fino’s opinion, we affirm it. *See Skrack*, 6 BLR at 1-711.

211 F.3d at 211 (it is the province of the ALJ to evaluate the physicians' opinions); Decision and Order at 15; *see also* Employer's Brief at 10.

Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because substantial evidence supports the ALJ's determination to discredit Dr. Rosenberg's opinion,¹³ the only opinion to affirmatively opine legal pneumoconiosis is not present, we affirm his finding that Employer did not rebut the presumed existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A).

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1).

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii). Employer again relies on Dr. Rosenberg's opinion to disprove disability causation; however, he failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to rebut the presence of legal pneumoconiosis. Employer's Exhibit 1. Thus, the ALJ permissibly found his disability causation opinion is not credible. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight"); Decision and Order at 24. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of Claimant's respiratory impairment was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 24.

¹³ As the ALJ provided a permissible basis for discrediting Dr. Rosenberg's opinion, we need not address Employer's additional contentions of error regarding the weighing of his opinion, nor do we need to address Employer's argument regarding the weighing of the evidence together based on hypothetically crediting Dr. Rosenberg's opinion. *See Shinseki*, 556 U.S. at 413; Decision and Order at 15; Employer's Brief at 9-11.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge