**U.S. Department of Labor**

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

BRB Nos. 21-0398 BLA
and 20-0398 BLA-A

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| KEITH T. MIELKE | ) | |
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| Claimant-Respondent | ) | |
| Cross-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| SHAMOKIN FILLER COMPANY, INCORPORATED | ) | |
| | ) | |
| | ) | |
| and | ) | DATE ISSUED: 6/28/2022 |
| | ) | |
| AMERICAN MINING INSURANCE COMPANY | ) | |
| | ) | |
| | ) | |
| Employer-Petitioner | ) | |
| Cross-Respondent | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal and Cross-Appeal of the Decision and Order Awarding Benefits of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for Claimant.

Sean B. Epstein (Thomas, Thomas & Hafer, LLP), Pittsburgh, Pennsylvania, for Employer.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals and Claimant cross-appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2020-BLA-05323) rendered on a claim filed on May 21, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least 15.92 years of qualifying coal mine employment, based on the parties' stipulation, and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[1] She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption. Alternatively, Employer argues the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. On cross-appeal, Claimant challenges the ALJ's evaluation of the May 29, 2019 arterial blood gas study and Dr. Wardeh's opinion.[2] The Director, Office of Workers' Compensation Programs, has not filed a response brief in either appeal.

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

[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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least 15.92 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

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 (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.[4] *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 considered the opinions of Drs. Futerfas, Hale, Wardeh, Kruklitis, and Durrani.[5] Decision and Order at 8-14. Drs. Futerfas, Hale, and Wardeh opined Claimant has a totally disabling respiratory impairment, while Drs. Kruklitis and Durrani opined he does not. Director's Exhibit 16; Claimant's Exhibits 3-4, 8-9; Employer's Exhibits 1-2, 5. The ALJ determined each physician is well-qualified to provide an opinion regarding whether Claimant is disabled and, crediting the opinions of Drs. Futerfas and Hale over the opinions of Drs. Wardeh, Kruklitis, and Durrani, she found the medical opinions established total disability. Decision and Order at 12-14.

Employer asserts the ALJ erred in discrediting Dr. Kruklitis's opinion. Employer's Brief at 5. We disagree. As the trier-of-fact, the ALJ has broad authority to assess the credibility of the medical opinions and assign them appropriate weight. *See Balsavage* v.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 33; Director's Exhibit 4.

[4] We affirm, as unchallenged, the ALJ's determination that Claimant's usual coal mine employment "required heavy manual labor." *See Skrack*, 6 BLR at 1-711; Decision and Order at 3-4.

[5] The ALJ found the pulmonary function studies and blood gas studies did not establish total disability. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 6-8. She also found no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 5, n.6.

*Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). The ALJ permissibly discredited Dr. Kruklitis's opinion because, though he acknowledged Claimant worked in maintenance, it was unclear whether he understood the exertional requirements of Claimant's usual coal mine work. *See Gonzales v. Director,* OWCP, 869 F.2d 776, 779 (3d Cir. 1989); *Budash v. Bethlehem Mines Corp*, 16 BLR 1-27, 1-29 (1991); Decision and Order at 12-13; Employer's Exhibit 1 at 1. She further permissibly rejected his opinion because he emphasized that Claimant's mild hypoxia only developed after six minutes of exercise, Employer's Exhibit 1 at 3, but "did not explain the significance of this fact or how it relates to Claimant's ability to perform his work." Decision and Order at 13; *see Mancia v. Director,* OWCP, 130 F.3d 579, 589 (3d Cir. 1987) (ALJ may reject a medical opinion that does not adequately explain the basis for its conclusion); *Kertesz,* 788 F.2d at 163.

Employer also argues the ALJ erred in evaluating Dr. Kruklitis's opinion because the physician opined Claimant "did not suffer from any respiratory impairment related to coalmine dust exposure," and the ALJ's rationale for discrediting his opinion is therefore misplaced. Employer's Brief at 5 (emphasis in original). Employer's argument conflates total disability with disability causation. The regulation at 20 C.F.R. §718.204 treats the issue of total disability and the issue of disability causation as distinct issues, with the inquiry into the presence of a totally disabling respiratory or pulmonary impairment governed by 20 C.F.R. §718.204(b), and the cause of the impairment governed by 20 C.F.R. §718.204(c). Section 718.204(b) sets forth the medical criteria relevant to the existence of a totally disabling impairment, and total disability is established if, in the absence of contrary probative evidence, the medical criteria in any one of the subsections at Section 718.204(b)(2) is satisfied. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock*, 9 BLR at 1-198. The regulatory definition of "total disability due to pneumoconiosis," and the types of proof that are required to satisfy its terms, appear separately at Section 718.204(c). Employer's argument thus lacks merit.

Employer further contends the ALJ erred in determining the opinions of Drs. Futerfas and Hale were credible because neither physician reviewed the non-qualifying May 29, 2019 blood gas study and because their reliance on the qualifying August 28, 2018 blood gas study is inconsistent with the ALJ's determination that the blood gas study evidence does not establish total disability. Employer's Brief at 5-6. We disagree.

The fact that Claimant did not demonstrate total disability by the pulmonary function study or blood gas study evidence does not preclude a finding of total disability based on the medical opinion evidence. *See* 20 C.F.R. §718.204(b)(2)(iv); *Balsavage*, 295 F.3d at 396; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Jonida Trucking, Inc. v. Hunt,* 124 F.3d 739, 744 (6th Cir. 1997). Non-qualifying test results alone do not establish the absence of an impairment. *Estep v. Director, OWCP*, 7 BLR 1-904, 1-

905 (1985). Rather, the relevant inquiry at 20 C.F.R. §718.204(b)(2)(iv) is whether the medical opinion evidence supports a finding that Claimant's respiratory or pulmonary impairment precluded him from performing his usual coal mine work.

In addition, the ALJ was not required to discount Drs. Futerfas's and Hale's opinions on the basis that they did not review the most recent blood gas study; a physician can render a reasoned and documented opinion regarding total disability based on his own examination of a miner, objective test results, or both. 20 C.F.R. §718.204(b)(2)(iv); *see Church v. Eastern Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Here, Drs. Futerfas and Hale evaluated Claimant's examination results and history, as well as the test results available to them at the time of their examinations, and explained how Claimant's hypoxia, hypercapnia, and respiratory symptoms rendered him disabled from performing his last coal mine job. Director's Exhibit 16 at 7; Claimant's Exhibit 8 at 2. As it is the province of the ALJ to evaluate the medical opinion evidence and to assess its credibility and probative value, we affirm the ALJ's determination that the opinions of Drs. Futerfas and Hale are credible and reject Employer's argument to the contrary.[6] *See Balsavage*, 295 F.3d at 396; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Kertesz*, 788 F.2d at 163.

Because it is supported by substantial evidence, we affirm the ALJ's determination that Claimant established total disability and invoked the Section 411(c)(4) presumption.[7] 30 U.S.C. §921(c)(4); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; Decision and Order at 15.

**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 pneumoconiosis,[8] or that "no part of

[6] We affirm, as unchallenged, the ALJ's discrediting of Dr. Durrani's opinion that Claimant is not totally disabled. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14.

[7] Because we affirm the ALJ's finding that Claimant established total disability by a preponderance of the medical opinion evidence, we need not address Claimant's arguments on cross-appeal that the ALJ erred in evaluating the arterial blood gas study evidence and Dr. Wardeh's opinion. Claimant's Cross Appeal Brief at 2-3

[8] "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

[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.

**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 Co*., 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the medical opinions of Drs. Kruklitis and Durrani, both of whom opined Claimant does not have legal pneumoconiosis. Employer's Exhibits 1, 5. Dr. Kruklitis diagnosed mild hypoxemia of "unclear" etiology but unrelated to pneumoconiosis. Employer's Exhibit 1 at 3. Dr. Durrani diagnosed hypoxemia primarily caused by smoking but noted this diagnosis raised concern for other conditions such as pulmonary hypertension or congestive heart failure. Employer's Exhibit 5 at 5-6. The ALJ gave both opinions little weight. Decision and Order at 22.

Employer contends the ALJ erred in discrediting the opinions of Drs. Kruklitis and Durrani. Employer's Brief at 7. We disagree.

The ALJ permissibly discredited Dr. Kruklitis's opinion because, though he opined he could exclude pneumoconiosis, he conceded the etiology of Claimant's hypoxemia is unclear.[9] *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997); *Kertesz*, 788 F.2d at 163; Decision and Order at 20; Employer's Exhibit 1 at 3. Likewise, the ALJ permissibly discredited Dr. Durrani's opinion that Claimant's impairment raises concern for other medical conditions and not pneumoconiosis as speculative because the record contains no evidence to support the existence of those conditions. *See Balsavage*, 295 F.3d at 396; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 21. She further permissibly

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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).

[9] Dr. Kruklitis stated that, "[w]hile the exact etiology of this hypoxemia remains unclear, I can say with a high degree of medical certainty that this is not due to coal workers' pneumoconiosis or other occupational lung disease." Employer's Exhibit 1 at 3.

discredited both physicians' opinions because neither adequately explained how they concluded coal mine dust exposure did not significantly contribute to or aggravate Claimant's hypoxemia. *See Balsavage*, 295 F.3d at 396; *see also Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (affirming rejection of medical opinion which failed to adequately explain why coal dust exposure did not exacerbate smoking-related impairments); Decision and Order at 20-21.

Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's rejection of Drs. Kruklitis's and Durrani's opinions. Because the ALJ permissibly discredited the only medical opinions supportive of a finding that Claimant does not have legal pneumoconiosis, we affirm her finding that Employer failed to disprove the existence of the disease. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[10] 20 C.F.R. §718.305(d)(1)(i).

**Disability Causation**

The ALJ found the opinions of Drs. Kruklitis and Durrani insufficient to establish no part of Claimant's total respiratory disability was due to pneumoconiosis. Decision and Order at 23. Employer raises no specific error with regard to the ALJ's finding other than to reassert Claimant does not have legal pneumoconiosis. *See* Employer's Brief at 7-8. As we rejected Employer's arguments on legal pneumoconiosis, we affirm the ALJ's finding that it did not rebut the Section 411(c)(4) presumption by establishing no part of Claimant's respiratory disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 23.

[10] Therefore, it is not necessary to address Employer's arguments concerning the ALJ's finding that it did not rebut clinical pneumoconiosis. Decision and Order at 19; Employer's Brief at 6-8.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge