



BRB No. 25-0116 BLA

GREGORY M. SMILEY)
)
 Claimant-Respondent)
)
 v.)
)
 EIGHTY-FOUR MINING COMPANY)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 03/31/2026

DECISION and ORDER

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

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank’s Decision and Order Awarding Benefits (2023-BLA-06181) rendered on a claim filed on September 28, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation that Claimant had twenty-three years of underground coal mine employment and found that he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found 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). He 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 thus invoked the Section 411(c)(4) presumption. It also argues he erred in finding the presumption un rebutted.² Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed 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 (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 or comparable gainful work. 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)-

¹ Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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); *see* 20 C.F.R. §718.305.

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

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); Director's Exhibit 3; Hearing Transcript at 11.

(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 is totally disabled based on the pulmonary function studies, medical opinion evidence, and the evidence as a whole.⁴ 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 20, 24-25.

Because all the valid pulmonary function studies produced qualifying⁵ values before and after the administration of bronchodilators, the ALJ found Claimant established total disability at 20 C.F.R. §718.204(b)(2)(i).⁶ Decision and Order at 20. As Employer does not challenge this finding, we affirm it.⁷ *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11-14.

The ALJ further considered the opinions of Drs. Celko, Krefft, Sood, and Basheda. Decision and Order at 23-25. Drs. Celko, Krefft, and Sood opined Claimant has a totally disabling pulmonary or respiratory impairment based upon his pulmonary function studies. Director's Exhibits 21, 24, 27; Claimant's Exhibits 1, 3. Dr. Basheda, however, opined that Claimant does not have a totally disabling respiratory impairment, but instead has a reversible obstructive impairment as well as a restrictive impairment due to a nonpulmonary condition. Employer's Exhibit 2. Finding Drs. Celko's, Krefft's, and

⁴ The ALJ found Claimant did not establish total disability based on the arterial blood gas studies or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 22.

⁵ A "qualifying" pulmonary function study yields results that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "nonqualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

⁶ All the pulmonary function studies produced qualifying values. Director's Exhibits 14, 21; Employer's Exhibit 2. However, as there was a disagreement between the physicians as to the validity of the December 6, 2022 pulmonary function study, the ALJ did not credit it. Decision and Order at 20.

⁷ The ALJ did not consider the August 25, 2022 pulmonary function study performed during Claimant's treatment. *See* Employer's Exhibit 6. But Employer does not raise this issue in its briefing to the Board. Moreover, because the study was qualifying for total disability, 20 C.F.R. §718.204(b)(2)(i), the ALJ's error in failing to consider the August 25, 2022 study is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Sood's opinions consistent with the objective evidence, the ALJ accorded them "great weight." Decision and Order at 24. He further found Dr. Basheda's opinion not well-reasoned and entitled to "no weight." *Id.* The ALJ therefore determined Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 25.

Employer contends the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 7-14. We are not persuaded.

We initially reject Employer's argument that the ALJ erred in crediting Drs. Celko's, Krefft's, and Sood's opinions because they did not review Dr. Basheda's more recent clinical data. See Employer's Brief at 23. An ALJ is not required to discount a physician's opinion because he did not review all the evidence of record; rather, a physician can render a reasoned and documented opinion regarding total disability based on his own examination of a miner, review of objective test results, or both. 20 C.F.R. §718.204(b)(2)(iv); see *Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984); see also *Minnich v. Pagnotti Enters., Inc.*, 9 BLR 1-89, 1-90 n.1 (1986) (ALJ properly considered whether the objective data offered as documentation adequately supported the opinion).

Dr. Celko opined Claimant has a totally disabling pulmonary impairment in the form of a severe restrictive ventilatory pattern he observed on both the December 6, 2022 and February 13, 2023 pulmonary function studies. Director's Exhibit 14. Dr. Krefft opined Claimant has a moderately severe respiratory impairment based on "significantly" reduced FEV1 values she observed on the August 25, 2022, December 6, 2022, and February 13, 2023 pulmonary function studies. Claimant's Exhibit 1 at 4-7. Dr. Sood noted the February 13, 2023 pulmonary function study produced pre-bronchodilator FVC and FEV1 values at 47% and 44% of the predicted values, respectively; subsequently, he relied on American Medical Association (AMA) guidelines to diagnose Claimant with a Class IV impairment and opined that Claimant is severely impaired and unable to meet the physical demands of most jobs, including his most recent coal mining work. Claimant's Exhibit 3 at 9-10. The ALJ permissibly found their opinions to be well-reasoned and entitled to great weight as their opinions were consistent with the valid and qualifying pulmonary function studies.⁸ See *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986); Decision and Order at 24.

⁸ As the opinions of Drs. Celko, Krefft, and Sood did not rely solely upon the December 6, 2022 pulmonary function studies and all the pulmonary function studies produced qualifying values, we reject Employer's argument that the physicians' opinions should be discredited for relying on the December 6, 2022 study. See *Shinseki v. Sanders*,

We further reject Employer’s argument that the ALJ erred in failing to reconcile the fact that Claimant’s diffusing capacity testing, blood gas results, and pulse oximetry values were described as normal by Dr. Basheda, “revealing no resting or exercise hypoxemia or desaturation.”⁹ Employer’s Brief at 24. As blood gas and pulmonary function studies measure different types of impairments, Employer has not explained how this evidence undermines the ALJ’s finding that the pulmonary function studies and the medical opinions consistent with these studies establish total disability. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984); *see also Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993) (“[R]esults from [pulmonary function studies and blood gas studies] may consistently have no correlation since coal workers’ pneumoconiosis may manifest itself in different types of pulmonary impairment.”). Further, the ALJ noted that Dr. Basheda opined Claimant could perform his last coal mining job despite admitting that the pulmonary function testing produced qualifying values and permissibly found his opinion not well-reasoned and inconsistent with the objective evidence.¹⁰ *See Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163; Decision and Order at 24. We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

Because it is supported by substantial evidence, we affirm the ALJ’s finding that the medical opinion evidence demonstrates Claimant has a totally disabling respiratory or

556 U.S. 396, 413 (2009) (dismissing error as harmless when appellant fails to explain how “error to which he points could have made any difference”); Employer’s Brief at 24.

⁹ Employer also asserts the ALJ failed to consider that Claimant did not report any respiratory complaints at the time of his December 6, 2022 Department of Labor-sponsored examination with Dr. Celko. Employer’s Brief at 24; *see* Director’s Exhibit 14 at 5. We decline to address Employer’s argument because it has not explained how the lack of complaints affects the ALJ’s finding that the objective studies, in conjunction with Dr. Celko’s, Krefft’s, and Sood’s opinions, sufficiently establish total disability. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 20, 24; Employer’s Brief at 24.

¹⁰ While Dr. Basheda opined the obstructive portion of the impairment reversed with medication, he acknowledged that a restrictive impairment remained. Employer’s Exhibit 2 at 21. However, he attributed this impairment to a non-pulmonary condition. *Id.* The proper inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption. *See* 20 C.F.R. §§718.204(b), (c), 718.305(d)(1)(ii).

pulmonary impairment.¹¹ 20 C.F.R. §718.204(b)(2)(iv); *see Kertesz*, 788 F.2d at 163; Decision and Order at 25. We further affirm his finding that Claimant established total disability based on the pulmonary function studies, medical opinion evidence, and the evidence as a whole, and thereby invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1); Decision and Order at 25.

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,¹² or that “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.¹³ Decision and Order at 17, 27.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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),

¹¹ We further reject Employer’s argument that the opinions of Drs. Celko, Krefft, and Sood should have been rejected because they did not address the effects of Claimant’s inhaler. Employer’s Brief at 24-25. Initially we note that all the pulmonary function studies were qualifying *after* the administration of bronchodilators. Director’s Exhibits 14, 21; Employer’s Exhibit 2. Moreover, the proper inquiry is whether Claimant is able to perform his usual coal mine work and not whether he is able to perform that work with the use of medication. *See* 20 C.F.R. §718.204(b)(1); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980).

¹² “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).

¹³ The ALJ found Employer rebutted the presence of clinical pneumoconiosis but failed to rebut the presence of legal pneumoconiosis. Decision and Order at 15, 17.

718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on Dr. Basheda's opinion to disprove the existence of legal pneumoconiosis.¹⁴ Decision and Order at 12-17. Dr. Basheda opined Claimant does not have legal pneumoconiosis but instead has an obstructive impairment due to asthma and a restriction due to musculoskeletal issues related to prior coronary artery bypass surgery (CABG) and "orthopedic problems." Employer's Exhibit 2 at 22. Dr. Basheda attributed the obstructive impairment to asthma, unrelated to coal mine dust exposure, as it partially reversed with the administration of an inhaler and it did not develop until after he left the mines. *Id.* at 19-20. He further attributed the restriction to CABG because there was no evidence of clinical pneumoconiosis on x-rays or computed tomography scans. *Id.* at 21. The ALJ found Dr. Basheda's opinion not well-reasoned and entitled to no weight. Decision and Order at 17.

Employer argues the ALJ erred in discrediting Dr. Basheda's opinion. Employer's Brief at 16-25. 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*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163. As the ALJ noted, Dr. Basheda opined that Claimant's asthma is not related to coal mine dust exposure because he "would not be having asthma symptoms decades after leaving the coal mines" and "asthma symptoms will disappear when one is removed from the toxic environment." Employer's Exhibit 2 at 20. The ALJ permissibly discredited this reasoning as inconsistent with the regulations' recognition that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure," a finding Employer has not challenged. 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 209-10 (3rd Cir. 2002); *see also 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); *Skrack*, 6 BLR at 1-711.

Further, the ALJ permissibly found that Dr. Basheda's opinion, that Claimant's asthma does not constitute legal pneumoconiosis because his impairment is partially reversible – while coal dust-related asthma is fixed and irreversible – and would have

¹⁴ The ALJ accurately noted Drs. Celko, Krefft, and Sood diagnosed legal pneumoconiosis and therefore determined their opinions do not aid Employer in rebutting legal pneumoconiosis. Decision and Order at 16.

resolved after he left the mines, is entitled to less weight as he provided no citation or reference to medical text, treatise, or study. *Balsavage*, 295 F.3d at 396; *Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997) (ALJ may reject a medical opinion which fails to adequately explain the bases for its conclusion); *Kertesz*, 788 F.2d at 163; *see also Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (ALJ may accord less weight to a physician who fails to adequately explain why a miner's response to bronchodilators necessarily eliminated coal dust exposure as a cause of his obstructive lung disease); Decision and Order at 17; Employer's Brief at 19-20; Employer's Exhibit 2 at 20.

Because the ALJ provided valid reasons for discrediting Dr. Basheda's opinion, the only medical opinion supportive of Employer's burden, we affirm his finding that Employer did not disprove legal pneumoconiosis.¹⁵ *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Mancia v. Director, OWCP*, 130 F.3d 579, 584 (3d Cir. 1997); Decision and Order at 17. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.¹⁶ 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "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); Decision and Order at 25-27. He permissibly discredited the disability causation opinion of Dr. Basheda because he failed to diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Soubik*, 366 F.3d at 234; *Epling*, 783 F.3d at 504-05; *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 27. As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 25-27.

¹⁵ Because the ALJ provided a valid basis for discrediting Dr. Basheda's opinion on legal pneumoconiosis, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 16-25.

¹⁶ We need not address Employer's argument that the ALJ erred in weighing Drs. Celko's, Krefft's, and Sood's opinions that Claimant has legal pneumoconiosis because their opinions do not assist it in satisfying its burden to rebut the presumption of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Employer's Brief at 23-25.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge