U.S. Department of Labor

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

BRB No. 24-0308 BLA

LARRY G. OSBORNE Claimant-Respondent v. BUFFALO MINING COMPANY and PITTSTON COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/15/2025 DECISION and ORDER

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

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

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

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

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2023-BLA-05460) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on December 14, 2020.[1]

ALJ Appetta (the ALJ) credited Claimant with 13.60 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.[2] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, she found the evidence establishes clinical pneumoconiosis and legal pneumoconiosis[3] and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). She thus found Claimant established a change in an applicable condition of entitlement[4] and entitlement to benefits. 20 C.F.R. §725.309.

[1] The record indicates that Claimant has filed three claims. His first claim is not a part of the record because the Federal Records Center destroyed it pursuant to a retention schedule. Director's Exhibit 1. Claimant filed a second claim on August 3, 2015, which ALJ Drew A. Swank denied because Claimant failed to establish total disability due to pneumoconiosis. Director's Exhibit 3. Claimant did not further pursue this denial.

[2] Section 411(c)(4) 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 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). This 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).

[4] 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 he 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

On appeal, Employer argues the ALJ erred in her consideration of Claimant's smoking history and in finding Claimant established clinical pneumoconiosis, legal pneumoconiosis, total disability, and disability causation.[5] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a response brief.

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.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Entitlement Under 20 C.F.R. Part 718

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

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entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish total disability due to pneumoconiosis in his prior claim, he had to submit new evidence establishing this element to obtain review of the merits of his current claim. *Id*. Here, Claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309 by establishing disability causation. *See E. Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511-12 (4th Cir. 2015).

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 13.60 years of underground coal mine employment and that the x-ray evidence established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 23-24.

[6] 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 5.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must establish he suffers from a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b).

The ALJ considered the medical opinions of Drs. Agarwal, Werchowski, and Spagnolo. Decision and Order at 13-20, 26-28. Drs. Agarwal and Werchowski diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) and emphysema related to coal mine dust exposure and cigarette smoking. Director's Exhibit 12; Claimant's Exhibits 1, 4. Dr. Spagnolo opined Claimant does not have legal pneumoconiosis but has chronic heart disease and chronic intermittent asthma unrelated to coal mine dust exposure. Employer's Exhibit 10 at 15.

The ALJ found the opinions of Drs. Agarwal and Werchowski well-reasoned, documented, and entitled to significant weight. Decision and Order at 26-28. Conversely, she found Dr. Spagnolo's opinion inadequately explained and inconsistent with the medical science set forth in the preamble to the 2001 revised regulations. *Id.* at 27-28. Thus she determined the medical opinions establish legal pneumoconiosis. *Id.* at 28.

Employer argues the ALJ erred in crediting the opinions of Drs. Agarwal and Werchowski because both physicians relied on the rebuttable presumption set forth in 20 C.F.R. §718.203 to attribute Claimant's COPD to his coal dust exposure and thereby diagnose legal pneumoconiosis. Employer's Brief at 10-12.

In his November 10, 2021 report, Dr. Agarwal diagnosed legal pneumoconiosis in the form of COPD attributable to Claimant's smoking history and coal dust exposure. Claimant's Exhibit 1 at 4. In doing so, he stated:

> As per [20 C.F.R. §]718.201(a)(2) legal pneumoconiosis includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment. Section 718.203 further states 'If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mine[s], there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.'

20 C.F.R. §718.203(b); Claimant's Exhibit 1 at 4. Considering only the number of years Claimant worked in the coal mines and underground, he summarily concluded, "[t]herefore, in my opinion, COPD is due to substantial contribution from coal dust." *Id.*

Similarly, Dr. Werchowski, after an initial examination of Claimant on March 14, 2021, diagnosed COPD due to smoking and coal dust exposure because Claimant "worked greater than 10 years in coal mines" and "there is [a] rebuttable presumption that the pneumoconiosis in his chronic obstructive pattern was significantly related and aggravated by dust exposure from his coal mine employment." Director's Exhibit 12 at 8. After a second examination on December 6, 2021, Dr. Werchowski diagnosed COPD and emphysema. Claimant's Exhibit 4 at 9. While again attributing Claimant's "underlying obstructive airways disease" to his coal mine and cigarette smoking histories, he now explained that Claimant's fourteen years of coal mine work and fifteen-pack-year smoking history are additive causal factors that resulted in his COPD and emphysema. *Id.* He also relied on Claimant's symptoms of wheezing, cough, and dyspnea on exertion and diagnosed a severe disabling pulmonary impairment based on reduced FEV_1, FEV_1/FVC ratio, and MVV values on pulmonary function testing. *Id*.

While Employer is correct the ALJ erred in crediting Dr. Agarwal's conclusory opinion as the doctor based it solely on the a legal application of the rebuttable presumption at 20 C.F.R. §718.203 without addressing Claimant's condition, we need not remand on this issue; the ALJ's error regarding Dr. Agarwal's opinion is harmless because the ALJ properly examined the validity of Dr. Werchowski's reasoning on the issue of legal pneumoconiosis based on the objective studies he conducted and the underlying bases for his conclusions, as is required. *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"); *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 26-28. In weighing Dr. Werchowski's opinion, the ALJ summarized the objective testing the doctor relied on to diagnose legal pneumoconiosis. Decision and Order at 13-14, 16-17, 26. She found Dr. Werchowski's opinion consistent with the Department of Labor's recognition that the effects of smoking and coal dust exposure can be additive. 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order at 28. Thus, she permissibly found Dr. Werchowski's opinion better reasoned and documented than the contrary opinion of Dr. Spagnolo. *See Milburn Colliery v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 28.

We also reject Employer's argument the ALJ should have discredited the opinions of Drs. Werchowski and Agarwal because they did not review all of the evidence of record. Employer's Brief at 18. An ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner and objective test results. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Employer's additional argument, that Dr. Werchowski did not adequately explain his opinion or set forth how his findings and the objective testing demonstrate a respiratory impairment consistent with legal

pneumoconiosis, amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113. As Dr. Werchowski's opinion satisfies Claimant's burden of affirmatively establishing the existence of legal pneumoconiosis, any error with respect to the ALJ's weighing of Dr. Agarwal's opinion on the issue of legal pneumoconiosis was harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984); 20 C.F.R. §718.202(a)(4).

We further reject Employer's assertion that the ALJ erred in discrediting Dr. Spagnolo's opinion on legal pneumoconiosis. Employer's Brief at 26-29. The ALJ noted Dr. Spagnolo believes "occupational asthma . . . presents with symptoms that become more severe with each day of the workweek, then clear up over the weekend and start again the next week," i.e., symptoms of "occupational asthma" occur during the periods of exposure to occupational conditions and when the exposure ceases so do the symptoms.[7] Decision and Order at 18, 27; Employer's Exhibit 11 at 17. Based on this underlying premise, Dr. Spagnolo opined that because Claimant did not "miss[] time off from work repeatedly or [was not] hospitalized repeatedly due to the work environment," Claimant's asthma is not related to coal dust exposure. *Id.* The ALJ permissibly found Dr. Spagnolo's opinion inconsistent with the medical science set forth in the preamble to the 2001 revised regulations which states asthma can be aggravated by coal dust exposure and thus constitute legal pneumoconiosis. Decision and Order at 27, *citing* 65 Fed. Reg. at 79,939; *see also American Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 332 (4th Cir. 2024) (ALJ may discredit a physician's opinion if it "is, in fact, inconsistent with the preamble"). In addition, the ALJ found Dr. Spagnolo opined Claimant's asthma is not due to his coal dust exposure because "it must appear during [Claimant's] mine work and cease when he left the mines or was no longer exposed to coal dust." Decision and Order at 27; Employer's Exhibit 11 at 17. Thus, the ALJ permissibly discredited Dr. Spagnolo's reasoning as contrary to the regulations recognizing pneumoconiosis "as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be latent and progressive may be discredited); Decision and Order at 27. Finally, she permissibly found Dr. Spagnolo's opinion undermined because he did not address why Claimant's

[7] When asked whether Claimant's pulmonary condition constitutes occupational asthma, Dr. Spagnolo stated it is "a specific presentation" with the symptoms occurring "over the span of your work week. So they start out being almost non-existent let's say on a Monday and become more severe each day and they clear up over the weekend and then they start again the next week." Employer's Exhibit 11 at 17.

thirteen years of coal dust exposure did not otherwise contribute to his asthma. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 27.

Because substantial evidence supports the ALJ's bases for discrediting Dr. Spagnolo's opinion, we affirm them. *See Compton*, 211 F.3d at 207-08. We therefore affirm the ALJ's finding that Claimant has legal pneumoconiosis.[8] 20 C.F.R. §§718.202(a), 718.201(b); Decision and Order at 26-28.

Total Disability

To invoke the Section 411(c)(4) presumption, a 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. *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,[9] evidence of pneumoconiosis and

[8] We also reject Employer's argument that the ALJ erred by failing to resolve the conflicts in the evidence regarding Claimant's cigarette smoking history. Employer's Brief 30-32. The ALJ correctly noted Dr. Agarwal reported Claimant smoked a half pack of cigarettes per day from 1971 to 2004, which is a seventeen-pack year history. Claimant's Exhibit 1. Dr. Werchowski noted Claimant smoked a half pack of cigarettes per day starting in his thirties and quitting in 2004, a twelve- to thirteen-pack year history, and, alternately, that Claimant smoked a half pack of cigarettes per day from 1969 to 2004, a seventeen-and-one-half-pack year history. Director's Exhibits 4, 12. Finally, Dr. Spagnolo recorded Claimant smoked a half pack of cigarettes for "thirty plus years, maybe a little less." Employer's Exhibit 11 at 19. Based on these histories, the ALJ found Claimant has a thirteen- to thirty-pack-year smoking history. Decision and Order at 6. We are unable discern any error in the ALJ's determination, nor has Employer identified how the ALJ erred in rendering her determination. *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 30-32. As her determination is rational and supported by substantial evidence, we affirm it. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319 (4th Cir. 2013) (it is the ALJ's prerogative to draw inferences from the evidence and determine the weight to accord the evidence); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753 (4th Cir. 1999).

[9] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718,

cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the pulmonary function study and medical opinion evidence, and in consideration of the evidence as a whole.[10] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 10-22.

Employer does not challenge the ALJ's finding that the pulmonary function study evidence supports a finding of total disability; thus we affirm her determination. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10-12. Rather, Employer argues the ALJ erred in finding the medical opinions support a finding of total disability. Employer's Brief at 32-38. We disagree.

Before considering whether the medical opinion evidence supports a finding of total disability, the ALJ determined the exertional requirements of Claimant's usual coal mine employment.[11] Decision and Order at 5. She found Claimant's usual coal mine employment as a cutting machine operator and a roof bolter required heavy manual labor because he was required to haul and stack timbers at the face of the mine, to work in coal heights ranging between four to eight feet, to stand eight to ten hours per day, to lift loads weighing fifty to one hundred pounds multiple times per day, and to carry materials weighing fifty pounds various distances per day. *Id.* We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

The ALJ then considered the opinions of Drs. Agarwal, Werchowski, and Spagnolo on the issue of total disability. Decision and Order at 13-22. Dr. Agarwal and Dr. Werchowski opined Claimant is totally disabled, whereas Dr. Spagnolo opined he is not. Director's Exhibit 12; Claimant's Exhibits 1, 4; Employer's Exhibits 10, 11. The ALJ

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respectively. A "non-qualifying" study yields results exceeding those values. See 20 C.F.R. §718.204(b)(2)(i), (ii).

[10] The ALJ found the blood gas studies do 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 12-13.

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

found the opinions of Drs. Agarwal and Werchowski well-reasoned and documented and entitled to probative weight. Decision and Order at 20-21. She found the contrary opinion of Dr. Spagnolo entitled to reduced weight because his explanation is contrary to the objective test results and lacks an explanation for his conclusion that Claimant would be able to perform the heavy manual labor required by his usual coal mine employment. *Id.* at 21-22.

Employer argues the ALJ erred in crediting the opinions of Drs. Agarwal and Werchowski because their opinions are predicated exclusively on qualifying pulmonary function studies, absent any reconciliation with the non-qualifying arterial blood gas studies indicative of no disability. Employer's Brief at 32-33. We disagree.

Dr. Agarwal based his opinion on the qualifying October 21, 2021 pulmonary function study, which demonstrated "severe obstructive ventilatory defect without significant bronchodilator response, [and] with mildly reduced diffusing capacity." Claimant's Exhibit 1 at 3. He also observed Claimant's PaO2 value on the October 21, 2021 arterial blood gas study was "moderately reduced." *Id.* Noting Claimant was "visibly short of breath on minimal activity" and "has been on home oxygen for [the] last [eight] years," Dr. Agarwal opined Claimant suffers from a severe pulmonary impairment that renders him unable to perform the "heavy" physical demand required by his coal mine work. *Id*.

Likewise, when Dr. Werchowski initially examined Claimant, he opined the March 14, 2021 pulmonary function study he administered produced qualifying results and demonstrated severe airflow obstruction with partial bronchodilator response. Director's Exhibit 12. Dr. Werchowski examined Claimant a second time and noted the December 6, 2021 pulmonary function study is qualifying and demonstrates moderate to severe airflow obstruction. Claimant's Exhibit 4. He also observed the results of the diffusing capacity were "17.29 mL/min/mmHg which is 63% of predicted" and "consistent with moderate approaching severe airflow obstruction." Claimant's Exhibit 4 at 2. Based on Claimant's "debilitating pulmonary function test findings of severe airflow obstruction with a low diffusing capacity," resting arterial blood gases demonstrating "borderline Aa oxygen gradient corrected for age," and symptoms of "significant adventitial breath sounds" evidenced on the physical examination, Dr. Werchowski opined Claimant is totally disabled from a respiratory standpoint. *Id.*

Contrary to Employer's argument, because arterial blood gas studies and pulmonary function studies measure different types of impairment, the results of arterial blood gas studies do not call into question pulmonary function testing. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). Thus, the ALJ permissibly found the opinions of Drs. Agarwal and Werchowski credible because they are supported by the

qualifying pulmonary function studies. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 20-21. Moreover, she permissibly found the physicians adequately explained how the objective testing was indicative of a disabling respiratory impairment, thereby preventing Claimant from performing the heavy work requirements of his usual coal mine work as a roof bolter and cutting machine operator. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); Decision and Order at 20-21.

Employer next argues the ALJ erred in discrediting Dr. Spagnolo's opinion. Employer's Brief at 33-38. We are not persuaded.

While Dr. Spagnolo opined Claimant is not totally disabled, he also acknowledged Claimant has a "mild impairment, but he is being treated for that easily" and thus concluded Claimant retains the respiratory capacity to perform his last coal mine work. Employer's Exhibit 11 at 31. Specifically, Dr. Spagnolo noted the pulmonary function studies from 2015 to 2021 continue to show an obstructive defect. *Id.* at 21. He opined Claimant retains the respiratory capacity to perform his last coal mine employment and his "mild to moderate degree of airflow obstruction" is caused by non-occupational asthma. *Id.* at 26-27, 31-32.

While Employer asserts Dr. Spagnolo "dedicated [eleven] pages of his narrative report identifying and summarizing the medical records that he reviewed," the ALJ correctly observed that Dr. Spagnolo "failed to address why [Claimant] is not totally disabled in light of the unanimous contrary opinions he reviewed," specifically the opinions contained in Claimant's prior 2015 claim from Drs. Gaziano, Zaldivar, and Castle that Claimant has a disabling impairment,[12] as well as those of Drs. Agarwal and Werchowski contained in the current claim. Employer's Brief at 34; Decision and Order at 21. She permissibly found Dr. Spagnolo did not adequately explain how, given the "unanimous contrary opinions," he concluded Claimant could perform the heavy manual labor his previous coal mine employment required. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441 (determination of whether a medical opinion is reasoned and documented requires the fact finder to examine the validity of the physician's reasoning considering studies conducted and the objective indications upon which the opinion is based); *Tackett v. Cargo*

[12] The ALJ correctly noted Dr. Spagnolo summarized all the medical opinions that he reviewed, including the medical opinions of Drs. Gaziano, Zaldivar, and Castle from Claimant's 2015 claim. Decision and Order at 21 n.22. She observed Dr. Gaziano opined Claimant "is unable to do his former coal mine work," Dr. Zaldivar opined Claimant's "lung impairment is severe enough to prevent him from performing his usual coal mining job," and Dr. Castle diagnosed a disabling breathing impairment due to cigarette smoking and asthma. *Id.*; Employer's Exhibit 10 at 3-4, 13.

Mining Co., 12 BLR 1-11 (1988) (en banc); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985); Decision and Order at 21. Further, she noted that "when given the opportunity to address the most recent qualifying pulmonary function studies," Dr. Spagnolo "indicated he did not know if the December and October 2021 [studies] met the federal criteria for total pulmonary disability," when in fact they are qualifying, and he failed to consider whether this factor would change his opinion. *Id.* at 22; Employer's Exhibit 11 at 38-39; *see also* Employer's Exhibit 10 at 14-15. Thus, she found these deficiencies further diminished the probative value of Dr. Spagnolo's conclusion. *Id.* at 22. Based on her determination that the pulmonary function study evidence supports a finding of total disability, which Employer does not challenge, the ALJ rationally found Dr. Spagnolo's opinion not persuasive. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319 (4th Cir. 2013) (it is the ALJ's prerogative to draw inferences from the evidence and determine the weight to accord the medical opinions); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753 (4th Cir. 1999). Thus, we affirm the ALJ's discrediting of Dr. Spagnolo's report as "poorly documented" and inadequately explained as this finding is rational. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 21.[13]

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 22. We further affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 22.

Disability Causation

Finally, the ALJ considered whether Claimant established pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *Robinson v. Pickands Mather and Co.*, 914 F.2d 35 (4th Cir. 1990).

[13] Because the ALJ provided valid reasons for discrediting Dr. Spagnolo's opinion, we need not address Employer's other arguments pertaining to the weight she accorded his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 33-38.

The ALJ credited Dr. Agarwal's opinion that Claimant's totally disabling respiratory impairment was due to legal pneumoconiosis over the contrary opinion of Dr. Spagnolo.[14] 20 C.F.R. §718.204(c); Decision and Order at 30-31. We disagree with Employer's argument that the ALJ erred in making this finding. Employer's Brief at 38-41.

Dr. Agarwal opined Claimant's total disability is due to legal pneumoconiosis "because [his] predominant ventilatory impairment is obstructive." Claimant's Exhibit 1 at 4. He eliminated other potential conditions as causes, opining Claimant's clinical pneumoconiosis is not likely disabling and his clinical examination and chest x-ray do not indicate that coronary artery disease and congestive heart failure are significant contributors. *Id.* The ALJ permissibly relied on Dr. Agarwal's opinion to conclude Claimant's totally disabling pulmonary impairment is due to legal pneumoconiosis.[15] Decision and Order at 31. For the same reasons she credited Dr. Agarwal's opinion on legal pneumoconiosis, the ALJ permissibly credited his opinion regarding the etiology of Claimant's disabling respiratory impairment. *See Robinson*, 914 F.2d at 37-38 (claimant must prove by a preponderance of the evidence that pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003); Decision and Order at 31. Employer's arguments amount to a request to reweigh the evidence, which the Board may not do, even if our conclusions might have been different. *See Mays*, 176 F.3d at 764; *Anderson*, 12 BLR at 1-113; *Consolidation Coal Co. v. Held*, 314 F.3d 184, 189 (4th Cir. 2002).

We likewise reject Employer's argument that the ALJ engaged in an impermissible selective analysis of Dr. Spagnolo's opinion and subjected his opinion to greater scrutiny than the opinions of the other physicians. Employer's Brief at 29-30. The ALJ permissibly discredited Dr. Spagnolo's opinion regarding the cause of Claimant's total disability because he failed to diagnose legal pneumoconiosis and a totally disabling impairment when the ALJ found Claimant established the disease and has a totally disabling respiratory impairment. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015)

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[14] As the ALJ found Dr. Werchowski did not render an opinion regarding the cause of Claimant's disability, she found his opinion not probative on the issue. Decision and Order at 31; Director's Exhibit 12; Claimant's Exhibit 4.

[15] Contrary to Employer's assertion, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when his opinion is otherwise well-reasoned, documented, and based on his own examination of the miner and objective test results. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); Employer's Brief at 40.

(physician's opinion that "did not properly diagnose pneumoconiosis can carry, at most, little weight"); *Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 185 (4th Cir. 2014); *Scott v. Mason Coal Co.*, 289 F.3d 263, 270 (4th Cir. 2002); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 30-31.

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability due to pneumoconiosis through Dr. Agarwal's opinion.[16] 20 C.F.R. §718.204(c). Consequently, we also affirm the ALJ's determination that Claimant established a change in an applicable condition of entitlement by establishing disability causation. 20 C.F.R. §725.309; Decision and Order at 9, 32. We therefore affirm the award of benefits.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[16] Because we affirm the ALJ's finding that Claimant established total disability due to legal pneumoconiosis based on Dr. Werchowski's opinion, we need not address Employer's arguments that the ALJ erred in finding the medical opinion evidence supports a finding of clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984); Employer's Brief at 19-25.