U.S. Department of Labor

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

BRB No. 22-0162 BLA

JOHN S. GEORGE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COMMERCIAL TESTING & ENGINEERING COMPANY	)	
	)	
	)	DATE ISSUED: 9/27/2023
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Michael D. Crim (Crim Law Office, P.L.L.C.), Clarksburg, West Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits on Remand (2018-BLA-05057) rendered on a miner's claim filed on July 28, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

In his February 27, 2019 Decision and Order Denying Benefits, the ALJ found Claimant had less than fifteen years of coal mine employment based on the parties' stipulation and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). He further found Claimant did not establish a totally disabling respiratory or pulmonary impairment and thus denied benefits. 20 C.F.R. §718.204(b)(2). In consideration of Claimant's appeal, the Benefits Review Board held the ALJ erred in finding the medical opinions do not establish total disability and remanded the case to the ALJ for further consideration.[2] *George v. Commercial Testing & Eng'g Co.*, BRB No. 19-0295 BLA, slip op. at 5-8 (June 9, 2020) (unpub.).

On remand, the ALJ credited Claimant with 11.14 years of coal mine employment and found Employer is the responsible operator.[3] Considering Claimant's entitlement under 20 C.F.R. Part 718, he further found Claimant established total disability due to legal pneumoconiosis. 20 C.F.R. §§718.202, 718.204(b), (c). He therefore awarded benefits.

On appeal, Employer argues the ALJ erred in determining the length of Claimant's coal mine employment, the exertional requirements of his usual coal mine employment, that Claimant established total disability, and the weight to be given to the medical opinion evidence. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response.

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[1] 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[2] The Board affirmed the ALJ's finding that Claimant has less than fifteen years of coal mine employment and thus cannot invoke the presumption, but instructed the ALJ to make a more specific finding on remand as it "may affect the other elements of entitlement." *George v. Commercial Testing & Eng'g Co.*, BRB No. 19-0295 BLA, slip op. at 2 n.2, 8 (June 9, 2020) (unpub.).

[3] Employer disagrees with the ALJ's finding that it is the responsible operator. Employer's Brief at 5. However, Employer identifies no specific error in the ALJ's finding; thus, we affirm it. 20 C.F.R. §802.211(b); *see Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 109 (1983); Decision and Order on Remand at 6.

The 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.[4] 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).

Length of Coal Mine Employment

Claimant bears the burden of proving the number of years he worked as a coal miner. *See Kephart v. Director, OWCP*, 8 BLR 1-185 (1985); *Shelesky v. Director, OWCP*, 7 BLR 1-34 (1984). The Board will uphold the ALJ's determination if it is based on a reasonable method and supported by substantial evidence in the record. 20 C.F.R. §725.101(a)(32); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986).

The ALJ considered Claimant's application for benefits, Social Security Administration (SSA) earnings record, and hearing testimony. Decision and Order on Remand at 3-5; Director's Exhibits 3, 8, 9. Claimant alleged 17.5 years of coal mine employment on his application for benefits, but his counsel conceded to approximately thirteen years at the hearing. Director's Exhibit 2; Hearing Tr. at 20; Decision and Order on Remand at 3-4.

The ALJ found Claimant had periods of coal mine employment between calendar years 1972 and 1988. Claimant testified he began working at Peabody Coal Company (Peabody) in 1972. Decision and Order on Remand at 4; Hearing Tr. at 24. His SSA earnings record reflects earnings with Peabody through 1978. Director's Exhibits 8, 9. Claimant further acknowledged an injury in 1977, for which he was off work for "a few months." Decision and Order on Remand at 4; Hearing Tr. at 46. Finally, Claimant worked for Employer from 1983 through 1988.[5] Decision and Order on Remand at 4; Director's Exhibit 8; Hearing Tr. at 26-29.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 24.

[5] Claimant also worked at a coal mine as a security guard for Pinkertons, Inc. from 1981 through 1983. Director's Exhibit 8; Hearing Tr. at 65-66. The ALJ found Claimant's work as an overnight security guard did not constitute coal mine employment because "he did not perform duties integral to the extraction of coal." Decision and Order on Remand at 4 n.2 (quoting *Falcon Coal Co. v. Clemons*, 873 F.2d 916, 922-23 (6th Cir. 1989)). While a security guard's work may constitute coal mine employment under certain circumstances, we affirm this finding a supported by substantial evidence, namely

The ALJ found the record insufficient to identify the specific beginning and ending dates of Claimant's coal mine employment, and thus calculated its length using the formula at 20 C.F.R. §725.101(a)(32)(iii).[6] Decision and Order on Remand at 4. For each year in which Claimant's earnings met or exceeded the Exhibit 610 average yearly earnings for 125 days of employment, the ALJ credited him with a full year of employment. *Id.* at 5. For those years in which Claimant's earnings fell short – 1972, 1977, 1978, and 1988 – he credited Claimant with a fractional year of employment, using 125 days as the divisor. *Id.* He therefore concluded Claimant established a total of 11.14 years of coal mine employment: 5.4 years with Peabody from 1972 to 1977 and 5.73 years with Employer from 1983 to 1988. *Id.* at 6.

Employer argues the ALJ erred by not considering Claimant's testimony regarding his specific daily earnings for Peabody when calculating the length of coal mine employment. Employer's Brief at 5. According to Employer, Claimant testified he earned $112.00 per day while working for Peabody, and if that wage is used to calculate his number of working days each year, he established only 3.49 years of employment with Peabody, not 5.4 years as found by the ALJ. *Id.* We are not persuaded.

As the ALJ reasonably found, the record does not establish the beginning and ending dates of Claimant's coal mine employment. Decision and Order on Remand at 4. The United States Court of Appeals for Sixth Circuit, whose law applies to this case, held in *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019):

> [I]f the beginning and ending dates of the miner's employment cannot be determined *or* – even if such dates are ascertainable – if the miner was

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Claimant's testimony his work consisted of night watch services and walking the perimeter. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Clemons*, 873 F.2d at 922; Hearing Tr. at 66-67.

[6] Pursuant to 20 C.F.R. §725.101(a)(32)(iii):

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's daily average earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

The BLS data is reported in Exhibit 610 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual.*

> employed by the mining company for "less than a calendar year," the adjudicator may determine the length of coal mine employment by dividing the miner's yearly income from coal mine employment by the average daily earnings of an employee in the coal mining industry. If the quotient from that calculation yields at least 125 working days, the miner can be credited with a year of coal mine employment, regardless of the actual duration of employment for the year. 20 C.F.R. §725.101(a)32(iii). If the calculation shows that the miner worked fewer than 125 days in the calendar year, the miner still can be credited with a fractional portion of a year based on the ratio of the days worked to 125. 20 C.F.R. §725.101(a)(32)(i).

Thus, the ALJ permissibly used the formula in the regulations, which relies on the average daily earnings from Exhibit 610, to determine the length of Claimant's coal mine employment. *Id.*; *see also Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 n.2 (1984).

Moreover, we disagree with Employer's assertion that Claimant testified he earned $112.00 per day during all periods of employment with Peabody. Claimant's testimony that he earned "about $112" per day came immediately after Employer's counsel specifically asked him about his limited earnings in the second, third, and fourth quarters of 1977, and whether his salary "was the same" in 1977 before and after he suffered an injury and was placed on light duty. Hearing Tr. at 45-47. As Employer points to nothing in the record to supports its assertion that Claimant earned $112.00 per day during his 1972 to 1976 employment with Peabody, we reject its argument that the ALJ erred in relying on the average daily earnings reported in Exhibit 610 for those years. With respect to 1977 and 1978, Employer's own calculation using a $112.00 daily wage results in 0.38 years of employment, whereas the ALJ credited Claimant with 0.56 years. Employer does not attempt to explain how a difference of only 0.18 year mattered in this case. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

While Employer further argues Claimant's employment with Employer at a power plant site from late 1984 to 1988 does not constitute coal mine employment, it again has not attempted to demonstrate how the alleged error would have made a difference to the outcome. Employer's Brief at 5-6. We therefore affirm the ALJ's length of coal mine employment finding.[7] *Shinseki*, 556 U.S. at 413.

[7] While subtracting the years as proposed by Employer from the ALJ's calculation would reduce the length of coal mine employment to less than ten years, thus disallowing use of the presumption at 20 C.F.R. §718.203(b), the ALJ found clinical pneumoconiosis was not established; therefore, the presumption would not apply. Decision and Order on Remand at 14-15. Moreover, as discussed in more detail below, while a physician's

Entitlement Under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3)[8] and (c)(4) presumptions, Claimant must establish disease (pneumoconiosis),[9] 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, 718.204. 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 (1986) (en banc).

Total Disability

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. 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 consider all relevant evidence and weigh the evidence supporting total disability against the 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

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understanding of the length of the miner's coal mine employment may affect the credibility of the opinion, the ALJ sufficiently addressed legal pneumoconiosis and disability causation without relying on his finding of 11.14 years of coal mine employment.

[8] As the ALJ found, the record contains no evidence of complicated pneumoconiosis or large opacities; thus, Claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304; Decision and Order on Remand at 7, 14.

[9] The ALJ found Claimant failed to establish clinical pneumoconiosis. Decision and Order on Remand at 15. "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). As none of the radiographic evidence nor the medical opinions diagnose clinical pneumoconiosis, we affirm the ALJ's finding as supported by substantial evidence. *See Napier*, 301 F.3d at 713-14; Director's Exhibit 12; Claimant's Exhibit 2; Employer's Exhibit 6.

total disability established based on the medical opinion evidence and when weighing the evidence as a whole.[10] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 13.

Usual Coal Mine Employment

Employer initially argues the ALJ erred in determining the exertional requirements of Claimant's last coal mine job constituted "at least medium manual labor." Employer's Brief at 6-7. It contends Claimant's last coal mine work instead required "light work" based on Claimant's descriptions in his application for benefits and the regulations for determining disability benefits under the Social Security Act. *Id.* at 7 (citing 20 C.F.R. §404.1567). Employer asserts these regulations define "light work" as "lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds," which it argues is most consistent with Claimant's application, indicating he lifted twenty pounds and did not carry any weight. *Id.* at 7. We disagree.

Contrary to Employer's argument, the ALJ considered Claimant's application for benefits, in which he stated he was required to lift twenty pounds, ten times a day, for about four and one-half hours per day in his last job as a coal sampler. Decision and Order on Remand at 6; Director's Exhibit 5 at 2. The ALJ also considered Claimant's testimony that he carried twenty-to-thirty-pound bags of coal out of the trucks, lifted them over his head, and dumped the coal into the hopper to crush it, which he did "all day." Decision and Order on Remand at 6-7; Hearing Tr. at 30-34. The ALJ was within his discretion to credit Claimant's more specific testimony regarding his job duties. *See Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989) (it is within the discretion of the ALJ to assess the credibility of the evidence and witnesses); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Moreover, while the ALJ was not required to apply Social Security regulations in making his determinations, Claimant's testimony is consistent with the regulations' definition for medium work, which involves "lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds." Employer's Brief at 7 (quoting 20 C.F.R. §404.1567). Therefore, substantial evidence supports the ALJ's finding that Claimant's usual coal mine work involved "at least medium manual labor on a constant basis." *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn.*

[10] The Board previously affirmed the ALJ's findings that the pulmonary function studies and arterial blood gas studies do not support total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); *George*, BRB No. 19-0295 BLA, slip op. at 3 n.3.

Consol. Coal Co. v. Crisp, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order on Remand at 7.

Medical Opinion Evidence

The ALJ considered the medical opinions of Drs. Feicht, Conibear, and Spagnolo. 20 C.F.R. §718.204(b)(2)(iv). Dr. Feicht diagnosed Claimant with mild resting hypoxemia and a mild restrictive and obstructive impairment. Director's Exhibit 12 at 8-9. He opined Claimant is "100% disabled" from performing his usual coal mining work due to his degree of dyspnea and "moderately severe symptoms."[11] *Id.* at 9; Claimant's Exhibit 3[12] at 27. Dr. Conibear opined Claimant is totally disabled[13] and unable to perform his usual coal mining work based on his low resting blood gases and shortness of breath with "relatively minor exertion." Claimant's Exhibit 2 at 4-5. Dr. Spagnolo opined Claimant's testing demonstrates "no evidence of an obstructive lung defect" and his lung capacity, diffusion capacity, and resting blood gases are normal. Employer's Exhibit at 6. Thus, he opined

[11] In his first supplemental report, Dr. Feicht responded to correspondence from a Department of Labor claims examiner asking him to consider seven years of coal mine employment as opposed to seventeen years. He amended his opinion to assert Claimant is not totally disabled because "[seven] years of coal dust exposure is not sufficient to account for a disabling pulmonary disability." Director's Exhibit 15. In his second supplemental report, he again amended his opinion based on eleven years of coal mine employment. Claimant's Exhibit 3 at 27. He ultimately opined Claimant has "borderline low objective criteria for disability" and has "moderately severe symptoms that would preclude his ability to work at his last year of coal mining." *Id.* The ALJ reasonably found Claimant's length of coal mine employment has no bearing on whether he is totally disabled, and therefore permissibly accorded little weight to Dr. Feicht's first supplemental report. *See Napier*, 301 F.3d at 713-14; Decision and Order on Remand at 9; Employer's Brief at 17.

[12] When the case was remanded to the ALJ, he renumbered previously admitted exhibits. Decision and Order on Remand at 2. For ease of review and discussion, we use the original exhibit designations.

[13] Employer argues Dr. Conibear's use of the word "incapacitated" rather than the phrase "totally disabled" makes the ALJ's crediting of her opinion "clear error." Employer's Brief at 16. While Dr. Conibear states Claimant is incapacitated rather than totally disabled, her use of that language was in response to a specific question posed by Claimant's counsel. Claimant's Exhibit 2 at 5. Further, she specifically opined that Claimant was unable to perform his usual coal mine employment. Claimant's Exhibit 2 at 5; 20 C.F.R. §718.204(b)(2)(iv). Thus, we reject Employer's argument.

"there is no evidence of a disabling respiratory impairment" and Claimant can perform his last coal mine employment. *Id.* at 5-6.

Employer argues the ALJ erred in crediting Drs. Feicht and Conibear over Dr. Spagnolo, particularly given the ALJ made contrary findings in his prior decision and Dr. Spagnolo holds superior credentials. Employer's Brief at 8-18. We disagree.

A physician may offer a reasoned medical opinion diagnosing total disability even though the objective studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005). Moreover, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his usual coal mine employment. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *Budash v. Bethlehem Mines Corp*., 9 BLR 1-48, 1-51-52 (1986) (en banc) (description of physical limitations in performing routine tasks may be sufficient to allow the ALJ to infer total disability). The ALJ permissibly credited the opinions of Drs. Feicht[14] and Conibear because they both understood the exertional requirements of Claimant's usual coal mine employment and adequately explained how Claimant's restrictive and obstructive impairments, low resting oxygenation, and shortness of breath with only minor exertion prevented him from performing the labor required of his usual coal mining work. *See Cornett*, 227 F.3d at 587; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order on Remand at 10-11, 13.

Furthermore, we reject Employer's argument the ALJ erred in failing to consider that Dr. Conibear's opinion relied on "inaccurate factual assertions." Employer's Brief at 15-16. Although Dr. Conibear mistakenly stated the 2015 pulmonary function study resulted in a FEV1/FVC ratio of seventy percent,[15] she correctly indicated the 2016 study resulted in a ratio of sixty-seven percent. Claimant's Exhibit 1; Claimant's Exhibit 2 at 3-

[14] Employer asserts the ALJ erroneously credited Dr. Feicht's opinion based "entirely" on the fact that Dr. Feicht was the only physician to examine Claimant. Employer's Brief at 11-12. While the ALJ noted that Dr. Feicht was the only physician to examine Claimant, that finding was not the sole basis for crediting Dr. Feicht's opinion. Decision and Order on Remand at 10.

[15] The FEV1/FVC value in the 2015 study was seventy-five percent. Director's Exhibit 12 at 21.

4. Her diagnosis of obstruction, insofar as it is relevant to her total disability opinion, is based on an FEV1/FVC value of seventy percent or less, and is thus supported by the 2016 study. Claimant's Exhibit 1 at 4. In addition, Employer argues Dr. Conibear failed to explain or adjust for the incorrect height recorded when assessing the 2016 pulmonary function study. Employer's Brief at 12. While the 2016 pulmonary function study is non-qualifying based on the ALJ's finding that Claimant's height is 66.5 inches, 2.5 inches less than what Dr. Conibear relied upon, Claimant's height is irrelevant to Dr. Conibear's findings of total disability based on obstruction and hypoxemia.[16] *See* 20 C.F.R. §718.204(b)(2)(i), (iv); *see also Cornett*, 227 F.3d at 587; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order on Remand at 7 n.6, 11; Claimant's Exhibit 2.

Finally, Dr. Conibear accurately noted Claimant's resting pO2 of 76 in the August 25, 2015 blood gas study, which she explained demonstrated hypoxemia. Claimant's Exhibit 2 at 2; Director's Exhibit 12 at 19. Because the blood gas study is already non-qualifying, Employer does not explain how the adjustments it contends Dr. Conibear was further required to make to account for age and barometric pressure would have made a difference in the outcome. *See Shinseki*, 556 U.S. at 413; *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order on Remand at 8.

Employer also argues the ALJ erred in not crediting Dr. Spagnolo's opinion. Employer's Brief at 13-15. Specifically, it argues that Dr. Spagnolo's understanding of Claimant's coal mine employment is "completely consistent with the exertional level of a person in a 'light' or 'medium' job." Employer's Brief at 14 n.7. We disagree.

While Dr. Spagnolo noted the work description provided in Claimant's application, he was unaware of the more specific description from Claimant's testimony relied on by the ALJ; rather, Dr. Spagnolo simply assumed Claimant "was required to do some manual labor in his last coal mining job but . . . it was not heavy manual labor." Employer's Exhibit 6 at 5. As the ALJ found Claimant had to lift and carry twenty-to-thirty-pound bags frequently throughout the day, the ALJ permissibly accorded Dr. Spagnolo's opinion little weight because the physician did not "demonstrate a convincing awareness of the physical requirements of Claimant's coal mine work." Decision and Order on Remand at 12; *see Cornett*, 227 F.3d at 587; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185.

Finally, we reject Employer's argument that the ALJ was required to accord most weight to Dr. Spagnolo's opinion because he possesses "far superior" qualifications than

[16] Employer also implies the 2016 pulmonary study is invalid. Employer's Brief at 15. However, none of the physicians provided such an assessment. Director's Exhibits 12, 15; Claimant's Exhibits 2, 3; Employer's Exhibit 6.

the other physicians.[17] Employer's Brief at 8-10. The ALJ specifically gave weight to Dr. Spagnolo's qualifications as the only board-certified pulmonologist, but provided other valid reasons for discrediting his opinion. *See Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-20 (2003) (where the ALJ considered a physician's credentials but determined his opinion undermined by defective reasoning, the ALJ adequately considered the physician's qualifications); Decision and Order on Remand at 12.

We therefore 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 on Remand at 13. As Employer has not raised any arguments regarding the weighing of the evidence together, 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; Decision and Order on Remand at 13.

Legal Pneumoconiosis

While Claimant has not established the presence of clinical pneumoconiosis, he may still establish the required disease element by establishing legal pneumoconiosis.[18] To establish legal pneumoconiosis, Claimant must prove he has a "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). The Sixth Circuit has held that a claimant can establish a lung impairment was significantly related to coal mine dust exposure "by showing that [the] disease was caused 'in part' by coal mine employment." *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*]

[17] Employer also asserts the ALJ erred in crediting Dr. Conibear based on her board-certification in family medicine given it expired in 1994. Employer's Brief at 12. While Employer is correct that Dr. Conibear's board-certification in family medicine has expired, it does not address that the ALJ also "gave weight" to her board-certification in occupational medicine, which is relevant to assessing the issues here. Decision and Order on Remand at 11.

[18] 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 encompasses 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).

we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

The ALJ credited Dr. Conibear's opinion that Claimant has legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due coal mine dust and Dr. Feicht's opinion that Claimant has legal pneumoconiosis in the form of chronic bronchitis due to coal mine dust exposure. Decision and Order on Remand at 15-16; Director's Exhibit 12; Claimant's Exhibits 2, 3. In contrast, he determined Dr. Spagnolo's opinion, finding no legal pneumoconiosis given he found no evidence of obstruction or impairment whatsoever, was undermined as the physician did not adequately explain why coal mine dust did not contribute to Claimant's condition; thus, the ALJ accorded his opinion no probative weight. Decision and Order on Remand at 16; Employer's Exhibit 6. Thus, weighing the medical opinions together, the ALJ found Claimant established the presence of legal pneumoconiosis. Decision and Order on Remand at 17.

Employer does not raise any specific arguments identifying error in the ALJ's credibility findings regarding Dr. Spagnolo's opinion, asserting only that his opinion was the best reasoned and documented. Employer's Brief at 8-10, 13-14. Similarly, while generally arguing Dr. Feicht's opinion is unreasoned, it has failed to point to any specific error in the ALJ's findings regarding Dr. Feicht's legal pneumoconiosis opinion. Employer's Brief at 17. Thus, as Employer has raised no specific arguments regarding the ALJ's findings regarding these physicians' opinions, they are affirmed. 20 C.F.R. §802.211(b); *see Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 109 (1983).

Employer also generally asserts that Dr. Conibear "fails to offer the opinion that Claimant's pulmonary impairment arose out of his coal mine employment." Employer's Brief at 16. Contrary to Employer's argument, the ALJ found Dr. Conibear opined that the etiology of Claimant's COPD and chronic bronchitis is his coal mine dust exposure. Decision and Order on Remand at 15; Claimant's Exhibit 2 at 3-4. As Employer identifies no other alleged errors in the ALJ's crediting of Dr. Conibear's opinion, or regarding the other physicians' opinions, we affirm the ALJ's finding that Claimant established the presence of legal pneumoconiosis. Decision and Order on Remand at 17.

Disability Causation

To establish disability causation, Claimant must prove legal pneumoconiosis was 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 of a miner's totally disabling impairment if it has "a material adverse effect on the

miner's respiratory or pulmonary condition" or if it "[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).

The ALJ credited Dr. Conibear's opinion that Claimant's coal mine dust exposure caused his impairment, given his exposure to "significant amounts" of coal dust and lack of other risk factors for COPD as a non-smoker. Decision and Order on Remand at 17. Similarly, he credited Dr. Feicht's ultimate opinion that Claimant's chronic bronchitis significantly contributed to Claimant's impairment, noting he never smoked. *Id.* The ALJ accorded Dr. Spagnolo's opinion that Claimant's complaints and symptoms were due to cardiac disease no probative weight, as he did not diagnose legal pneumoconiosis or find a disabling impairment, contrary to the ALJ's findings. Decision and Order on Remand at 17-18. Thus, weighing the evidence together, the ALJ found Claimant satisfied his burden to establish his legal pneumoconiosis substantially contributed to his disabling impairment. *Id.* at 18.

Again, Employer raises no specific arguments identifying any error in the ALJ's finding that Dr. Spagnolo's opinion is entitled to no probative weight; thus, this finding is affirmed. 20 C.F.R. §802.211(b); *see Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 109. Employer also generally argues the ALJ should have found Dr. Conibear's opinion unreasoned because she did not consider Claimant's coronary artery disease as a potential etiology of his pulmonary symptoms. Employer's Brief at 12, 15.

It is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility. *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at185. Further, Claimant need not demonstrate that his coal mine dust exposure was the sole or even the primary cause of his respiratory impairment. *See Cornett*, 227 F.3d at 576. Thus, the ALJ permissibly credited Dr. Conibear's opinion that legal pneumoconiosis was a substantial contributing cause of Claimant's impairment given her understanding of Claimant's coal mining history[19] and lack of smoking history, even assuming Claimant's coronary artery disease could have also contributed to his symptoms. *See Grundy Mining Co. v. Flynn*, 353 F.3d 467, 483-84 (6th Cir. 2003) (ALJ rationally inferred that the limitations due to a pulmonary disease were due to pneumoconiosis because pneumoconiosis was the only

[19] The ALJ found that although Dr. Conibear relied on only seven years of coal mine employment, she expressed an understanding of Claimant's coal mine dust exposure in his tenure as an underground miner working at the face, as well as during his work as a coal sampler which required working around a coal crusher. Decision and Order on Remand at 15-16. He found if she had considered a longer length of coal mine employment, it would have only made her opinion stronger. *Id.* at 16.

pulmonary disease diagnosed). Because the ALJ found Dr. Conibear's opinion well-reasoned and documented, and accorded Dr. Spagnolo's contrary opinion no probative weight, we affirm the ALJ's finding that Claimant established by a preponderance of the evidence that his legal pneumoconiosis substantially contributed to his totally disabling impairment.[20] Decision and Order on Remand at 18.

[20] Employer notes Dr. Feicht's first supplemental opinion found that seven years of coal mine employment was insufficient to cause impairment, and thus "even Dr. Feicht has [opined] that Claimant's pulmonary issues are related to other elements." Employer's Brief at 17-18. The ALJ, however, permissibly discredited Dr. Feicht's first supplemental opinion that only seven years of coal mine dust was not sufficient to cause "disability," as the physician focused on the question of whether Claimant was totally disabled by coal mine dust, rather than the correct legal pneumoconiosis inquiry of whether Claimant had a chronic lung disease or impairment (regardless of severity) significantly related to or substantially aggravated by coal mine dust. Decision and Order on Remand at 17; Director's Exhibit 15. Further, as we have affirmed the ALJ's findings regarding Drs. Conibear's and Spagnolo's opinions, and thus that Claimant has met his burden, we need not consider whether the ALJ's findings regarding the length of coal mine employment affected his crediting of Dr. Feicht's second supplemental opinion diagnosing legal pneumoconiosis based on an eleven-year coal mine employment history. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits on Remand.[21]

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[21] Thus, we reject Employer's request for remand to the district director or ALJ so it can further develop evidence related to contested issues "that have not been resolved by the ALJ," including the issue of Claimant's cardiac condition. *Id.* at 18. Employer has not demonstrated or claimed it was prevented from developing relevant medical evidence while the case was before the ALJ. Further, the ALJ addressed all contested issues.