**U.S. Department of Labor**

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

BRB No. 24-0121 BLA

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| LARRY M. RAMEY | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| TALON RESOURCES, INCORPORATED | ) | |
| | ) | **NOT-PUBLISHED** |
| and | ) | |
| | ) | |
| WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND | ) | DATE ISSUED: 12/03/2024 |
| | ) | |
| Employer/Carrier-Petitioners | ) | |
| | ) | |
| 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 of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2021-BLA-05902) rendered on a subsequent claim filed on December 31, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ credited Claimant with 21.76 years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined 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),[2] and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). Further, she found Employer did not rebut the presumption and awarded benefits.

[1] This is Claimant's ninth claim for benefits. Director's Exhibits 1-8, 10. Claimant withdrew his eighth claim. Director's Exhibits 8, 53. When a claim is withdrawn, it is considered not to have been filed. 20 C.F.R. §725.306(b). The district director denied Claimant's seventh claim because the evidence did not establish total disability. Director's Exhibit 7.

[2] 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); *see* 20 C.F.R. §718.305.

[3] 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 she 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 entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied Claimant's seventh claim for failure to establish total disability, Claimant had to submit new evidence establishing total disability to obtain review of his current claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 7.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed 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.[5] 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).

**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)(i). 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 qualifying pulmonary function studies or arterial blood gas studies,[6] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 21.76 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10-12.

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 23; Director's Exhibits 11, 12.

[6] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

Employer argues the ALJ erred in finding that Claimant established total disability based on the medical opinions[7] and the evidence as a whole.[8] Employer's Brief at 4-17. We disagree.

The ALJ considered the medical opinions of Drs. Werchowski, Gaziano, and Nader that Claimant has a totally disabling respiratory or pulmonary impairment and the contrary opinions of Drs. Zaldivar and Spagnolo.[9] Decision and Order at 17-23. After reviewing their qualifications, she determined all of the physicians are qualified to render an opinion. *Id.* at 17-22. She found Drs. Werchowski's and Nader's opinions well-reasoned, documented, and entitled to full probative weight. Further, she determined Dr. Gaziano's opinion lacked "extensive analysis" but was entitled to some probative weight, while Drs. Zaldivar's and Spagnolo's opinions were not persuasive and entitled to reduced probative weight. *Id.* at 18-22. Thus, the ALJ found Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 23.

Employer generally contends the ALJ erred in crediting Claimant's experts because they did not review the more recent non-qualifying objective testing or as much evidence as Employer's experts. It also contends the ALJ "selectively analyzed" the medical

[7] The ALJ found Claimant did not establish total disability based on the pulmonary function or blood gas studies, and there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 13-16, 23. The ALJ also found Claimant did not establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 12.

[8] Employer contends that the ALJ erred in considering the undesignated narrative report included with Dr. Agarwal's pulmonary function study, in excess of the evidentiary limitations for medical opinions at 20 C.F.R. §725.414. Employer's Brief at 4 n.3; Employer's Exhibit 3; Employer's Evidence Summary Form at 3, 5-6; Decision and Order at 13-15. We consider any error to be harmless because the ALJ concluded the pulmonary function study evidence does not support a finding of total disability and she did not consider Dr. Agarwal's opinion in weighing the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv). *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); Decision and Order at 15 n.13, 16-23.

[9] We affirm, as unchallenged, the ALJ's findings that Claimant's usual coal mine job as a mobile equipment operator required heavy exertion and that all the physicians understood those exertional requirements. *See Skrack*, 6 BLR at 1-711; Decision and Order at 11, 23.

opinions by crediting Drs. Werchowski, Nader, and Gaziano based on their understanding of Claimant's objective testing results, his symptoms, and the exertional requirements of his usual coal mine job, but not crediting Drs. Zaldivar and Spagnolo based on their consideration of the same factors. Employer's Brief at 4-7, 14, 16. Employer states the ALJ's "primary error is that she based the weight she granted to each doctor's opinion on her mistaken understanding that the presence alone of obstructive or restrictive changes on objective testing equated [to] totally disabling obstructive or restrictive changes." *Id.* at 6.

As discussed below, we reject Employer's assertions of error and conclude the ALJ properly examined whether each physician's opinion is reasoned and documented, and she adequately explained the basis for her credibility determinations. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 17-23.

**Dr. Werchowski**

Dr. Werchowski conducted the Department of Labor (DOL) complete pulmonary evaluation of Claimant on February 2, 2020, and obtained qualifying pre-bronchodilator and non-qualifying post-bronchodilator pulmonary function study results and non-qualifying blood gas study results. Director's Exhibit 26 at 10-12, 26. He diagnosed Claimant with a "moderate airflow obstruction without a response to bronchodilator therapy" and opined that Claimant is totally disabled from performing his last coal mine job. *Id.* at 9-10.

We reject Employer's contention that the ALJ erred in crediting Dr. Werchowski's opinion because he did not review as much evidence as its experts and did not adequately explain why Claimant is totally disabled "solely based on a reduced FEV1 and MVV" on pulmonary function testing. Employer's Brief at 6-8. An ALJ is not required to discredit a physician who did not review all the medical records when his opinion is otherwise well-reasoned, documented, and based on his own examination and objective test results. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); Employer's Brief at 7. Moreover, the ALJ accurately noted Dr. Werchowski based his opinion on multiple factors, including his physical examination of Claimant, the objective testing results he obtained, and his understanding of Claimant's usual coal mine work. Decision and Order at 17-18; Director's Exhibit 26.

As the ALJ noted, Dr. Werchowski reported that his physical examination of Claimant indicated his lungs showed "a focal expiratory wheeze on the left side" and "adventitial breath sounds" which "supports [a diagnosis of] airway disease." Decision and Order at 17-18; Director's Exhibit 26 at 9-10. Additionally, the ALJ accurately noted Dr. Werchowski understood Claimant's last coal mine employment as a mobile equipment

operator required heavy manual labor and that he concluded Claimant was totally disabled based on the results of the objective testing showing a moderate respiratory impairment with no response to bronchodilator on pulmonary function testing, an "abnormal" FEV1/FVC ratio of 65 percent, low diffusion capacity consistent with emphysema, a "very low" MVV "showing reduced respiratory muscle stamina," and progressively worsening respiratory symptoms of "cough, mucus production, wheezing and shortness of breath[.]" Decision and Order at 17-18; Director's Exhibit 26 at 9-10. Consequently, we see no error in the ALJ's finding that Dr. Werchowski's opinion is well-reasoned and documented and sufficient to support Claimant's burden of proof. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *see also Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); Decision and Order at 17-18, 23.

**Dr. Nader**

Dr. Nader examined Claimant on April 22, 2022, and obtained qualifying pulmonary function study results and non-qualifying blood gas study results. Claimant's Exhibit 5 at 58-62, 72-73.[10] Further, Dr. Nader noted that Claimant has a twenty-year history of chronic obstructive pulmonary disease and that he reported shortness of breath with exertion, wheezing, mucus expectoration, and a productive cough. *Id.* at 58. Dr. Nader opined that the pulmonary function study results reflected an "underlying moderate-to-severe restrictive airway disease with a component of obstructive airway disease and [a] decrease in diffusing capacity" and that Claimant is totally disabled based on his "significant reduction in FEV1 and FVC" values and his respiratory symptoms. *Id.* at 59-60. He further opined: "Even though [Claimant's] chest x-ray *did not* meet the criteria for total disability. A 3/2 perfusion [sic] and a finding on his CAT scan with coalescence of lung nodules predominantly in the upper lobe reflect underlying significant fibrosis." *Id.* at 60 (emphasis added). He concluded that any further coal dust exposure would be harmful and progress Claimant's significant fibrosis. *Id.*

[10] Dr. Nader's report did not include its own pagination. *See* Claimant's Exhibits 5. Rather, all of Claimant's exhibits were submitted as part of a single file that was numbered sequentially at the top of each page. Decision and Order at 22 n.17. Consistent with the ALJ's Decision and Order, this decision references the pagination from the file submitted as Claimant's Exhibits.

Employer contends the ALJ mischaracterized Dr. Nader's discussion of Dr. DePonte's x-ray reading in finding Dr. Nader's statements "indicated [the x-ray] contribut[ed] to a disabling impairment[,]" rather than merely indicating that further exposure to coal mine dust would be harmful, which Employer contends is insufficient to establish total disability.[11] Employer's Brief at 15 (citing *White v. New White Coal Co.*, 23 BLR 1-1, 1-6 (2004); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83, 1-88 (1988)).

Dr. Nader generally indicated that Claimant should not work in a dusty environment based, in part, on evidence of significant fibrosis indicated on Dr. DePonte's x-ray reading. Although Employer takes issue with the ALJ's inference that Dr. Nader's discussion of Dr. DePonte's x-ray results related to their "impact [on] Claimant's respiratory capacity," the ALJ specifically found Dr. Nader's opinion on total disability was based on "Claimant's symptoms, his medical testing results and the exertional requirements of Claimant's last coal mining job . . . ." Decision and Order at 23; *see* Claimant's Exhibit 5 at 60; *see also Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. The ALJ's finding is supported by substantial evidence, as Dr. Nader specifically opined Claimant is "totally disabled from [a] pulmonary capacity standpoint *based on his pulmonary function test* and is unable to perform his previous exercise requirement of [his] last coal mine job . . . ." Claimant's Exhibit 5 at 59-60 (emphasis added); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). He also opined that Claimant's "chronic cough, wheezing, shortness of breath, [and] mucus expectoration . . . contribute to his total pulmonary disability." Claimant's Exhibit 5 at 60. We therefore reject Employer's argument that the ALJ erred.

Moreover, Employer has failed to explain how the ALJ's inference regarding Dr. Nader's discussion of the x-ray evidence undermines her overall conclusion on total disability. *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); Decision and Order at 23. As Employer raises no other specific challenges to the ALJ's crediting of Dr. Nader's opinion, we affirm her determination that Dr. Nader's opinion supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22-23; Claimant's Exhibit 5 at 58-60.

[11] For the same reasons discussed above, we reject Employer's argument that the ALJ erred in crediting Dr. Nader's opinion because he failed to consider Employer's evidence and did not adequately explain how Claimant is totally disabled given the non-qualifying objective testing. Employer's Brief at 14-16; *see Cornett*, 227 F.3d at 578; *Killman*, 415 F.3d at 721-22; *Church*, 20 BLR at 1-13.

**Dr. Zaldivar**

Dr. Zaldivar examined Claimant on January 27, 2021, and obtained non-qualifying objective testing results. Employer's Exhibit 1 at 12, 16. He concluded Claimant is not totally disabled and explained:

> From the pulmonary standpoint according to the absolute FEV1 value, he exceeds the disability standard for the Department of Labor for a 68-year-old male. The standard is 1.82 liters and his is 1.91. The lower limit of the forced vital capacity is 2.37 and his is 2.39. This is so even with the difficulty which he had performing the test. Therefore, from the pulmonary standpoint, *according to the standard tables*, he is able to perform his usual coal mining work.

Employer's Exhibit 1 at 6 (emphasis added).

At his deposition, Dr. Zaldivar stated he reviewed all of the pulmonary function studies and questioned their validity. Employer's Exhibit 4 at 42-43, 48, 68-70. He explained that Claimant's variable FVC results showing a restriction were due to either Parkinson's disease or Claimant "not cooperating well enough on any of the tests . . . ." Employer's Exhibit 4 at 17, 33-37, 51-53. Dr. Zaldivar testified that Claimant's test results do show "a very mild restriction of forced vital capacity, which in itself [is] of no clinical significance." *Id.* at 36-37. He stated that Claimant "still has the pulmonary capacity to perform his usual work, no matter from what reason he is restricted." *Id.* at 49, 53-55.

Contrary to Employer's contention, the ALJ did not "mischaracterize" or misunderstand Dr. Zaldivar's opinion. Employer's Brief at 8-10. She recognized that Dr. Zaldivar reviewed a significant amount of Claimant's medical records and understood his usual coal mine job, but she gave valid reasons for finding his opinion unpersuasive. Decision and Order at 19-20, 23; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the credibility of the evidence of record). The ALJ noted Dr. Zaldivar "stated concerns about the validity of the pulmonary function testing[,]" but she permissibly found he did not supply sufficient detail for her to find the studies invalid or unreliable. Decision and Order at 19 n.16; *Hicks*, 138 F.3d at 533. In addition, the ALJ accurately determined Dr. Zaldivar's attribution of the cause of Claimant's pulmonary function study results to either Parkinson's disease or tremors is not relevant to the issue of whether Claimant is totally disabled. The proper inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment, while 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); *see W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 698 (4th Cir. 2018); Decision and Order at 20.

Further, the ALJ specifically acknowledged Dr. Zaldivar opined Claimant is not totally disabled from performing his usual coal mine work, but she permissibly found his opinion unpersuasive because he relied "heavily" on the fact that Claimant's objective tests were non-qualifying in reaching his conclusion. *See Hicks*, 138 F.3d at 533; Decision and Order at 18-20, 23; Employer's Exhibits 1 at 6; 4 at 36.

Moreover, the ALJ permissibly found Dr. Zaldivar's opinion lacked credibility in "large part due to the questions that [Dr. Zaldivar] raises himself regarding Claimant's pulmonary capacity" and the pulmonary function testing results which show a "consistent pulmonary abnormality in the form of reduced [FVC results]." Decision and Order at 19-20; *see Hicks*, 138 F.3d at 533; Employer's Exhibits 1 at 6; 4 at 34, 36, 45. We see no error in the ALJ's conclusion that while Dr. Zaldivar indicated that Parkinson's disease can cause rigidity in the lungs that prevents expansion, he did not adequately address "the impact of a consistent pattern of a reduction of forced lung capacity or of restriction in the chest that prevents full lung expansion" on Claimant's respiratory ability. 20 C.F.R. §718.204(b)(iv); *see Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (as the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight); *see also Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the Administrative Procedure Act is satisfied if the reviewing court can discern what the ALJ did and why she did it); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc) (Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable); Decision and Order at 19-20, 23. We therefore affirm the ALJ's determination to give less weight to Dr. Zaldivar's opinion.

**Dr. Spagnolo**

Dr. Spagnolo prepared a report based on his review of Claimant's medical records and noted Claimant's respiratory symptoms of shortness of breath with exertion, productive cough, and intermittent wheezing. Employer's Exhibit 2 at 18. He also noted Claimant's blood gas study results are normal, and there is no evidence of an obstruction or restriction based on his pulmonary function study results; he opined Claimant is not totally disabled. *Id.* at 19-20. At his deposition, Dr. Spagnolo testified that Claimant's "[FVC] is reduced a little bit" on pulmonary function testing and that Dr. Nader's pulmonary function study results showed "a little restriction." Employer's Exhibit 5 at 27, 43-44. He further testified that the reduced FEV1 value that Dr. Werchowski obtained pre-

bronchodilator was not a "permanent problem" and there "might have been something acutely going on at that time." Employer's Exhibit 5 at 29-30.

The ALJ found Dr. Spagnolo's opinion was speculative regarding whether Dr. Werchowski's pulmonary function study results showed an acute or temporary respiratory impairment and gave his opinion less weight. Decision and Order at 21 (citing Employer's Exhibit 5 at 30). Employer contends it is "irrational" for the ALJ to discredit Dr. Spagnolo's entire opinion based on his discussion of Dr. Werchowski's pulmonary function study results when the ALJ also "observed that [the doctor] reviewed an extensive amount of medical documentation." Employer's Brief at 10-11. This argument is again based on the premise that an ALJ must credit a physician who reviews the most evidence, which we have rejected. *See Church*, 20 BLR at 1-13. As Employer raises no specific challenge to the ALJ's characterization of Dr. Spagnolo's opinion as speculative and does not argue that Dr. Spagnolo's assertion of an acute respiratory impairment is supported by the record, we affirm the ALJ's finding. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may not credit a purely speculative opinion); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985) (ALJ must consider factors that tend to undermine the reliability of a physician's conclusions before accepting the medical opinion); *see also Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983) (Board affirms ALJ's discrediting of a medical opinion if she provides a valid reason); Decision and Order at 21.

Additionally, contrary to Employer's contention, the ALJ did not find Dr. Spagnolo's discussion of "any reduction" in FVC values on pulmonary function testing or "symptomatic presentation" to be an indication of total disability. Employer's Brief at 12-13. Rather, in addition to finding his opinion speculative, the ALJ also permissibly found Dr. Spagnolo's opinion entitled to limited probative weight because he relied "heavily" on the non-qualifying nature of objective pulmonary function testing results to the "exclusion" of specifically addressing whether Claimant's reduced FVC results and reported symptoms were disabling in view of Claimant's usual coal mine work.[12] 20 C.F.R. §718.204(b)(2)(iv); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Akers*, 131 F.3d at 441; *Tackett*, 12 BLR at 1-14; Decision and

[12] Contrary to Employer's assertion, the ALJ noted Dr. Spagnolo based his opinion that Claimant does not have an obstructive respiratory impairment on guidelines provided by the American Thoracic Society, the Canadian Thoracic Society, and the European Thoracic Society. However, she did not discredit Dr. Spagnolo's opinion on that basis but merely noted the guidelines differ from DOL disability standards. Decision and Order at 21 (citing Employer's Exhibit 5 at 23-25); Employer's Brief at 11-12.

Order at 20-21, 23. Thus, we affirm the ALJ's decision to give less weight to Dr. Spagnolo's opinion.

**Conclusion on Total Disability**

As the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight. *See Looney*, 678 F.3d at 316-17; *Underwood*, 105 F.3d at 949. Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability based on the medical opinions at 20 C.F.R. §718.204(b)(2)(iv), and her consideration of the evidence as a whole.[13] 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 23-24.

[13] We need not address Employer's contention that the ALJ erred in her consideration of Dr. Gaziano's total disability opinion because substantial evidence supports the ALJ's determination that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) based on the opinions of Drs. Werchowski and Nader. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 13-14.

Consequently, we affirm the ALJ's conclusion that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305, 725.309; Decision and Order at 31. We further affirm, as unchallenged, the ALJ's finding that Employer did not rebut the presumption. *See Skrack*, 6 BLR at 1-711; Decision and Order at 33.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge