**U.S. Department of Labor**

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

BRB No. 24-0175 BLA

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| JUNE L. BUCHANAN<br>(o/b/o DONALD R. BUCHANAN, deceased)<br><br>Claimant-Respondent<br><br>v.<br><br>LODESTAR ENERGY, INCORPORATED<br><br>Employer-Petitioner<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | **NOT-PUBLISHED**<br><br>DATE ISSUED: 12/23/2024<br><br>DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Ryan Driskill (Yonts, Sherman and Driskill, PSC), Greenville, Kentucky, for Claimant.

Jason H. Halbert and Joseph D. Halbert (Shelton, Branham & Halbert, PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2020-BLA-05768)[1] 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 August 23, 2018.[2]

The ALJ credited the Miner with thirty-six years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant,[3] the Miner's widow, established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c),[4] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[5] 30

[1] The ALJ initially issued a Decision and Order Awarding Benefits on September 27, 2023. On November 14, 2023, Employer moved to vacate the judgment because it did not receive service of the decision due to a scrivener's error. By Order dated February 6, 2024, the ALJ vacated the September 27, 2023 Decision and Order Awarding Benefits and issued a new Decision and Order Awarding Benefits on February 6, 2024.

[2] The Miner filed two prior claims for benefits. Director's Exhibit 64. He withdrew his first claim. *Id.* A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). On October 9, 2015, the district director denied the Miner's prior claim, filed on August 8, 2014, because he failed to establish total disability. Director's Exhibits 1, 64.

[3] Claimant is the widow of the Miner, who died on October 23, 2019, while his claim was pending before the district director. Claimant's Exhibit 6. She is pursuing the miner's claim on behalf of her husband's estate.

[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 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 Miner failed to establish total disability in his prior claim, Claimant had to submit new evidence establishing this element to obtain review of the merits of the Miner's current claim. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

[5] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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.

U.S.C. §921(c)(4) (2018). Further, she found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[6] 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.[7] 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).

**Invocation of the Section 411(c)(4) Presumption - Total Disability**

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented 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 and arterial blood gas studies,[8] 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). Qualifying evidence in any of the four categories

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

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

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

establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas study evidence,[9] the medical opinions, and the evidence as a whole.[10] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 8-12.

Employer argues the ALJ erred in finding the medical opinion evidence supports total disability because she erred in weighing Drs. Majmudar's and Tuteur's opinions. Employer's Brief at 5-7.

Before weighing the medical opinions, the ALJ addressed the exertional requirements of the Miner's usual coal mine work. Decision and Order at 5-6. She considered the Miner's description of his duties on his CM-913 Description of Coal Mine Work form, on which he listed his job title as a "Timberman/Brattice Builder." *Id.* at 5-6 (citing Director's Exhibit 5). Specifically, she accurately noted the Miner's CM-913 form stated that his usual coal mine job required him to drag, saw, and lay out timbers weighing thirty to fifty pounds and lift and stack concrete blocks weighing sixty pounds. *Id.* at 5. Based on the Miner's CM-913 form, the ALJ found his usual coal mine work required "routine heavy strenuous labor and occasional periods of very heavy strenuous labor." *Id.* at 6. As this finding is unchallenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ next considered the medical opinions of Drs. Sood, Majmudar, and Tuteur. Decision and Order at 9-11. Drs. Sood and Majmudar opined the Miner had a totally disabling chronic obstructive pulmonary disease (COPD) based on the October 9, 2018 pulmonary function study. Claimant's Exhibit 4; Director's Exhibit 14. Similarly, Dr. Tuteur opined the Miner had mild to moderate COPD but concluded his disability was unrelated to his coal mine dust exposure. Employer's Exhibits 3 at 5-6; 7 at 4. The ALJ found Drs. Sood's, Majmudar's, and Tuteur's opinions reasoned and documented.

[9] The ALJ considered the results of an arterial blood gas study dated October 9, 2018. Decision and Order at 9. She found the study produced non-qualifying results at rest but qualifying results during exercise. *Id.*; Director's Exhibit 14 at 19. As explained below, however, the exercise results were actually non-qualifying.

[10] The ALJ found the pulmonary function study evidence does 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)(i), (iii); Decision and Order at 8-9.

Decision and Order at 11. She thus found the medical opinion evidence supports a finding of total disability. *Id.*

As the ALJ's finding that Dr. Sood's opinion is reasoned and documented is unchallenged, we affirm it. *Skrack*, 6 BLR at 1-711; Decision and Order at 11.

Employer argues the ALJ erred in crediting Dr. Majmudar's opinion because he did not have an adequate understanding of the exertional requirements of the Miner's usual coal mine work. Employer's Brief at 6-7. We disagree.

Dr. Majmudar noted the Miner's usual coal mine job as a roof bolter required him to lift forty pounds "overhead" multiple times a day, work on his knees, and walk more than one mile per shift. Director's Exhibit 14 at 1. He stated the October 9, 2018 pulmonary function study showed an $FEV_1$ value of 62% and a "significantly reduced" MVV value of 45. *Id.* at 2-3. He also stated the $FEV_1$ value met the criteria for a class II impairment under the American Medical Association (AMA) guidelines. *Id.* at 2. Based on the $FEV_1$ and MVV values of the October 9, 2018 study, Dr. Majmudar opined the Miner had a mild obstructive airway impairment and did not have enough lung capacity to perform his usual coal mine work. *Id.* at 3.

The ALJ noted Dr. Majmudar's evaluation of the Miner included his "medical, surgical, social, and occupational histories and [his] history of present illness, a physical examination, and diagnostic testing including a chest x-ray, pulmonary function test, arterial blood gas study, and EKG." Decision and Order at 10. Although Dr. Majmudar referred to the Miner's job as a "roof bolter" rather than "timberman," the ALJ rationally found Dr. Majmudar's opinion contained sufficient information to conclude the Miner was totally disabled. *See Scott*, 60 F.3d at 1141; *Poole*, 897 F.2d at 894; Decision and Order at 10-11. Contrary to Employer's assertion and despite the misnomer, Dr. Majmudar's understanding of the exertional requirements of the Miner's usual coal mine work is consistent with the Miner's CM-913 form describing lifting requirements of thirty to sixty pounds and the ALJ's finding that his work required "routine heavy strenuous labor and occasional periods of very heavy strenuous labor." Decision and Order at 6; *see Scott*, 60 F.3d at 1141; *Poole*, 897 F.2d at 894.

We also reject Employer's argument that the ALJ erred in crediting Dr. Majmudar's opinion because, it asserts, the regulations do not allow for a determination of disability based on AMA guidelines. Employer's Brief at 7. Contrary to Employer's assertion, the regulations specifically provide that even where the pulmonary function studies and blood gas studies are non-qualifying, "total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on *medically acceptable clinical and laboratory diagnostic techniques*, concludes that a miner's respiratory or pulmonary

condition prevents" him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv) (emphasis added); *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); *Carpenter v. GMS Mine & Repair Maint. Inc*., 26 BLR 1-33, 1-40 (2023). The ALJ thus permissibly found Dr. Majmudar's opinion that the Miner was disabled by a class II impairment under the AMA guidelines is reasoned and documented.[11] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 11.

We further reject Employer's argument that the ALJ mischaracterized Dr. Tuteur's opinion as diagnosing a totally disabling respiratory or pulmonary impairment. Employer's Brief at 5-6. Dr. Tuteur agreed with Dr. Sood that the Miner had COPD associated with a moderate obstructive ventilatory defect and a "disability" due to "advanced occlusive" coronary artery disease and hypertension. Employer's Exhibit 3 at 3, 6. In his supplemental report, Dr. Tuteur stated his opinion remained unchanged. Employer's Exhibit 7 at 4. The ALJ rationally found Dr. Tuteur's opinion supports a finding of total disability. Decision and Order at 11; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012) (ALJ's function is to weigh the evidence, draw appropriate inferences, and determine credibility); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-112, 1-113 (1989) (Board cannot substitute its inferences for those of the ALJ and is not empowered to reweigh the evidence). Although Dr. Tuteur opined the Miner's "disability" was unrelated to coal mine dust exposure and was attributable to "advanced occlusive" coronary artery disease and hypertension, the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the Miner had a totally disabling respiratory or pulmonary impairment. The cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-11 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023). As Employer does not otherwise challenge the ALJ's finding that Dr. Tuteur's opinion is reasoned and documented, we affirm it. *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order at 11.

We also reject Employer's argument that the ALJ erred in failing to consider all of the evidence from the Miner's prior claims in determining whether Claimant established a

[11] To the extent Employer asserts the ALJ substituted her opinion for that of a medical expert in weighing Dr. Majmudar's opinion, we disagree. Employer's Brief at 7. The "question of whether [a] medical report is sufficiently documented and reasoned is one of credibility for the fact finder." *Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460 (11th Cir. 1989).

change in an applicable condition of entitlement. Specifically, Employer asserts she "ignored" Employer's Exhibits 4 and 5 in assessing the arterial blood gas study evidence. Employer's Brief at 7.

When evaluating whether a change in an applicable condition of entitlement has been established, an ALJ is not bound by the credibility findings in a prior claim but rather should "consider only the new evidence to determine whether the element of entitlement previously found lacking is now present." *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 486 (6th Cir. 2012); *see also Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 731 (7th Cir. 2013). After finding a change in condition has been established, the ALJ must then weigh all of the evidence to determine if a claimant is entitled to benefits. In doing so, "no findings made in connection with the prior claim . . . will be binding on any party in the adjudication of the subsequent claim." 20 C.F.R. §725.309.

Here, the ALJ determined the new evidence – the medical opinions of Drs. Sood, Majmudar, and Tuteur – established total disability and thus a change in an applicable condition of entitlement. Decision and Order at 11-12. She then considered the evidence from the prior claims, including Employer's Exhibits 4 and 5, but permissibly found it entitled to little probative value in assessing the Miner's condition "near and at the time of his death." Decision and Order at 12; *see Woodward v. Director, OWCP*, 991 F.2d 314, 319 (6th Cir. 1993); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718-19 (4th Cir. 1993).

Finally, Employer argues the ALJ erred in finding the October 9, 2018 exercise blood gas study is qualifying for total disability. Employer's Brief at 4-5. Although we agree with Employer that the ALJ mischaracterized this blood gas study as qualifying,[12] Employer has not explained how the error makes a difference in this claim. *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"). None of the physicians relied on the non-qualifying October 9, 2018 arterial blood gas study values as a basis for diagnosing total disability. As previously discussed, Drs. Sood and Majmudar diagnosed total disability in

[12] As the ALJ recognized, the October 9, 2018 exercise study was performed at an altitude of up to 2,999 feet above sea level and produced a pCO2 value of 34. Decision and Order at 9; Director's Exhibit 14 at 19. Under the regulatory criteria, blood gas studies performed at this altitude and with this pCO2 value are qualifying for total disability if they produce a corresponding pO2 value equal to or less than 66. 20 C.F.R. Part 718, Appendix C. The October 9, 2018 exercise study produced a pO2 value of 99.4; thus, it is not qualifying. Director's Exhibit 14 at 19.

their credited medical opinions based on the October 9, 2018 pulmonary function study.[13] As pulmonary function studies and blood gas studies measure different types of impairments, the non-qualifying blood gas study does not necessarily contradict the medical opinions or the ALJ's finding them credible under 20 C.F.R. §718.204(b)(2)(iv). *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). Nor has Employer pointed to any evidence indicating that the non-qualifying nature of the exercise blood gas study affected the ALJ's crediting of the medical opinions as establishing total disability. The ALJ's error in weighing the arterial blood gas study evidence is therefore harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); 20 C.F.R. §718.204(b)(2)(iv).

We thus affirm, as supported by substantial evidence, the ALJ's finding that Claimant established total disability based on the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), and the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 12. We therefore affirm the ALJ's finding 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(c); Decision and Order at 12. We further affirm, as unchallenged, the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption. *See Skrack*, 6 BLR at 1-711; Decision and Order at 12-19.

[13] Whether a blood gas study is qualifying is based upon its partial pressure of carbon dioxide (PCO2) and partial pressure of oxygen (PO2) values. *See* 20 C.F.R. Part 718, Appendix C. Dr. Sood did not rely on either value to diagnose total disability but instead described the blood gas study values at rest and with exercise as "normal." However, in addition to finding total disability based upon the pulmonary function study, he separately calculated a maximum metabolic equivalent (METs) using data from the blood gas study and opined the METs value is also disabling. Claimant's Exhibit 4 at 4.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge