U.S. Department of Labor

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

BRB No. 22-0482 BLA

GARY D. FRIDLEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ELK RUN COAL COMPANY	)	
	)	
and	)	
	)	
ANR, INCORPORATED, c/o CONTRA ENERGY	)	DATE ISSUED: 07/31/2024
	)	
	)	
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 Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2020-BLA-05586) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 28.33 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It further contends she erred in finding it did not rebut the presumption.[2] Claimant responds in support of the award. 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.[3] 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, 362 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone,

[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] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 28.33 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 23.

[3] 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 3.

prevents him from performing his usual coal mine work and comparable gainful work.[4] 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 weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp*., 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195, 1-198 (1986), *aff'd on recon*., 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the arterial blood gas studies, medical opinions, and the evidence as a whole.[5] Decision and Order at 25-35.

Arterial Blood Gas Studies

The ALJ considered five arterial blood gas studies performed on April 18, 2019, November 21, 2019, August 27, 2020, January 11, 2021, and April 14, 2021. Director's Exhibit 14; Employer's Exhibits 1, 2; Claimant's Exhibits 2, 4. The first three studies were done only at rest. Of these, the April 18, 2019 and August 27, 2020 studies produced qualifying[6] results while the November 21, 2019 study was non-qualifying. Director's Exhibit 14 at 3; Claimant's Exhibit 2 (pdf page no. 951); Employer's Exhibit 1 at 19. The two remaining blood gas studies were performed at rest and with exercise. The January 11, 2021 study was non-qualifying at rest but qualifying with exercise, while the April 14, 2021 study was non-qualifying both at rest and with exercise. Claimant's Exhibit 4 at 70; Employer's Exhibit 2 at 18.

The ALJ found the April 18, 2019 and August 27, 2020 qualifying, resting blood gas studies sufficiently reliable and accorded each "normal probative weight." Decision and Order at 26. In contrast, she found the November 21, 2019 non-qualifying, resting study "not sufficiently reliable to assess . . . disability" because its administering physician, Dr. Basheda, did not indicate whether he offered Claimant an exercise arterial blood gas

[4] The ALJ found Claimant's usual coal mine work as a fire boss required heavy manual labor. Decision and Order at 5. We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

[5] The ALJ found the pulmonary function 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); Decision and Order at 23 n.24; 25.

[6] A "qualifying" blood gas study yields values that are equal to or less than the values set out in the tables at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(ii).

study, as the applicable regulation requires.[7] *Id*. (citing 20 C.F.R. §718.105). We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

As to the January 11, 2021 study, which was non-qualifying at rest but qualifying with exercise, the ALJ considered Dr. Zaldivar's comment that its qualifying results were likely due to a COVID-19 infection Claimant had a few months earlier. Employer's Exhibit 16 at 50-51. The ALJ recognized that Claimant was hospitalized with COVID-19 in October and November of 2020, but found it was not clear from Dr. Zaldivar's comments that the blood gas study conducted two to three months later was performed "soon after" an acute respiratory illness under the applicable quality standard.[8] Decision and Order at 27. Finding insufficient explanation from Dr. Zaldivar as to how Claimant's previous COVID-19 infection would have affected the results of his blood gas study administered months later, the ALJ "declin[ed] to invalidate" the January 11, 2021 exercise study. *Id.*

Dr. Zaldivar further opined that the January 11, 2021 study's elevated PCO_2 values could have occurred if Claimant were not using his BiPAP machine for sleep apnea consistently. Employer's Exhibit 16 at 51. The ALJ found Dr. Zaldivar's statement to be conjectural. Decision and Order at 27. She therefore found the January 11, 2021 exercise blood gas study sufficiently reliable. *Id.* at 27-28.

Regarding the April 14, 2021 study that Dr. Zaldivar conducted, the ALJ found its non-qualifying, resting results sufficiently reliable. However, she found its non-qualifying, exercise results unreliable because Dr. Zaldivar did not draw Claimant's blood during exercise as required, but rather drew it thirty seconds after the exercise ended.[9] Decision and Order at 28; Employer's Exhibit 2 at 8, 32-33. Absent an explanation from Dr. Zaldivar for departing from the required testing procedure, the ALJ accorded the exercise

[7] Section 718.105 requires that, if the resting arterial blood gas study is non-qualifying, "an exercise [arterial] blood-gas test shall be offered to the miner unless medically contraindicated." 20 C.F.R. §718.105(b). Because Dr. Basheda exercised Claimant for six minutes to obtain a pulse oximetry test but did not explain why he could not conduct an exercise arterial blood gas study or whether he offered Claimant one, the ALJ found his November 21, 2019 resting blood gas study presented "an incomplete picture of Claimant's respiratory condition" and accorded it reduced weight. Decision and Order at 27.

[8] Appendix C to 20 C.F.R. Part 718 requires that blood gas studies "not be performed during or soon after an acute respiratory or cardiac illness."

[9] Section 718.105 requires that, "[i]f an exercise blood-gas test is administered, blood shall be drawn during exercise." 20 C.F.R. §718.105(b).

results of the April 14, 2021 study reduced probative weight. Decision and Order at 28. We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

Weighing the blood gas studies together, the ALJ found the preponderance of the studies that merited normal probative weight are qualifying. Decision and Order at 28. Additionally, she accorded "substantial weight" to the January 11, 2021 qualifying exercise study because she found it more probative of Claimant's ability to perform the heavy manual labor required by his work as a fire boss. *Id.* Relying on the January 2021 exercise study, as supported by the qualifying April 18, 2019 and August 27, 2020 resting studies,[10] the ALJ found the blood gas study evidence supports total disability. *Id.* at 29.

Employer contends the ALJ erred in relying on the January 2021 qualifying exercise blood gas study when Dr. Zaldivar opined its values were low because Claimant was likely still recovering from COVID-19. Employer's Brief at 14-16. It further contends the ALJ erred in failing to weigh Dr. Basheda's similar opinion. *Id.* at 15. Employer's arguments are not persuasive.

The ALJ considered Dr. Zaldivar's opinion that Claimant's January 2021 exercise blood gas values were likely due to inflammation from his previous COVID-19 infection. Employer's Exhibit 16 at 50-51. She permissibly found his rationale unpersuasive and thus insufficient to invalidate the study "absent a more specific explanation for how a past COVID infection would affect Claimant's blood gas study months later . . . ." Decision and Order at 27; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Further, the ALJ permissibly discounted Dr. Zaldivar's opinion because record evidence showed Claimant's blood gas study results in August 2020, before his COVID-19 infection, were lower than the January 2021 results postdating his infection, and his treatment records predating his COVID-19 infection also document hypoxemia.[11] *See Hicks*, 138 F.3d at 528; *Akers*, 131

[10] The ALJ found Dr. Zaldivar's opinion that obesity was a cause of the low results obtained in the April 18, 2019 and August 27, 2020 blood gas studies relevant to the cause, but not the existence, of total disability. Decision and Order at 29.

[11] Employer contends the ALJ selectively analyzed Claimant's treatment records because they reflect that his physicians thought his hypoxemia was due to heart disease and obesity. Employer's Brief at 16-17. However, Employer conflates the existence of total disability with its cause. Total disability concerns whether the miner has a respiratory or pulmonary impairment that prevents him from performing his usual coal mine work, 20 C.F.R. §718.204(b); 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 at 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v.*

F.3d at 441. We therefore reject Employer's assertion that the ALJ erred in declining to credit Dr. Zaldivar's comments regarding the possible effect of Claimant's earlier bout of COVID-19 on the January 2021 exercise blood gas study results.

Further, for the reasons just discussed in affirming the ALJ's rationale for declining to credit Dr. Zaldivar's opinion regarding Claimant's COVID-19 infection and the January 2021 blood gas study, Employer has not shown how the ALJ erred in not discussing Dr. Basheda's comments.[12] *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"). Employer does not explain how Dr. Basheda's comments are any more specific than Dr. Zaldivar's regarding how a prior COVID-19 infection may have affected the reliability of a blood gas study taken months later. Nor does Employer explain how the ALJ could credit Dr. Basheda's comments given her finding that blood gas studies and Claimant's treatment records documented hypoxemia before his COVID-19 infection, undermining the conclusion that the January 2021 exercise blood gas study likely reflected the residual effects of COVID-19. Therefore, at most, Employer has identified a harmless error in the ALJ's decision. *See Shinseki*, 556 U.S. at 413; *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Employer next argues the ALJ erred in discrediting Dr. Zaldivar's opinion that Claimant's January 2021 exercise blood gas study results could have occurred if Claimant were not properly using his BiPAP machine for sleep apnea. Employer's Brief at 15. We disagree. Contrary to Employer's contention, the ALJ permissibly rejected, as "conjecture," Dr. Zaldivar's statement that high pCO2 levels on the January 2021 exercise blood gas study could have resulted "if [Claimant] was not using [the BiPAP] very well" at that time. Decision and Order at 27; *see U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may discredit a speculative opinion); *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441. While Employer contends the ALJ should have viewed various notations in the record as supporting Dr. Zaldivar's opinion,[13] the

---

Apogee Coal Co., 26 BLR 1-1, 1-11 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023).

[12] Employer points to Dr. Basheda's statements that the January 2021 blood gas results reflected "a transient factor, uncontrolled asthma either related to sarcoidosis and/or [Claimant's] COVID 19 infection," and that the blood gas impairment was due in part to "the adverse effects of COVID 19." Employer's Exhibit 15 at 12, 16.

[13] Employer points to a 2018 notation that Claimant was not then taking his asthma medications, a 2020 notation that Claimant was not wearing oxygen at home, and Dr. Werchowski's 2021 notation that Claimant experiences dyspnea when he does not wear

Board is not empowered to reweigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Employer does not otherwise challenge the ALJ's determination that the January 2021 exercise blood gas study better reflected Claimant's ability to perform heavy manual labor. We therefore affirm the ALJ's determination that the blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii).

Medical Opinions

The ALJ considered the medical opinions of Drs. Habre, Agarwal, Werchowski, Basheda, and Zaldivar. Decision and Order at 29-34. Drs. Habre, Agarwal, and Werchowski opined that Claimant is totally disabled based on his arterial blood gas studies reflecting hypoxemia. Director's Exhibits 14, 15; Claimant's Exhibits 2, 4. Dr. Basheda gave varying opinions regarding total disability. He initially opined that Claimant is totally disabled by heart disease, not a respiratory impairment, but after reviewing additional arterial blood gas testing he opined Claimant has a totally disabling respiratory impairment. Employer's Exhibits 1, 14 at 33. However, after later reviewing the pulmonary function and arterial blood gas studies Dr. Zaldivar conducted in April 2021, Dr. Basheda concluded that Claimant retains the respiratory capacity to perform his usual coal mine work. Employer's Exhibit 15 at 14-15. Finally, Dr. Zaldivar opined that, as of the April 2021 objective testing, Claimant could perform the work of a fire boss. Employer's Exhibit 16 at 39-40.

The ALJ found the opinions of Drs. Habre, Agarwal, and Werchowski reasoned and documented because they were supported by the qualifying blood gas studies upon which each physician relied, and by the ALJ's determination that the blood gas study evidence as a whole supports a finding of total disability. Decision and Order at 33. Conversely, she accorded Drs. Basheda's and Zaldivar's opinions "reduced probative weight" because they relied on flawed blood gas testing to conclude that Claimant is not totally disabled. *Id.* at 34.

Employer contends the ALJ made inconsistent credibility determinations when finding the opinions of Drs. Habre, Agarwal, and Werchowski sufficiently reasoned and documented to support a finding of total disability. Employer's Brief at 23. It points to the ALJ's earlier decision to accord less weight to their opinions on clinical pneumoconiosis because they did not have the opportunity to review additional x-ray

his BiPAP at night. Employer's Brief at 15 (citing Employer's Exhibits 7 at 43, 46; 11 at 51; Claimant's Exhibit 4).

evidence of record.[14] *Id.* at 23-24. Employer argues the ALJ erred by not explaining why a similar credibility determination should not apply to the issue of total disability since Drs. Habre, Agarwal, and Werchowski did not review later objective studies yielding higher non-qualifying results. *Id.* at 24. We disagree.

As an initial matter, the ALJ has discretion to credit all, part, or none of a physician's medical opinion; thus, her decision to credit Drs. Habre's, Agarwal's, and Werchowski's opinions on total disability is not inherently inconsistent with her decision to discredit their opinions on the separate question of clinical pneumoconiosis. *See Luketich v. Director, OWCP*, 8 BLR 1-477, 1-480 n.3 (1986); *see also Drummond Coal Co. v. Freeman*, 17 F.3d 361, 366 (11th Cir. 1994) ("An ALJ need not . . . find that a medical opinion is either wholly reliable or wholly unreliable.").

Moreover, the ALJ's explanation demonstrates consistency in her rationale for crediting their total disability opinions but rejecting their clinical pneumoconiosis diagnoses. The ALJ explained that Drs. Agarwal's and Werchowski's clinical pneumoconiosis opinions were undermined because they based their diagnoses on a single positive x-ray reading each, when the ALJ found the overall weight of the x-ray evidence does not support a finding of clinical pneumoconiosis.[15] Decision and Order at 14-15; *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09 (4th Cir. 2000). On the issue of total disability, the ALJ acknowledged that Drs. Habre, Agarwal, and Werchowski did not review later blood gas studies but found their opinions credible because the blood gas studies from November 2019 and April 2021 were unreliable, and the overall weight of the blood gas study evidence as a whole supports total disability. Decision and Order at 33.

[14] "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). It is unclear why the ALJ initially considered whether the evidence supported a finding of clinical pneumoconiosis, with the burden of proof on Claimant. Decision and Order at 7-17 (analyzing whether the evidence affirmatively established the existence of complicated pneumoconiosis and simple clinical pneumoconiosis at the same time). As the ALJ determined later in her decision, Claimant invoked the Section 411(c)(4) presumption, relieving him of the burden to establish simple clinical pneumoconiosis. Decision and Order at 34-35; *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018) ("Once the presumption is invoked, there is no need for the claimant to prove the existence of pneumoconiosis . . . .").

[15] The ALJ found that Dr. Habre did not address the existence of clinical pneumoconiosis. Decision and Order at 14 n.11.

Thus, the ALJ permissibly credited Drs. Habre, Agarwal, and Werchowski when their opinions were consistent with the overall weight of the objective evidence (total disability) and discredited their opinions when it was not (clinical pneumoconiosis). We therefore reject Employer's allegation of error.

Employer next argues the ALJ erred in "summarily" rejecting the non-disability opinions of Drs. Basheda and Zaldivar because they were based, in part, on six-minute walk tests. Employer's Brief at 19-20. According to Employer, the ALJ should have credited their non-disability diagnoses because the six-minute walk test is a medically acceptable diagnostic tool. We disagree with Employer's characterization of the ALJ's decision.

The ALJ accorded Drs. Basheda's and Zaldivar's opinions reduced weight because they relied "in large part" on Dr. Zaldivar's April 2021 blood gas study, the exercise portion of which the ALJ found unreliable.[16] Decision and Order at 34. While Employer asserts the ALJ's reasoning is "suspect," Employer's Brief at 22, it has not challenged the ALJ's finding that Dr. Zaldivar's April 2021 exercise blood gas study is unreliable. As an ALJ may permissibly accord less weight to a medical opinion that is based on an unreliable objective study, we affirm the ALJ's finding. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951 (4th Cir. 1997) (ALJs must consider the quality of medical opinions); *Director, OWCP v. Siwiec*, 894 F.2d 635, 639-40 (3d Cir. 1990).

Moreover, the ALJ did not impermissibly substitute her opinion for Dr. Zaldivar's regarding the effects of Claimant's drop in blood oxygenation from 97% to 92% during the six-minute walk test. The ALJ considered the relevant evidence underpinning Dr. Zaldivar's diagnoses and permissibly found his opinion inadequately explained because he did not discuss whether the decrease in oxygenation observed on the testing would affect Claimant's ability to perform his usual coal mine work.[17] *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) (even a mild respiratory impairment may be totally disabling depending upon the exertional requirements of a miner's usual coal mine employment); Employer's Exhibit 2 at 33. We therefore affirm the ALJ's determination

[16] The ALJ found reliance on the April 2021 exercise blood gas study significant considering that Dr. Basheda previously opined that earlier blood gas study evidence, which the ALJ found reliable and "fully probative," showed that Claimant has totally disabling hypoxemia. Decision and Order at 34.

[17] Dr. Zaldivar interpreted his test as reflecting a "[m]ild drop in ox[i]metry at 6 minute walk[.]" Employer's Exhibit 2 at 33. Additionally, he noted that Dr. Basheda's 2019 six-minute walk test with pulse oximetry was conducted while Claimant was on oxygen. *Id.* at 3.

that the medical opinions support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv).

Employer further contends the ALJ failed to sufficiently explain how she weighed all the relevant evidence together to find Claimant totally disabled. Employer's Brief at 19. We disagree. The ALJ explained that she found the non-qualifying pulmonary function studies do not call into question the valid and qualifying arterial blood gas studies because the tests measure different types of impairment. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); Decision and Order at 34-35. Additionally, contrary to Employer's contention, the ALJ had no need to further explain why Drs. Basheda's and Zaldivar's six-minute walk tests with pulse oximetry were not as probative as the qualifying blood gas studies, because she had already determined that Claimant's January 2021 qualifying exercise arterial blood gas study better reflected his ability to perform heavy manual labor.

Because the ALJ permissibly found the other evidence of record does not undermine the qualifying exercise blood gas studies and medical opinions diagnosing total disability, we affirm her conclusion that the evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 34-35. We therefore also affirm her determination that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal[18] nor clinical pneumoconiosis, or "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[19]

[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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[19] The ALJ found that Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 37.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the medical opinions of Drs. Basheda and Fino that Claimant does not have legal pneumoconiosis. Employer's Exhibits 1, 2, 14-16. They attributed Claimant's obstructive impairment to asthma unrelated to coal mine dust exposure, and his hypoxemia to obesity, sarcoidosis, cardiac disease, and his prior COVID-19 infection. Employer's Exhibits 1 at 6-9; 2 at 11; 14 at 15-19, 26-28, 32; 15 at 11-16; 16 at 34-35, 37-40, 45-46. The ALJ found neither doctor's opinion sufficiently persuasive to rebut legal pneumoconiosis. Decision and Order at 41-44.

Employer contends the ALJ erred in discrediting Drs. Basheda's and Fino's opinions. Employer's Brief at 25-30. We disagree.

The ALJ permissibly discredited their opinions because she found that, even assuming Claimant has asthma exacerbated by obesity, sarcoidosis, and cardiac disease, they did not adequately explain why his years of coal mine dust exposure did not contribute to, or aggravate, his pulmonary impairment. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); Decision and Order at 42. She also permissibly found neither physician adequately explained their conclusion that the variable nature of Claimant's pulmonary function and blood gas results means coal mine dust exposure did not contribute to, or aggravate, his disabling impairment. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 42-43.

While Employer contends the ALJ gave undue weight to Claimant's lengthy history of coal mine dust exposure and substituted her judgment for that of the physicians, it is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Employer's Brief at 11-12; 25-27. Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *Anderson*, 12 BLR at 1-113.

The ALJ also considered Claimant's hospitalization and treatment records that Employer submitted and found they do not support its burden to disprove legal pneumoconiosis because they generally did not discuss the etiology of Claimant's respiratory and pulmonary illnesses. Decision and Order at 38; Employer's Exhibits 5-7; 11-13. We reject Employer's contention that the ALJ erred, as an ALJ may permissibly

conclude that evidence that does not discuss pneumoconiosis is not probative of its absence. *See Marra v. Consolidation Coal*, 7 BLR 1-216, 1-218-19 (1984); Employer's Brief at 24. Substantial evidence supports the ALJ's determination that Claimant's hospitalization and treatment records neither support nor refute a finding of legal pneumoconiosis. Decision and Order at 38; Employer's Exhibits 5-7; 11-13. We thus affirm her finding. *See Marra*, 7 BLR at 1-218-19.

Therefore, we affirm the ALJ's finding that Employer did not rebut the presumption of legal pneumoconiosis.[20] 20 C.F.R. §718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1).

Disability Causation

The ALJ next considered whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 44-46. She found the opinions of Drs. Basheda and Fino unpersuasive on the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 45.

[20] The ALJ accurately found the opinions of Drs. Habre and Werchoswki diagnosing legal pneumoconiosis do not aid Employer in meeting its burden on rebuttal. Decision and Order at 44 n.48; Director's Exhibit 14; Claimant's Exhibit 4. Thus, we decline to address Employer's arguments regarding the ALJ's weighing of their opinions. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 30-31.

Employer does not challenge this finding apart from its contention that Claimant does not have legal pneumoconiosis, which we have rejected.[21] Employer's Brief at 32. We thus affirm the ALJ's finding that Employer failed to prove no part of Claimant's total respiratory disability is due to legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 45.

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

[21] We need not address Employer's contention that the ALJ erred in also discrediting Drs. Basheda's and Fino's opinions because neither doctor concluded that Claimant's pulmonary impairment is totally disabling. Decision and Order at 45; Employer's Brief at 32.