U.S. Department of Labor

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

BRB No. 18-0594 BLA

WELDON BLAND	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 02/05/2020
	)	
and	)	
	)	
PITTSTON COMPANY	)	
	)	
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 Tracy A. Daly, Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

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

BOGGS, Chief Administrative Appeals Judge:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2014-BLA-05035) of Administrative Law Judge Tracy A. Daly pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on May 23, 2012.

The administrative law judge credited claimant with 25.51 years of coal mine employment either underground or in conditions substantially similar to those in an underground mine and found the evidence established a totally disabling pulmonary or respiratory impairment. Thus, he determined claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] The administrative law judge further found employer did not rebut the presumption and awarded benefits.

On appeal, employer asserts the administrative law judge erred finding claimant established total respiratory disability and thus erred finding he invoked the Section 411(c)(4) presumption. Employer further challenges the administrative law judge's finding it did not rebut the presumption. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.[2]

The Board's scope of review is defined by statute. We must affirm the administrative law judge'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

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established 25.51 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11, 14-15.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant was employed in the coal mine industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 6.

by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of Section 411(c)(4) Presumption – 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). Total disability can be established by pulmonary function or 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 administrative law judge 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 administrative law judge found claimant did not establish total disability based on the pulmonary function or blood gas studies, as the only valid pulmonary function study and none of the blood gas studies yielded qualifying values.[4] 20 C.F.R. §718.204(b)(2)(i)-(ii); Decision and Order at 16-19. The administrative law judge determined that although the record contained numerous diagnoses of cor pulmonale, claimant failed to establish he also had right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 19-21; *see* Claimant's Exhibits 6-9. Therefore, the administrative law judge found claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). Decision and Order at 15-21.

Prior to weighing the medical opinion evidence the administrative law judge determined claimant's usual coal mine employment as a mine equipment welder-repairman required heavy to very heavy physical exertion.[5] Decision and Order at 12; Director's Exhibits 4, 12; Employer's Exhibits 11 at 2, 15 at 2; Hearing Transcript at 18. He next

[4] The administrative law judge considered pulmonary function studies dated July 12, 2012, November 20, 2012, October 24, 2013, April 17, 2014, July 22, 2014, and January 15, 2015. Director's Exhibit 12; Claimant's Exhibits 4-5; Employer's Exhibits 11, 15. He found only the non-qualifying October 24, 2013 study conducted by Dr. Fino was valid. Decision and Order at 18. The July 12, 2012 study was performed by Dr. Klayton as part of the Department of Labor (DOL) sponsored exam but was later found to be invalid. Director's Exhibit 12. The DOL had claimant retested on November 20, 2012 but that test was also determined to be invalid. Director's Exhibit 12; *see* 20 C.F.R. §725.406(c).

[5] Employer does not challenge this finding, and therefore, we affirm it. *See Skrack*, 6 BLR 1-710, 1-711 (1983).

considered the opinions of Drs. Klayton, Fino, Castle, and Selby, as well as claimant's treatment records, including those from Drs. Nida, Smiddy Ponder, and Emery. Decision and Order at 21-38; Director's Exhibits 12, 14-15; Claimant's Exhibits 6-9; Employer's Exhibits 3-5, 11-15. Drs. Klayton[6], Fino, Castle, and Selby opined claimant is not disabled. In contrast, Drs. Nida and Smiddy, claimant's treating primary care physician and treating pulmonary specialist, opined claimant is disabled.[7] Weighing the exertional requirements of claimant's job together with the medical opinions and treatment records, the administrative law judge found claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 34-39.

Employer contends the administrative law judge did not adequately explain, in compliance with the Administrative Procedure Act (APA),[8] his finding that the treatment records and opinions of Drs. Nida and Smiddy support a finding of total disability. Employer's Brief at 3-14; see Decision and Order at 36-38. We agree. The administrative law judge noted the record reflects claimant has chronic dyspnea and concluded "[c]laimant's ongoing need for pulmonary medications and nighttime oxygen support [the opinions of Drs. Nida and Smiddy] that [he is totally disabled from performing his usual coal mine employment]." Decision and Order at 38. Contrary to the view expressed by our dissenting colleague, however, in finding their opinions reasoned the administrative law judge failed to explain how claimant's diagnosis or symptoms and prescriptions for

[6] Dr. Klayton initially diagnosed claimant with a totally disabling respiratory impairment based on "dyspnea with mild exertion" and the qualifying pulmonary function study values he obtained. Director's Exhibit 12. In a supplemental opinion, however, he indicated that due to the pulmonary function study values being invalidated, he no longer believed claimant has a totally disabling respiratory impairment. *Id*. He explained "there is no objective evidence of significant disability on his normal resting arterial blood gases" and also relied on "the fact that he can walk a block on the level or walk up one flight of steps before he has to stop to catch his breath." *Id*.

[7] The administrative law judge observed neither Dr. Ponder, claimant's cardiologist nor Dr. Emery, a physician at Pulmonary Associates, specifically provided an opinion concerning total disability, but both noted claimant's symptoms of shortness of breath and dyspnea, which he found was consistent with the opinions of Drs. Nida and Smiddy. Decision and Order at 37; Director's Exhibit 14; Claimant's Exhibit 7.

[8] The Administrative Procedure Act, 5 U.S.C. §500 *et seq.*, provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

medication necessarily support the physicians' opinions that claimant is totally disabled from a respiratory or pulmonary impairment.[9] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (administrative law judge must adequately explain his reason for crediting a physician); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989) (factfinder is required to examine the validity of the reasoning of a medical opinion in light of the objective evidence upon which the opinion is based). Mere symptoms such as shortness of breath alone are insufficient to establish total disability. *See Wright v. Director, OWCP*, 8 BLR 1-245, 1-247 (1985). Moreover, neither Dr. Nida nor Dr. Smiddy specifically referenced claimant's use of medication or oxygen to support their conclusion that he is disabled.[10] *See* Director's Exhibit 14; Claimant's Exhibit 6. Thus, the administrative law judge appears to have inappropriately substituted his opinion for theirs when reaching this conclusion. *Marcum v. Director*, OWCP, 11 BLR 1-23, 1-24 (1987). Further, as employer argues, the administrative law judge failed to analyze and adequately explain the basis upon which he found the physicians offered reasoned opinions, as required by 20 CFR 718.204((b)(2)(iv). *See Hicks*, 138 F.3d at 533; *Wojtowicz*, 12 BLR at 1-165.

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[9] The regulations provide that where, as here, the administrative law judge finds claimant cannot establish total disability under the provisions at 20 C.F.R. §718.204(b)(2)(i)-(iii), totally disability can be established "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 or prevented the miner from engaging in employment as described in paragraph (b)(1) of this section." 20 C.F.R. §718.204(b)(2)(iv) (emphasis added).

[10] Dr. Nida, claimant's primary care physician, concluded:

> After reviewing all of [claimant's] information and completing a physical exam, it appears he suffers from [coal workers' pneumoconiosis]. He has a history of a "B" reading which was positive for [coal workers' pneumoconiosis]. He displays moderate to severe shortness of breathing with the least amount of exertion on physical activity. His echo also shows increase pulmonary pressures with right side ventricular pressures which could be part of the disease process. I feel he is totally disabled to work at this time.

Director's Exhibit 14; Dr. Smiddy of Pulmonary Associates assessed that claimant has, among other things, shortness of breath on exertion, chronic obstructive pulmonary disease, and coal workers' pneumoconiosis. Director's Exhibit 14; Claimant's Exhibit 6.

Similarly, there is merit to employer's contention that the administrative law judge improperly focused on his own view of claimant's symptoms and failed to conduct the required analysis and explanation of his findings with respect to the opinions of Drs. Fino and Castle. Our dissenting colleague has helpfully attempted to fill in bases for the administrative law judge's conclusory determinations; however, that is not our province. It is the role of the trier of fact to make such determinations and to properly explain them. *See Hicks*, 138 F.3d at 533. Absent an appropriate analysis of the evidence and explanation of the weight accorded to it in the decision before the Board, we cannot determine whether substantial evidence supports the administrative law judge's findings. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 254 (4th Cir. 2016) (stating that the court could not "guess at what the [administrative law judge] meant to say, but didn't"); *King v. Califano*, 615 F.2d 1018, 1020 (4th Cir. 1980) ("[e]ven if legitimate reasons exist for rejecting [or crediting] certain evidence, the [administrative law judge] cannot do so for no reason or for the wrong reason"); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (Board lacks the authority to render factual findings to fill in gaps in the administrative law judge's opinion). As the administrative law judge did not properly analyze the physicians' opinions and adequately explain his determinations to credit the opinions of Drs. Nida and Smiddy and discredit the opinions of Drs. Fino and Castle, we are bound to vacate those findings and remand this case for further consideration by the administrative law judge.

On remand, the administrative law judge must reconsider whether the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). In so doing, the administrative law judge must address the comparative credentials of the physicians, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). He must also explain his findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165. If the administrative law judge finds that the medical opinion evidence establishes total disability, he must weigh all of the relevant evidence together to determine whether claimant has established total disability. *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc).

Because we have vacated the administrative law judge's finding of total disability, we also vacate his finding that claimant invoked the Section 411(c)(4) presumption.[11] 30 U.S.C. §921(c)(4).

[11] We decline to address, at this time, employer's challenge to the administrative law judge's determination that it failed to rebut the Section 411(c)(4) presumption. On

Accordingly, the administrative law judge's Decision and Order Awarding Benefits affirmed in part, vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

I concur:

MELISSA LIN JONES
Administrative Appeals Judge

GRESH, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from the decision of my colleagues to vacate the administrative law judge's award of benefits. Instead, I would reject employer's argument the administrative law judge erred in finding the evidence establishes total disability. Employer's Brief at 3-14. The administrative law judge permissibly determined that the opinions of Drs. Nida and Smiddy, claimant's treating primary care physician and treating pulmonary specialist, together with the treatment records and opinions of Drs. Ponder and Emery, support a finding of total disability. Decision and Order at 38; *see* Director's Exhibit 14; Claimant's Exhibits 6-9; Employer's Exhibits 3-4, 7-8, 12-14.

Dr. Nida, claimant's primary care physician, concluded claimant suffers from coal workers' pneumoconiosis, displays moderate to severe shortness of breath with the least amount of exertion on physical activity, has an "echo" that "shows increase pulmonary

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remand, should the administrative law judge again find that claimant has invoked the Section 411(c)(4) presumption, employer may challenge the administrative law judge's rebuttal findings.

pressures with right side ventricular pressures which could be part of the disease process," and concluded claimant is totally disabled to work. Director's Exhibit 14; *see* Decision and Order at 27. Dr. Smiddy, of Pulmonary Associates, noted claimant's treatment with pulmonary medications (Symbicort, Spiriva, Albuterol) and oxygen, and concluded claimant suffers from shortness of breath on exertion, chronic obstructive pulmonary disease, and coal workers' pneumoconiosis. Decision and Order at 28-30, 37; Director's Exhibit 14; Claimant's Exhibit 6. Like Dr, Nida, he similarly concluded that claimant is totally disabled from a pulmonary standpoint.[12] Decision and Order at 37; Director's Exhibit 14; Claimant's Exhibit 6. Finally, while neither Dr. Emery, also of Pulmonary Associates, nor Dr. Ponder, claimant's cardiologist, provide an opinion concerning total disability, the administrative law judge accurately observed both noted claimant's symptoms of shortness of breath and dyspnea, consistent with the opinions of Drs. Nida and Smiddy. Decision and Order at 37; Director's Exhibit 14; Claimant's Exhibit 7.

Contrary to employer's arguments and the decision of my colleagues, the administrative law judge permissibly credited the opinions of Drs. Nida and Smiddy that claimant is totally disabled, finding they demonstrated familiarity with claimant's medical history, symptoms, pulmonary medications and test results,[13] and are supported by claimant's treatment records as a whole documenting pulmonary medication and oxygen use. *See Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 949 (4th Cir. 1997); *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); Decision and Order at 36-38. The administrative law judge is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Grizzle v. Pickands Mather & Co*., 994 F.2d 1093, 1096 (4th Cir. 1993), and the Board is not empowered to reweigh the evidence or substitute its judgment for that of the administrative law judge, even if our conclusions would have been different. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999); *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co*., 12 BLR 1-77, 1-79 (1988). Because it is supported by substantial evidence, the administrative law judge's finding that the evidence, when weighed together, establishes total disability is affirmable. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (substantial

[12] Dr. Smiddy specifically attributed claimant's disability to pneumoconiosis, a pulmonary condition. Director's Exhibit 14; Claimant's Exhibit 6.

[13] Thus, contrary to my colleagues assertion, their opinions are based on "medically acceptable clinical and laboratory diagnostic techniques" to conclude that claimant's respiratory or pulmonary condition prevents him from engaging in his usual coal mine work as required at 20 CFR 718.204 (b)(2)((v).

evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion).

Specifically, my colleagues state that "[m]ere symptoms such as shortness of breath *alone* are insufficient to establish total disability" (emphasis added). But Drs. Nida and Smiddy did not merely indicate claimant's symptom of shortness of breath. Dr. Nida further stated that claimant suffered from "moderate to severe" shortness of breath "with the least amount of exertion on physical activity" and Dr. Smiddy stated the miner had "shortness of breath on exertion." Director's Exhibit 14; Claimant's Exhibit 6. Thus, they did provide a basis for determining that claimant's shortness of breath was disabling and they thereby both concluded that the miner was totally disabled from performing his coal mine work. *See* Director's Exhibit 14 ("totally disabled to work"). While the administrative law judge acknowledged Dr. Nida did not specify whether claimant's total disability resulted from a respiratory or pulmonary impairment, he permissibly inferred it did from the context of his opinion. Decision and Order at 36; *see Underwood*, 105 F.3d at 949 (it is the administrative law judge's job to weigh the evidence, draw appropriate inferences, and determine credibility.); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988); *see also Haynes v. Good Coal Co., Inc.*, BRB Nos 18-0021 BLA and 18-0023 BLA, slip op, at 6 (Jan. 18, 2019) (unpub.) (the administrative law judge accurately determined the doctors' opinions that the miner was totally disabled were supported by a doctor's report noting that the miner was prescribed oxygen because he was experiencing shortness of breath and was unable to leave his home), *aff'd*, *Good Coal Co., Inc. v. Haynes*, No. 19-3142, slip op. at 3 (6th Cir., Dec. 6, 2019) (unpub.) (reasonable to conclude that the doctors' reports that the miner was on oxygen and unable to leave his house implied inability to perform his usual coal mine employment); Director's Exhibit 14; Claimant's Exhibit 6.

My colleagues also state that the administrative law judge failed to explain how claimant's prescriptions for pulmonary medications support the physicians' opinions that claimant is totally disabled from a respiratory or pulmonary impairment. But Drs. Nida and Smiddy did not merely prescribe pulmonary medications in a vacuum without any diagnosis, but both opined that claimant suffered from coal workers' pneumoconiosis and chronic obstructive pulmonary disease. Further, the prescription of oxygen (which both Drs. Nida and Smiddy made note of, *see* Decision and Order at 27-30) also was not prescribed in a vacuum or based on the miner's symptoms alone, but was prescribed based on an objective oximetry study result showing low o2 levels. *See* Decision and Order at 33.

In addition, a medical opinion may still support a finding of total disability if it provides sufficient information from which the administrative law judge can reasonably infer that a miner is unable to do his last coal mine job. *Poole v. Freeman Mining Co.*, 897

F.2d 888, 894 (7th Cir. 1990). The opinions of Drs. Nida and Smiddy do so here and the administrative law judge also considered their opinions (independent from the physicians' own conclusions that the miner is totally disabled) in light of the exertional requirements of the miner's usual coal mine work and permissibly found:

> Though a significant level of impairment is not detected by the results of the [pulmonary function studies] and [arterial blood gas studies], the record demonstrates that Claimant suffers from chronic dyspnea and is prescribed pulmonary medications and nighttime oxygen. . . . Whether the origin of [c]laimant's respiratory impairment is pulmonary or nonpulmonary, or whether [c]laimant's chronic dyspnea that requires pulmonary medications and nighttime oxygen is due to heart disease, lung disease, cor pulmonale, obstructive sleep apnea, obesity, or a combination of these conditions, the record clearly establishes that [c]laimant suffers from a chronic respiratory or pulmonary impairment that is totally disabling and would prevent him from performing his usual coal mine job which required him to perform heavy and very heavy labor.[14]

Decision and Order at 38; *see* 20 C.F.R. §718.204(a), (b)(2)(iv); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208 (4th Cir. 2000); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Poole*, 897 F.2d at 894; *see also Roberts v. West Virginia C.W.P. Fund*, 74 F.3d 1233 (Table), 1996 WL 13850, at 2 (4th Cir. Jan. 12, 1996) (holding that the inquiry at total disability is the existence of respiratory impairment, not its etiology).

My colleagues state that the administrative law judge "appears" to have "substituted his opinion" for the physicians' when reaching this conclusion or "focused on his own view of claimant's symptoms." But again, a medical opinion may still support a finding of total disability if it provides sufficient information from which the administrative law judge can reasonably infer that a miner is unable to do his last coal mine job. *See Poole*, 897 F.2d at 894. So the administrative law judge permissibly made such an inference in this case and

[14] The administrative law judge observed Dr. Klayton identified coronary artery disease with angina as a non-pulmonary disabling diagnosis, Dr. Castle opined "[i]t is entirely likely" claimant is permanently disabled due to his severe cardiac disease and other medical problems unrelated to coal dust exposure, and Dr. Fino provided claimant's cardiac disease, obesity, and obstructive sleep apnea as risk factors for the development of pulmonary disease and symptoms. Decision and Order at 36, *quoting* Employer's Exhibit 15; *see also* Director's Exhibit 12; Employer's Exhibit 11.

therefore did not substitute his opinion for the treating physicians' medical opinions. Moreover, in any event, the treating physicians did provide a basis for concluding that the miner was totally disabled due to his exertional shortness of breath when compared to the exertional requirements of the miner's usual coal mine work, which the administrative law judge permissibly found was supported by the evidence of record. Again, it is for the administrative law judge to weigh the medical evidence and to draw his own inferences therefrom, *see Grizzle*, 994 F.2d at 1096, and it is not for the Board to reweigh the evidence or substitute its judgment for that of the administrative law judge, even if we might have come to a different conclusion. *See Mays*, 176 F.3d at 764; *Anderson*, 12 BLR at 1-113; *Fagg*, 12 BLR at 1-79.

I would also affirm the administrative law judge's determination to discredit the opinions of Drs. Klayton, Fino, and Castle, that claimant is not totally disabled. Decision and Order at 34; *see* Director's Exhibit 12; Employer's Exhibits 11, 15. The administrative law judge permissibly discredited their opinions because despite having reviewed claimant's treatment records, they did not address or attempt to reconcile their conclusions that claimant is able to perform his usual coal mine job requiring heavy to very heavy exertion levels with his ongoing need for pulmonary medications and supplemental oxygen use documented in the treatment records.[15] *Looney*, 678 F.3d at 316-17; *Compton*, 211 F.3d at 207-208; Decision and Order at 35; Director's Exhibit 12; Employer's Exhibits 11, 15. Moreover, employer does not challenge this credibility determination on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) is affirmable as supported by substantial evidence. *See Compton*, 211 F.3d at 207-08.

Finally, I would affirm the administrative law judge's determination that considering all of the evidence together, "the treatment records based on Claimant's on-going care are more probative than the other evidence" of record and establish total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); Decision and Order at 39. Having affirmed the findings that the miner had at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment, I would affirm the administrative law judge's

[15] In particular, the administrative law judge noted Dr. Klayton did not reasonably explain how claimant's ability to walk only one block on level ground or walk up only one flight of steps before he has to stop to catch his breath supported the conclusion that claimant can perform heavy or very heavy manual labor. Decision and Order at 35; Director's Exhibit 12.

determination that claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4).

In all other respects, I agree with the majority's conclusions.

DANIEL T. GRESH
Administrative Appeals Judge