U.S. Department of Labor

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

BRB No. 21-0012 BLA

JOHN C. GOBLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LEFT BEAVER COAL COMPANY	)	
	)	DATE ISSUED: 8/30/2022
and	)	
	)	
OLD REPUBLIC INSURANCE 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 on Remand and Orders Denying Employer's Motions for Reconsideration of Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

John Earl Hunt, Allen, Kentucky, for Claimant

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for Employer and its Carrier.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Peter B. Silvain, Jr.'s Decision and Order Awarding Benefits on Remand and Orders Denying Employer's Motions for Reconsideration (2015-BLA-05205) rendered on a claim filed on August 16, 2013, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Board for the second time.

In his initial Decision and Order Denying Benefits, the ALJ credited Claimant with less than fifteen years of coal mine employment based on the parties' stipulation and therefore found Claimant could not invoke 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). Considering Claimant's entitlement to benefits under Part 718,[2] the ALJ found Claimant established legal but not clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1), (4). He also found Claimant established total disability based on the pulmonary function studies, 20 C.F.R. §718.204(b)(2)(i), but not the blood gas studies or medical opinions. The ALJ also concluded that Claimant failed to establish his total disability is due to legal pneumoconiosis and thus denied benefits. 20 C.F.R. §718.204(c).

In consideration of Claimant's appeal, the Board affirmed, as unchallenged, the ALJ's findings that Claimant did not invoke the Section 411(4) presumption and did not establish clinical pneumoconiosis. *Goble v. Left Beaver Coal Co.*, BRB Nos. 18-0309 BLA and 18-0309 BLA-A, slip op. at 2 n.3 (Aug. 28, 2019) (unpub.). The Board also affirmed the ALJ's finding that Claimant established legal pneumoconiosis. *Id*. at 3-7. The Board agreed with Claimant that the ALJ did not adequately explain his weighing of the blood gas studies, which affected his weighing of the medical opinions on total disability and

[1] 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); 20 C.F.R. §718.305.

[2] The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2018). 20 C.F.R. §718.304; Decision and Order on Remand at 4 n.13. He further found no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order on Remand at 4 n.13.

disability causation.[3] *Id.* at 7-11. The Board also held the ALJ did not adequately explain his rejection of Dr. Rasmussen's opinion and thus vacated the denial of benefits and remanded the case for further consideration of the evidence pursuant to 20 C.F.R. §§718.204(b)(2)(ii), (iv), 718.204(c). *Id*. at 11-12.

On remand, the ALJ denied Employer's request that this case be reassigned to a different ALJ. He concluded Claimant established total disability based on the pulmonary function studies and medical opinion evidence. He further concluded that Claimant established he is totally disabled due to legal pneumoconiosis and thus awarded benefits.

On appeal, Employer argues the ALJ lacked authority to hear and decide the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[4] It further asserts the removal provisions applicable to the ALJ rendered his appointment unconstitutional. On the merits, Employer argues the ALJ erred in finding Claimant established total disability and disability causation. The Director, Office of Workers' Compensation Programs (the Director), filed a response urging the Board to reject Employer's Appointments Clause arguments as forfeited. Claimant responds, urging affirmance. Employer replies, reiterating its contentions.[5]

---

[3] The ALJ found the pulmonary function studies established total disability, assigning controlling weight to the more recent pre-bronchodilator studies but when weighing the blood gas studies he did not consider recency of the evidence. The Board concluded the ALJ failed to reconcile his analyses. *Goble*, BRB Nos. 18-0309 BLA and 18-0309 BLA-A, slip op. at 7-8 and n.13.

[4] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[5] Employer contends that, in the event of further appellate review, it preserves its challenge to the Board's affirmance of the ALJ's reliance on the preamble in determining the credibility of the medical opinions on legal pneumoconiosis and the Board's affirmance

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 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).

Appointments Clause

Employer argues the ALJ erred in finding it forfeited its Appointments Clause challenge because it is a structural constitutional issue which can be raised at any time, and it could not have raised its challenge before the ALJ when the claim was initially before him because *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018) had not yet been issued.[7] Employer's Brief at 13-17. The Director responds that Employer's arguments should be rejected because they are the same arguments made and rejected in *Joseph Forrester Trucking v. Director, OWCP* [*Davis*], 987 F.3d 581, 587-88, 591 (6th Cir. 2021).[8] Director's Brief at 2. Employer replies, reiterating its argument that an Appointments

---

of the ALJ's decision to credit Dr. Gaziano's validation over Dr. Vuskovich's invalidation of Dr. Rasmussen's blood gas study. Employer's Brief at 4 n.1.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 23.

[7] *Lucia* involved a challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). The United States Supreme Court held that, similar to the Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018), *citing Freytag v. Comm'r*, 501 U.S. 868 (1991). The Department of Labor has conceded the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[8] The Director explains Appointments Clause challenges can be forfeited when the "agency's regulatory scheme requires issue exhaustion," as here. Director's Brief at 2. Moreover, the Director explains that Employer need not have waited until *Lucia* was decided because the United States Supreme Court "had already said 'everything necessary to decide this case,'" citing *Lucia*, 138 S.Ct. at 2053. *Id*.

Clause challenge can be raised at any time, relying on the holding in *Carr v. Saul*, U.S. , 141 S.Ct. 1352 (2021).[9] Employer's Reply Brief at 2-3. We agree with the Director.

Appointments Clause issues are "non-jurisdictional" and thus are subject to the doctrines of waiver and forfeiture. *See Lucia*, 138 S.Ct. at 2055 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture."). Employer failed to raise its challenge to the ALJ's appointment when it was initially before the ALJ and then when the case was before the Board on appeal from the ALJ's initial decision.[10] Instead, it waited until after the Board remanded the case on August 28, 2019.[11] *See Island Creek Coal Co. v. Young*, 947 F.3d 399, 402-03 (6th Cir. 2020) (employer waived Appointments Clause challenge by raising the issue for the first time "four months after the merits briefing period had closed"); *see also Edd Potter Coal Co., Inc. v. Director, OWCP*, 39 F.4th 202, 209 (4th Cir. 2022) (disagreeing that "a remand turns back the clock and allows a party to raise whatever new issues it would like, effectively absolving it of any earlier forfeiture"); Director's Brief at 1. Employer first raised the Appointments Clause issue in its July 29, 2020 Motion to Transfer to the ALJ, over two years after *Lucia* was decided and over eleven months after the Board remanded the case to the ALJ.[12]

---

[9] In *Carr v. Saul*, U.S. , 141 S.Ct. 1352 (2021), a case involving SSA ALJs, the United States Supreme Court held that structural constitutional issues, such as Appointments Clause issues, can be raised at any time because SSA adjudicators are not suited to address such challenges and do not have the power to grant the requested relief.

[10] Employer's additional argument that because Claimant did not raise the issue in his appeal to the Board, Employer was precluded from raising the issue in its response brief to the Board is groundless, as Employer could have done so in a motion or cross-appeal on the issue. Employer's Reply Brief at 3-4.

[11] In the instant case, the DOL ratified the ALJ's appointment on December 21, 2017, the ALJ's initial decision was issued on April 30, 2018, and the case was pending before the Board until it was remanded to the ALJ on August 28, 2019.

[12] Employer asserts it sent a letter to ALJ Silvain on September 19, 2019, raising a challenge to his appointment. Employer's Brief at 4. This letter is not contained in the record. Even if it were, we would still hold Employer forfeited its Appointments Clause challenge because the Board already had remanded the case back to the ALJ by then.

The Supreme Court's holding in *Carr*, 141 S.Ct. 1352, does not assist Employer because, unlike DOL, the SSA does not have the same issue exhaustion regulatory scheme. See *Ramsey v. Comm'r*, 937 F.3d 537, 547 n.5 (6th Cir. 2020). Moreover, DOL ALJs are able to provide the requested relief by having the case reassigned to a different constitutionally appointed ALJ. *See Davis*, 987 F.3d at 591-92. We therefore conclude the ALJ properly held Employer forfeited its right to challenge the ALJ's appointment and we affirm the ALJ's denial of Employer's Motion to Transfer. Decision and Order on Remand at 3 n.5. Further, because Employer has not raised any basis for excusing its forfeiture, we see no reason to entertain its additional arguments regarding the validity of the ALJ's ratification. *See Davis*, 987 F.3d at 591-92; *Powell v. Serv. Emps. Int'l, Inc.*, 53 BRBS 13, 15 (2019); *Kiyuna v. Matson Terminals, Inc.*, 53 BRBS 9, 11 (2019); *Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against resurrecting lapsed arguments because of the risk of sandbagging); Employer's Reply Brief at 4-8.

Removal Provisions

Employer's challenge to the ALJ's tenure – which it raised before the ALJ for the first time on remand, at the same time it raised its challenge to the ALJ's appointment – suffers from the same defects and thus also is forfeited. *See Davis*, 987 F.3d at 591-92; *Powell*, 53 BRBS at 15; Employer's Reply Brief at 8-10; Employer's Motion to Transfer dated July 29, 2020 at 1 n.1.

Entitlement under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions, Claimant must establish disease (pneumoconiosis);[13] disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR

[13] "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). "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).

1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

A miner is totally disabled if a pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 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.[14] 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).

Pulmonary Function Studies

The ALJ reconsidered the four pulmonary function studies on remand.[15] The September 25, 2013 study was qualifying[16] before and after the administration of a bronchodilator, but the ALJ found it invalid. Decision and Order on Remand at 5-6; Director's Exhibit 9 at 33. The December 12, 2013 and April 9, 2014 pulmonary function studies were non-qualifying before and after administration of a bronchodilator.[17] Decision

[14] On remand, the ALJ reiterated his prior findings that Claimant does not have complicated pneumoconiosis; he followed the Board's remand instruction to reconsider the blood gas study evidence and found them to be in equipoise; and further found no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order on Remand at 4 n.13, 7.

[15] The Board did not address the pulmonary function studies in the prior appeal, except to conclude the ALJ's analysis of the pulmonary function and blood gas studies were inconsistent as to whether he was crediting the more recent evidence.

[16] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[17] The April 9, 2014 pulmonary function study reflected non-qualifying values both before and after the administration of a bronchodilator. Employer's Exhibit 5. However, Dr. Zaldivar noted that both studies were taken while Claimant was medicated with Symbicort, a bronchodilator, and thus the pre-bronchodilator study did not measure

and Order on Remand at 5; Director's Exhibit 9 at 13; Employer's Exhibit 5. The March 17, 2016 pulmonary function study had qualifying pre-bronchodilator values and non-qualifying post-bronchodilator values. Decision and Order on Remand at 5; Claimant's Exhibit 4. The ALJ gave greatest weight to most recent qualifying pre-bronchodilator test, and found the pulmonary function study evidence weighed in favor of establishing total disability at 20 C.F.R. §718.204(b)(2)(i).

Employer argues the ALJ failed to consider whether the March 17, 2016 study is valid based on Dr. Sikder's comment that study showed "severe obstructive airway disease with significant reversibility but this may have been effort related." Employer's Brief at 17-18, 20-21, *quoting* Claimant's Exhibit 17 at 1. However, Employer did not challenge the validity of the March 17, 2016 pulmonary function study before the ALJ, either at the hearing on May 24, 2016, or in its November 21, 2016 post-hearing brief. It also did not file a brief raising this issue on remand. Thus, Employer forfeited its right to object to the validity of the study for the first time in this appeal. *See Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-49 (1990); *Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987).

Regardless, in the absence of evidence to the contrary, compliance with the quality standards set forth in the regulations is presumed. 20 C.F.R. §718.103(c); *see* Appendix B to 20 C.F.R. Part 718; *Vivian v. Director, OWCP*, 7 BLR 1-360 (1984) (the party challenging the validity of a study has the burden to establish the results are suspect or unreliable). The technician who conducted the March 17, 2016 pulmonary function study noted Claimant gave "good effort"; Dr. Sikder also signed the results and relied on them in concluding Claimant is totally disabled. Claimant's Exhibits 4, 6, 8, 17. Thus, even had Employer preserved its argument, we still would find it unpersuasive.

Employer next contends the ALJ erred in giving determinative weight to the qualifying pre-bronchodilator values in general. Employer's Brief at 18. However, the DOL has recognized that "the use of a bronchodilator does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis." 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). We therefore affirm the ALJ's reliance on the March 17, 2016 qualifying pre-bronchodilator values to find Claimant is totally disabled.

Claimant's baseline function, but rather his lung function as medicated. *Id*. at 2. Because disability determinations are based on Claimant's ability to perform his job and not whether he can perform his job after taking medication, the ALJ "considered both the pre- and post-bronchodilator tests from Dr. Zaldivar's examination to be post-bronchodilator tests." Decision and Order on Remand at 6.

Additionally, we disagree the ALJ "misread" Dr. Zaldivar's April 9, 2014 testing as including two non-qualifying post-bronchodilator studies as opposed to one non-qualifying pre-bronchodilator and one non-qualifying post-bronchodilator study. Employer's Brief at 18; Employer's Exhibit 5. The ALJ permissibly relied on Dr. Zaldivar's statement that because Claimant had already used a bronchodilator on the testing day, and was still under its effects, all testing performed on that day should be considered to have been done while Claimant was medicated. Decision and Order on Remand at 6; Employer's Exhibit 5 at 2.

Further, we reject Employer's argument that because Claimant takes bronchodilation medication daily, *all* of the pulmonary function testing of record should be considered as representing post-bronchodilator values. Employer's Brief at 18. The quality standards at 20 C.F.R. §718.103 and Appendix B do not provide specific instructions for the administration or recording of pulmonary function tests when the miner has taken bronchodilator medication on his own.[18] Here the ALJ permissibly relied on Dr. Zaldivar's characterization of his own studies. In contrast, both Drs. Rasmussen and Sikder were aware that Claimant was prescribed breathing medications but neither suggested he had taken the medication prior to testing and both concluded he is totally disabled based on the studies they conducted. Director's Exhibit 9 at 8; Claimant's Exhibits 4, 6, 8, 17, 18.

Finally, we reject Employer's contention the ALJ erred in finding the pre-bronchodilator values of the December 12, 2013 pulmonary function study were just above qualifying and thus supported disability. Employer's Brief at 19. The ALJ did not base his finding of total disability on that study; he gave determinative weight to the pre-bronchodilator results of the March 17, 2016 pulmonary function study. Decision and Order on Remand at 6.

Because it is supported by substantial evidence, we affirm the ALJ's conclusion that the pulmonary function test evidence weighs in favor of establishing total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order on Remand at 5-6.

Medical Opinions

The ALJ also reconsidered the medical opinion evidence relating to total disability. Drs. Rasmussen, Sikder, and Leslie opined that Claimant is totally disabled, while Drs.

[18] Rather, the regulation states that, "[i]f a bronchodilator is administered," the physician "must" report the values obtained both before and after administration of the bronchodilator. 20 C.F.R. §718.103(b)(8).

Zaldivar and Vuskovich opined he is not. Director's Exhibit 9; Claimant's Exhibits 5-8, 17, 18; Employer's Exhibits 5, 7, 13. The ALJ found the opinions of Drs. Rasmussen and Sikder "consistent with the weight of the objective evidence" and gave them controlling weight. Decision and Order on Remand at 11.

Employer argues Dr. Rasmussen's opinion on total disability is not credible because it is based on the September 25, 2013 pulmonary function study the ALJ found to be invalid. Employer's Brief at 19-20. We disagree. In his initial report, Dr. Rasmussen opined Claimant's blood gas study showed his "[o]xygen transfer was moderately impaired." Director's Exhibit 9 at 76. He also found Claimant's pulmonary function test "revealed [a] moderate, but reve[r]sible airways obstruction." *Id*. at 8. Dr. Rasmussen asserted that, taken together, this shows "a disabling degree of respiratory interference" such that Claimant does not "retain the pulmonary capacity to perform his regular coal mine employment" as a tipple attendant, which he described as heavy manual labor.[19] *Id*. at 72. Dr. Rasmussen later reviewed the valid December 12, 2013 pulmonary function study. Contrary to Employer's characterization Dr. Rasmussen did not conclude the December 12, 2013 pulmonary function studies no longer showed disability under DOL's criteria. Employer's Brief at 20, citing Director's Exhibit 9 at 8. Rather, he stated the "*spirometric study is normal following bronchodilator therapy indicating essentially normal post-bronchodilator ventilatory function*." Director's Exhibit 9 at 8 (emphasis added). He concluded the pre-bronchodilator portion of the study still showed a moderate obstructive respiratory impairment. *Id*.

Although the ALJ noted Dr. Rasmussen did not review the most recent non-qualifying blood gas study, he permissibly considered Dr. Rasmussen's opinion to be consistent with the weight of the qualifying pre-bronchodilator pulmonary function studies. Because the ALJ permissibly found Dr. Rasmussen's opinion reasoned and documented, we affirm his determination it supports finding Claimant totally disabled. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order on Remand at 8; Director's Exhibit 9.

Employer also challenges the ALJ's reliance on Dr. Sikder's opinion, arguing she relied on an invalid pulmonary function study. Having rejected Employer's assertion that the March 17, 2016 study is invalid, we reject Employer's contention. Employer's Brief at 20-21, *quoting* Claimant's Exhibit 17 at 1.

[19] The ALJ determined Claimant's usual coal mine work as a tipple attendant required heavy manual labor. Decision and Order on Remand at 4.

Employer further argues the ALJ erred in not addressing Dr. Sikder's failure to identify the exertional requirements of Claimant's usual coal mine work. Employer's Brief at 21-22. We consider the ALJ's error, if any, harmless. *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). In her reports, Dr. Sikder noted Claimant worked as a surface miner at the tipple weighing and loading coal onto railroad cars. Claimant's Exhibits 17, 18. Thus, while Dr. Sikder did not identify the specific exertional requirements of Claimant's usual coal mine work, she demonstrated a sufficient understanding of the nature of Claimant's job to conclude he was totally disabled from performing the duties described to her.[20] *See Cornett v. Benham Coal Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-303 (2003).

As Employer raises no further challenges to the ALJ's credibility findings, including the ALJ's discrediting of its own medical experts, we affirm his determination that the medical opinions are supportive of a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). We further affirm the ALJ's overall conclusion that Claimant established total disability in consideration of the evidence as a whole. 20 C.F.R. §718.204(b).[21]

Disability Causation

To establish disability causation, Claimant must prove that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure

[20] Even if we were to agree Dr. Sikder's opinion is entitled to no weight on total disability, the ALJ's finding that Claimant is totally disabled is supported by Dr. Rasmussen's opinion and would satisfy Claimant's burden of proof given the ALJ's rejection of all medical opinions diagnosing no total disability.

[21] We affirm, as unchallenged on appeal, the ALJ's findings that Drs. Vuskovich and Zaldivar did not adequately address whether Claimant is totally disabled based on the qualifying pulmonary function study evidence. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 10-11; Employer's Exhibits 5 at 3; 7 at 10.

unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 599 (6th Cir. 2014).

Employer argues the opinions of Drs. Rasmussen and Sikder are insufficient as a matter of law to establish disability causation because neither physician opined Claimant's disability is due to legal pneumoconiosis. Employer's Brief at 22-23. We disagree.

The ALJ found Claimant has a disabling obstructive respiratory impairment based on the qualifying pulmonary function study evidence and the Board previously affirmed the ALJ's finding that the disabling obstruction is legal pneumoconiosis. *See* above at 7-11; *Goble*, BRB Nos. 18-0389 BLA and 18-0389 BLA-A, slip op. at 3-7; Decision and Order on Remand at 11. Because the ALJ found Claimant's totally disabling impairment *is legal pneumoconiosis*, it follows that legal pneumoconiosis is the cause of Claimant's total disability. Thus, we see no error in the ALJ's crediting of the opinions of Drs. Rasmussen and Sikder as sufficient to establish disability causation at 20 C.F.R. §718.204(c).[22] *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order on Remand at 11-13; Director's Exhibit 9 at 7; Claimant's Exhibit 6.

[22] We affirm, as unchallenged, the ALJ's discrediting of the opinions of Drs. Vuskovich and Zaldivar that Claimant is not totally disabled due to legal pneumoconiosis because neither physician diagnosed the disease. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 13-14; Employer's Exhibits 5, 7, 13.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits on Remand and Orders Denying Employer's Motions for Reconsideration.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge