

U.S. Department of Labor

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



BRB Nos. 22-0129 BLA
and 22-0130 BLA

RUTH DONOFRIO)
(o/b/o and Widow of TONY DONOFRIO,)
JR.))

Claimant-Petitioner)

v.)

BLACKWOOD ANTHRACITE,)
INCORPORATED)

and)

DATE ISSUED: 8/24/2023

ROCKWOOD INSURANCE COMPANY)

Employer/Carrier-)
Respondents)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in Miner's Claim, on Request for Modification; and Denying Benefits in Survivor's Claim of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for Claimant.

Paul K. Paterson (Mascelli & Paterson), Scranton, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant¹ appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Denying Benefits in Miner's Claim, on Request for Modification[] and Denying Benefits in Survivor's Claim (2021-BLA-05122 and 2021-BLA-05268) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (the Act). This case involves Claimant's second request for modification of the denial of a miner's claim filed on June 14, 2013, and a survivor's claim filed on February 18, 2020.²

In her August 24, 2016 Decision and Order Denying Benefits, ALJ Adele Higgins Odegard credited the Miner with 9.57 years of coal mine employment and found that while the Miner established the presence of pneumoconiosis, he failed to establish total disability. MC Director's Exhibit 43. Thus, she found he could not invoke the rebuttable presumption that he was totally disabled due to pneumoconiosis under Section 411(c)(4) of the Act.³ 30 U.S.C. §921(c)(4) (2018); MC Director's Exhibit 43. The Miner appealed the decision to the Benefits Review Board, but later requested remand so that he could request modification; thus, the Board dismissed the appeal and remanded the case to the district director. MC Director's Exhibits 44, 47, 49. The Miner timely requested modification⁴ of

¹ The Miner, Tony Donofrio, Jr., died on June 22, 2019. SC Director's Exhibit 11. Claimant is the Miner's widow and is pursuing the miner's claim on his behalf as well as her own survivor's claim. MC Director's Exhibit 111; SC Director's Exhibit 1.

² The appeal in the miner's claim was assigned BRB No. 22-0129 BLA and the appeal in the survivor's claim was assigned BRB No. 22-0130 BLA. The Board consolidated these appeals for purposes of decision only. *Donofrio v. Blackwood Anthracite, Inc.*, BRB Nos. 22-0129 BLA and 22-0130 BLA (Apr. 5, 2022) (unpub. Order).

³ 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.

⁴ When evaluating a request for modification, the ALJ "must consider whether any additional evidence submitted by the parties demonstrates a change in condition and,

ALJ Odegard's decision, asserting both a change in conditions and a mistake in a determination of fact. MC Director's Exhibit 51. The district director denied modification, and the Miner requested a hearing before the Office of Administrative Law Judges. MC Director's Exhibits 55, 56.

On May 22, 2019, ALJ Lystra A. Harris denied the Miner's request for modification, finding no mistake of fact, the Miner failed to establish total disability, and the Miner failed to demonstrate a change in condition. MC Director's Exhibit 96. The Miner again appealed to the Board; during the pendency of the appeal, he died and Claimant requested dismissal and remand to the district director, which the Board granted. MC Director's Exhibits 80; SC Director's Exhibit 11. Thereafter, Claimant filed a claim for survivor's benefits and again requested modification of the denial of the miner's claim. SC Director's Exhibit 2; MC Director's Exhibit 103. The district director denied modification in the miner's claim and benefits in the survivor's claim. SC Director's Exhibit 27; MC Director's Exhibit 105. Claimant requested a hearing in both claims. SC Director's Exhibit 34; MC Director's Exhibit 111.

The cases were consolidated and assigned to ALJ Morris (the ALJ). He credited the Miner with 9.57 years of coal mine employment and therefore found Claimant could not invoke the Section 411(c)(4) presumption in either the miner's or survivor's claim.⁵ He further determined that Claimant failed to establish the Miner was totally disabled based on the new evidence and found no mistake of fact in the prior ALJs' findings that total disability was not established. Thus, he found Claimant could not establish entitlement to benefits in the miner's claim and failed to establish a basis for modification. 20 C.F.R. §§718.204(b); 725.310.

Based on the denial of benefits in the miner's claim, the ALJ found Claimant is not derivatively entitled to survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).⁶ Therefore, the ALJ considered whether Claimant could establish

regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact." 20 C.F.R. §725.310(c).

⁵ For purposes of a survivor's claim, Section 411(c)(4) provides a rebuttable presumption that a miner died 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.

⁶ Under Section 422(*l*) of the Act, the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's

entitlement at 20 C.F.R. §718.205(b) without the benefit of a presumption. The ALJ found Claimant failed to establish that the Miner's death was due to pneumoconiosis and thus denied survivor's benefits.

On appeal, Claimant challenges the ALJ's findings that the Miner worked 9.57 years in coal mine employment and that Claimant failed to establish total disability, and thus could not invoke the Section 411(c)(4) presumption. She further argues the ALJ erred in finding death causation was not established in the survivor's claim. Employer responds, urging affirmance of the denial of benefits. Claimant filed a reply, reiterating her arguments. The Director, Office of Workers' Compensation Programs, has not filed a response.

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.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 (1965).

In reviewing the record on modification, an ALJ is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971). The ALJ may correct any mistake of fact, including the ultimate fact of entitlement. *Keating v. Director, OWCP*, 71 F.3d 1118, 1123 (3d Cir. 1995).

Evidentiary Issues

Claimant argues the ALJ erred in excluding portions of Claimant's Exhibit 6 and in admitting Employer's Exhibits 3 through 5, as they are treatment records pertaining to non-pulmonary diseases, in violation of 20 C.F.R. §725.414(a)(4). Claimant's Brief at 3. We disagree.

Because the ALJ exercises broad discretion in resolving procedural and evidentiary matters, *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc), a party seeking to overturn the disposition of an evidentiary issue must establish the ALJ's action

benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

⁷ This case arises under the law of the United States Court of Appeals for the Third Circuit, as the Miner performed his coal mine employment in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

represented an abuse of discretion. *V.B. [Blake] v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

At the hearing in the current request for modification, Employer objected to certain portions of Claimant's Exhibit 6, consisting of Dr. Simelaro's report and attachments of medical "studies and articles." 2021 Hearing Transcript at 13-15. The ALJ agreed certain pages of the attachments should be excluded; specifically those containing handwritten notes and those that were abstracts rather than entire articles. He admitted only pages one, two, and nineteen through twenty-five of the "studies and articles" attachment of the exhibit.⁸ *Id.* at 15-17. In addition, Claimant objected to Employer's Exhibits 3 through 5, consisting of treatment records from Lebanon Internal Medicine, arguing they did not pertain to a respiratory or pulmonary disease as the regulations require. *Id.* at 17. The ALJ overruled Claimant's objection and admitted the exhibits. *Id.* at 19.

Initially, we reject Claimant's argument that the ALJ erred in excluding portions of Claimant's Exhibit 6, as she has failed to explain how he abused his discretion, other than contending generally that Dr. Simelaro's opinion relied on the excluded medical authorities. Claimant's Brief at 3; *Blake*, 24 BLR at 1-113.

In addition, we disagree that the ALJ's admission of the Lebanon Internal Medicine records at Employer's Exhibits 3 through 5 was an abuse of discretion "violative" of 20 C.F.R. §725.414(a). The regulations provide that "[n]otwithstanding the [evidentiary] limitations" of 20 C.F.R. §725.414(a)(2), (3), "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or *related disease*, may be received into evidence." 20 C.F.R. §725.414(a)(4) (emphasis added). Claimant does not contend that the Lebanon Internal Medicine records do not reflect medical treatment, but argues the treatment was not for a pulmonary disease. Claimant's Brief at 3. Claimant, however, does not address the ALJ's determination that the records pertain to treatment of a related disease.

The records note treatment following hospital admissions related to the Miner's chronic kidney disease. Employer's Exhibits 3-5. The ALJ agreed with Employer's position that the records constituted treatment of a related disease, given Dr. DuPont's explanation that the Miner's kidney disease affected his respiratory condition. 2021 Hearing Transcript at 17-19; Employer's Exhibit 1. We see no abuse of discretion in the

⁸ Claimant's Exhibit 6 began with Dr. Simelaro's report, sequentially numbered pages 1 through 7, and continued with attached medical "studies and articles" and page numbers restarting with page 1.

ALJ's decision to admit this evidence as constituting medical treatment of a pulmonary or related disease. 20 C.F.R. §725.414(a)(4); *Blake*, 24 BLR at 1-113.

Invocation of the Section 411(c)(4) Presumption—Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption in either the miner's or survivor's claim, Claimant must establish the Miner worked at least fifteen years in underground coal mines or "substantially similar" surface coal mine employment and had a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b)(1)(i).

Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

ALJ Odegard previously addressed the length of the Miner's coal mine employment. She considered the Miner's Social Security Administration (SSA) earnings statement, his CM-911a application form, testimony, a certificate of competency from the Pennsylvania Department of Environmental Resources, and a memorandum from the claims examiner. MC Director's Exhibit 43 at 6-7. She concluded the Miner had 2.57 years of coal mine employment with Employer from 1983-1987, based on his SSA earnings statement. *Id.* at 7-8. In addition, she found the Miner's testimony, CM-911a application form, and a memorandum from the claims examiner supported a finding that he worked as a miner for seven years for Red Ash Mining (Red Ash) and Sky View Coal Company (Sky View), two companies the Miner owned as partnerships from 1985 to 1992.⁹ *Id.* at 6-8. Thus, she found the Miner established a total of 9.57 years of coal mine employment, and she rejected the parties' proposed stipulation of seventeen years as inconsistent with the record. *Id.* at 9-10.

The current ALJ found no mistake in ALJ Odegard's determinations. He addressed Claimant's testimony, which he concluded added no new information, and further noted the only evidence that could potentially point to additional coal mine employment was a coal mining certification issued in 1993. Decision and Order at 7. However, he found this single document insufficient to support additional employment, given that it conflicted

⁹ The Miner also worked for Lackawanna County as a tour guide in non-operational mines from 1992 through 2012. MC Director's Exhibits 4, 5, 8. ALJ Odegard found this employment did not constitute coal mine employment. MC Director's Exhibit 43 at 6, 10. The parties have not challenged this determination.

with the other evidence of record indicating the Miner's coal mine employment ended in 1992. Decision and Order at 7-8.

Claimant contends the ALJ ignored the parties' previous stipulation to seventeen years of coal mine employment, accepting ALJ Odegard's finding of 9.57 years without any significant analysis. Claimant's Brief at 13-14. We disagree.

First, while the parties initially stipulated to seventeen years of coal mine employment, ALJ Odegard rejected this stipulation given the "significant disparity" between the stipulated length of employment and the length of coal mine employment she found supported by the record. MC Director's Exhibit 43 at 9-10. The Miner did not contest this finding on modification before ALJ Harris, but rather conceded 9.57 years was correct, with counsel specifying that she was not raising a mistake of fact as an issue in that regard.¹⁰ MC Director's Exhibits 72 at 6-7; 93 at 7-8. Moreover, Claimant has not explained how the record could support a conclusion that the Miner had at least fifteen years of coal mine employment or how the determination of 9.57 years was unreasonable or inadequately explained. *Muncy*, 25 BLR at 1-27; *see also Grimes v. Exxon Co., U.S.A.*, 14 BRBS 573, 576 (1981) (an ALJ is not obligated to accept all stipulations entered into by the parties; however, such a rejection or modification of a stipulation must be adequately explained). Thus, we affirm the ALJ's finding of 9.57 years of coal mine employment.¹¹ Decision and Order at 8. Consequently, we also affirm his finding that the Section 411(c)(4) presumption is inapplicable to either claim. *Id.* at 8, 21.

¹⁰ ALJ Harris did not specifically address the length of the Miner's coal mine employment because doing so was unnecessary. MC Director's Exhibit 96 at 8-9.

¹¹ Employer argues the Miner should have been credited with only 2.57 years of coal mine employment as there is no documentary evidence regarding Red Ash or Skyview and further argues the Miner's testimony was contradictory regarding the dates he worked for and owned these companies. Employer's Response at 16-17. The ALJ has broad discretion in assessing the credibility of witness testimony. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). However, even assuming there were discrepancies the ALJ failed to address, the ALJ found insufficient coal mine employment to invoke any applicable presumptions. *See* 20 C.F.R. §§718.203(b), 718.305. Further, the ALJ did not find any opinion undermined based on an alleged lack of understanding regarding the length of the Miner's coal mine employment. Thus, any error in crediting the Miner with seven years of employment with Red Ash and Sky View is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Miner's Claim—Entitlement Under 20 C.F.R Part 718

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions,¹² Claimant must establish disease (pneumoconiosis), 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, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 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 his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on 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 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). The ALJ found Claimant failed to establish total disability by any means. 20 C.F.R. §718.204(b)(2); Decision and Order at 10, 16.¹³

¹² There is no evidence identifying large opacities or complicated pneumoconiosis on radiograph; thus, Claimant cannot invoke the irrebuttable presumption of total disability or death due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304; MC Director's Exhibit 43 at 11-12.

¹³ In the prior request for modification, ALJ Harris found the arterial blood gas studies did not support a finding of total disability and the parties have not submitted any new blood gas evidence. MC Director's Exhibit 96 at 16; 20 C.F.R. §718.204(b)(2)(ii). Similarly, ALJ Harris found no evidence of cor pulmonale with right-sided congestive heart failure and no new evidence on this issue was submitted. MC Director's Exhibit 96 at 16; 20 C.F.R. §718.204(b)(2)(iii).

Pulmonary Function Study Evidence

Two pulmonary function studies, dated May 23, 2017, and September 15, 2018, were admitted and considered in the prior request for modification.¹⁴ MC Director's Exhibits 96 at 12; 51; 70. Both studies were qualifying;¹⁵ however, in the first request for modification proceeding, ALJ Harris found both were invalid and thus could not support a finding of total disability. MC Director's Exhibit 96 at 12-17. The current ALJ found no mistake of fact in these determinations and, as no new pulmonary function study evidence was submitted, found the pulmonary function studies do not support total disability. Decision and Order at 10; 20 C.F.R. §718.204(b)(2)(i).

Claimant argues the ALJ erred by adopting ALJ Harris's finding without independently assessing the validity of the two qualifying pulmonary function studies to determine if a mistake in a determination of fact was made. Claimant's Brief at 21. We disagree.

The ALJ noted ALJ Harris's discussion of the conflicting opinions regarding the validity and reliability of the pulmonary function studies and, based on his own review of the record and ALJ Harris's "thorough review" of the evidence, he found no mistake in a determination of fact. Decision and Order at 10. As the ALJ found, ALJ Harris conducted a detailed analysis of the conflicting evidence regarding the validity of the pulmonary function studies at issue and provided bases for finding the opinions invalidating the studies better reasoned and supported by the record than those that found the studies acceptable. MC Director's Exhibit 96 at 15-16. Thus, the ALJ permissibly found no mistake in a determination of fact in ALJ Harris's prior determination. *See O'Keefe*, 404 U.S. at 256; Decision and Order at 10. Therefore, we affirm the ALJ's conclusion that there was no mistake in a determination of fact and the pulmonary function studies fail to support total disability. Decision and Order at 10; 20 C.F.R. §718.204(b)(2)(i).

Medical Opinion Evidence and Treatment Records

In the current request for modification, Claimant relies on the medical opinions of Drs. Kraynak and Simelaro who opined the Miner was totally disabled by a respiratory

¹⁴ The record also contains the results of pulmonary function studies conducted on October 16, 2013, May 30, 2014, and February 11, 2015. MC Director's Exhibit 43 at 23-24. ALJ Odegard accorded each of these studies little probative weight. *Id.* at 24-25.

¹⁵ 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).

impairment. MC Director's Exhibit 111; Claimant's Exhibit 6. Both parties also submitted hospitalization and treatment records. Claimant's Exhibits 1-4; Employer's Exhibits 3-5. The ALJ first found no mistake of fact in ALJ Harris's determinations that Drs. Kraynak's and Levinson's previous opinions did not establish total disability.¹⁶ Decision and Order at 11. Turning to the new evidence in the current request for modification, he found Drs. Kraynak and Simelaro did not address treatment records that tended to undermine their opinions. Decision and Order at 15-16. Thus, he found their opinions inadequate to establish total disability.¹⁷ *Id.*

Claimant maintains the ALJ erred in finding Drs. Kraynak's and Simelaro's opinions inadequate to support a finding of total disability, given that he discredited the contrary opinion. Claimant's Brief at 22, 24. Specifically, Claimant contends the ALJ failed to apply the appropriate standard in assessing total disability, failed to give proper deference to Dr. Kraynak as the Miner's treating physician, substituted his opinion for those of the experts, and inconsistently found total disability established at one point in time but that it "mysteriously disappeared" thereafter. *Id.* at 22-28. Claimant's arguments are unpersuasive.

First, contrary to Claimant's contention, the ALJ correctly indicated total disability can be established via a reasoned medical opinion that the miner is unable to perform his usual coal mine employment. Decision and Order at 10. In so finding, he indicated that all the opening experts expressed an understanding that the Miner's usual coal mine employment required heavy labor. *Id.* at 15.

In addition, the ALJ is not required to credit a medical opinion simply because it is uncontradicted; rather, he "has broad discretion to determine the weight accorded each doctor's opinion." *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *see*

¹⁶ The ALJ concurred with ALJ Harris's discrediting of Dr. Kraynak's opinion as the doctor appeared unaware of the nature or exertional requirements of the Miner's usual coal mine employment. Decision and Order at 11; MC Director's Exhibit 96 at 20. Claimant asserts this finding was unsupported by the record but provides no support for this argument. Claimant's Brief at 27. Thus, we have no basis for reviewing this contention. *See* 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

¹⁷ The ALJ also considered Dr. DuPont's opinion; however, the ALJ found he did not specifically address whether the Miner was totally disabled, but rather opined only that the Miner had no respiratory impairment related to his coal mine employment. Decision and Order at 15-16; Employer's Exhibit 1.

also *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Relatedly, we reject Claimant’s assertion that the ALJ was required to defer to Dr. Kraynak as the Miner’s treating physician. Claimant’s Brief at 28, 39. While a treating physician’s opinion may be due additional deference, there is no per se rule that a treating physician’s opinion must always be accorded greatest weight. See 20 C.F.R. §718.104(d)(5) (the ALJ must consider a treating physician’s opinion “in light of its reasoning and documentation”); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 210 (3d Cir. 2002) (citing *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998)) (the ALJ must consider the quality of a physician’s reasoning); but see *Soubik v. Director, OWCP*, 366 F.3d 226, 235 (3d Cir. 2004) (“It is well-established in this circuit that treating physicians’ opinions are assumed to be more valuable than those of non-treating physicians.”).

Moreover, the ALJ specifically considered that Dr. Kraynak was a treating physician. While he noted Dr. Kraynak was Board-certified in family medicine and not pulmonary diseases, he declined to discredit the doctor’s opinion for that reason because the doctor had treated the Miner for approximately three years. Decision and Order at 14-15 (citing 20 C.F.R. §718.104(d)). However, while according Dr. Kraynak’s opinion some weight, the ALJ found it insufficient to meet Claimant’s burden to establish total disability because the doctor did not address relevant evidence of record. Decision and Order at 15-16; see *Kertesz*, 788 F.2d at 163; 20 C.F.R. §718.104(d)(5).

Finally, Claimant contends the ALJ erred in relying on the treatment records from Lebanon Internal Medicine to find Drs. Kraynak’s and Simelaro’s opinions undermined. Claimant’s Brief at 22-23. Claimant argues the records do not address a pulmonary impairment. *Id.* at 23. She further contends the ALJ’s finding that this more recent evidence from Lebanon Internal Medicine undermined the doctors’ opinions is inconsistent with the ALJ’s finding that earlier records from the Miner’s hospitalizations at Wellspan Health/Good Samaritan Hospital (Good Samaritan) support the doctors’ finding of total disability.¹⁸ *Id.* at 23-25.

¹⁸ The Miner was hospitalized at Wellspan Health/Good Samaritan Hospital at various times in a three-month period: December 21, 2018 through December 26, 2018; February 21, 2019 through March 1, 2019; and March 11, 2019 through March 20, 2019. He was treated for respiratory distress, acute chronic kidney failure with renal insufficiency, obstructive nephropathy, acute hypoxemic respiratory failure, hyperkalemia requiring emergent dialysis, acute pulmonary edema, acute chronic congestive heart failure, and paroxysmal atrial fibrillation. Decision and Order at 13-14; Claimant’s Exhibits 1-4. His treatment included dialysis, nebulizer treatment, and supplemental oxygen. Claimant’s Exhibits 1, 3, 4. After these hospitalizations, the Miner was seen at

Claimant is correct that the ALJ indicated Drs. Kraynak's and Simelaro's opinions tend to support the conclusion that the Miner had a totally disabling respiratory impairment, "as of the times he was hospitalized, from 12/2018 to 3/2019." Decision and Order at 14 (emphasis added). Dr. Simelaro opined that the Miner was disabled as of 2018 based on his review of the Good Samaritan records, which noted respiratory failure, accessory muscle usage, and wheeze, as well as the September 15, 2018 pulmonary function study, which he indicated demonstrated moderate to severe obstruction. Claimant's Exhibit 4. Dr. Kraynak opined his examinations of the Miner demonstrated restriction, periodic wheezing, constant shortness of breath, and constant oxygen usage near the end of his life; he noted that prior to his death, the Miner had several hospitalizations when he suffered from hypoxemia and respiratory distress. MC Director's Exhibit 111. As the ALJ notes, however, while the post-hospitalization records from Lebanon Internal Medicine do not reflect treatment of a respiratory disease, the records specify the Miner's shortness of breath and edema had improved with no complaints of dyspnea or cough, and they do not reflect the severity of pulmonary impairment demonstrated during the Miner's earlier hospitalizations. Decision and Order at 14-16; Employer's Exhibits 3-5.

Thus, the ALJ permissibly found their opinions undermined because they did not address this contradictory evidence. See *Kertesz*, 788 F.2d at 163; *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (an ALJ may assign less weight to a physician's opinion that reflects an incomplete picture of the miner's health).

Claimant further argues the ALJ erred in relying on more recent evidence demonstrating improvement, contrary to the progressive nature of pneumoconiosis, which is an irreversible disease. Claimant's Brief at 25. However, the ALJ did not accord more weight to the Miner's more recent treatment records because they showed improvement. Rather, the ALJ questioned the bases of the experts' opinions finding total disability that significantly relied on respiratory failure indicated during the Miner's hospitalizations, given that the doctors did not address the Miner's seeming lack of respiratory distress and complaints after his hospitalizations. Decision and Order at 16. Thus, the ALJ's explanation is adequate to comply with the Administrative Procedure Act (APA).¹⁹ See *Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997); see also *Piney*

Lebanon Internal Medicine on April 9, 2019, May 7, 2019, and May 29, 2019, for his "severe" chronic kidney disease. Decision and Order at 14; Employer's Exhibits 3-5.

¹⁹ The Administrative Procedure Act, 5 U.S.C. §500 *et seq.*, requires that every adjudicatory decision include "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).

Mountain Coal Co. v. Mays, 176 F.3d 753, 756, (4th Cir. 1999) (the APA does not demand perfection; if we understand what the ALJ did and why he did it, the APA is satisfied).

Finally, contrary to Claimant's contention that the ALJ imposed an "impossible burden of proof" upon her, the ALJ properly determined Claimant has the burden to affirmatively establish all elements of entitlement, including total disability. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730 (3d Cir. 1993); *Rafferty*, 9 BLR at 1-232; Decision and Order at 16; Claimant's Brief at 33.

Thus, we affirm the ALJ's finding that the medical opinion evidence did not support Claimant's burden to establish total disability. Decision and Order at 16. As no new evidence supports a finding of total disability and Claimant raises no other contentions regarding the prior findings,²⁰ we further affirm the ALJ's finding that Claimant failed to establish total disability and a basis for modification in the miner's claim. *Id.* Because Claimant failed to establish total disability, a required element of entitlement, we further affirm the denial of benefits in the miner's claim. *Trent*, 11 BLR at 1-27; Decision and Order at 16.

Survivor's Claim

In a survivor's claim where no statutory presumptions are invoked, a claimant must establish by a preponderance of the evidence that the miner had pneumoconiosis²¹ arising out of coal mine employment and his death was due to pneumoconiosis. See 20 C.F.R. §§718.202(a), 718.203, 718.205(b); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Failure to establish any one of these elements precludes an award of benefits.

²⁰ While Claimant generally argues the ALJ substituted his opinion for that of the medical experts, it is unclear what rulings she alleges constituted such an error. Claimant's Brief at 28-29.

²¹ "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). "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).

Trumbo, 17 BLR at 1-87-88. A miner's death will be considered due to pneumoconiosis²² if pneumoconiosis or complications of pneumoconiosis are direct causes of the miner's death or if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a "substantially contributing cause" if it hastens the miner's death. 20 C.F.R. §718.205(b)(6); *see Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006 (3d Cir. 1989).

The ALJ considered the Miner's death certificate, the medical opinions of Drs. Kraynak, Simelaro, and DuPont, and the Miner's treatment records.²³ Decision and Order at 22-23; SC Director's Exhibits 12, 13; Claimant's Exhibits 1-4, 6; Employer's Exhibits 1, 3-5. The Miner's death certificate listed "acute myocardial infarction" due to "atherosclerotic coronary artery disease" as the cause of death and listed acute chronic diastolic heart failure, hypertension, and paroxysmal atrial fibrillation as other conditions contributing to death. SC Director's Exhibit 11.

Dr. Kraynak opined that pneumoconiosis played a "significant role" in the Miner's death, noting the Miner developed chronic diastolic heart failure, which was likely "influenced" by his respiratory disease. SC Director's Exhibit 12. Dr. Simelaro opined that while the Miner's pneumoconiosis did not "acutely" kill him, it contributed to his death by "promoting arteriosclerosis affecting his heart and kidneys." Claimant's Exhibit 6. However, Dr. DuPont concluded that the Miner's death was not caused or contributed to by pneumoconiosis, but rather was due to his "severe underlying cardiac and renal disease." Employer's Exhibit 1.

The ALJ found Drs. Kraynak's and Simelaro's opinions not well-reasoned or documented and accorded them little weight. Decision and Order at 24. The ALJ found Dr. DuPont's opinions consistent with the records he reviewed, but noted the records did

²² Employer conceded the x-ray evidence supports a finding of clinical pneumoconiosis, per ALJ Odegard's finding. Hearing Transcript at 8-9; MC Director's Exhibit 43 at 12, 22. However, no such concession was made regarding legal pneumoconiosis which ALJ Odegard found was not established. *Id.* at 22. Neither ALJ Harris nor ALJ Morris further addressed the presence of legal pneumoconiosis. MC Director's Exhibit 96; Decision and Order at 21 (noting the presence of pneumoconiosis was established). Claimant does not challenge this aspect of ALJ Morris's decision.

²³ In addition to the Miner's treatment records submitted in the miner's claim, the record in the survivor's claim included multiple treatment notes from Dr. Kraynak, including visits between October 2, 2015 through June 19, 2019 and records from Valley Kidney Specialists dated October 3, 2018 and January 8, 2019. SC Director's Exhibit 13.

not address the circumstances of the Miner's death. *Id.* Weighing the evidence together, the ALJ found it insufficient to establish death causation. *Id.* at 25.

Claimant argues the ALJ substituted his opinion for that of Dr. Simelaro by citing the Miner's obesity as the "extent of his" reason for rejecting the doctor's opinion and in finding the medical studies that Dr. Simelaro cited to connect heart disease to pneumoconiosis only "marginally relevant" when, Claimant asserts, they were directly related to the Miner's death.²⁴ Claimant's Brief at 37. Further, she argues the ALJ erred in citing the Miner's other medical conditions in rejecting Dr. Kraynak's opinion because pneumoconiosis need not be the only cause of a miner's death. *Id.* at 37-38. She also contends the ALJ failed to consider Dr. Kraynak's superior understanding of the Miner's condition gained from being his treating physician. *Id.* at 38-39. We disagree.

Contrary to Claimant's arguments, the ALJ did not substitute his opinion for those of the physicians, but rather permissibly considered their opinions in light of the supporting evidence and their explanations. *See Kramer*, 305 F.3d at 211; *Balsavage*, 295 F.3d at 396-97. The ALJ noted that Dr. Simelaro opined pneumoconiosis contributed to the Miner's death, as medical studies have demonstrated chronic pulmonary obstructive disease (COPD)²⁵ increased the risk of developing heart disease, thus connecting pneumoconiosis to the Miner's death due to myocardial infarction. Decision and Order at 24; Claimant's Exhibit 6. But the ALJ found Dr. Simelaro's opinion unpersuasive, as the studies Dr. Simelaro relied upon addressed only increased statistical chances of heart disease in individuals with COPD and in previous miners, and so found them minimally relevant to the Miner specifically. Decision and Order at 24. He further found Dr. Simelaro did not address other risk factors for the Miner's heart disease addressed in the medical studies that were relevant to the Miner's condition, i.e., that he was morbidly obese. *Id.* An ALJ is not required to accept the theory of any physician but may weigh the evidence and draw his own inferences; thus, the ALJ did not err in discrediting Dr. Simelaro's opinion. *See Kertesz*, 788 F.2d at 163.

In addition, contrary to Claimant's argument, the ALJ considered that Dr. Kraynak was the Miner's treating physician but found his conclusion that pneumoconiosis played a

²⁴ Claimant also argues the ALJ improperly excluded some of the medical authorities Dr. Simelaro relied upon, an argument we rejected above. Claimant's Brief at 36-37.

²⁵ Moreover, ALJ Odegard found legal pneumoconiosis not established. MC Director's Exhibit 43 at 21. Thus, even assuming the Miner had chronic obstructive pulmonary disease, no findings have been made that it constituted legal pneumoconiosis.

significant role in the Miner's death appeared at odds with his own medical records. Decision and Order at 24. The ALJ noted that during the last few months of the Miner's life, Dr. Kraynak's treatment records do not seem to reflect any significant respiratory problems or note any treatment for respiratory issues, but rather focused on other health issues.²⁶ *Id.* Thus, the ALJ permissibly found Dr. Kraynak's opinion undermined as inconsistent with his treatment of the Miner. *See Balsavage*, 295 F.3d at 396-97 (it is within the ALJ's purview to consider the medical opinion evidence and draw his own conclusions regarding its credibility); *Kertesz*, 788 F.2d at 163.

Claimant's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Thus, we affirm the ALJ's findings that the evidence is insufficient to establish the Miner's death was due to pneumoconiosis. Decision and Order at 25.

Because Claimant did not establish that the Miner's death was due to pneumoconiosis, an essential element of entitlement in a survivor's claim under 20 C.F.R. Part 718, we affirm the ALJ's denial of benefits. *See* 20 C.F.R. §718.205; *Trumbo*, 17 BLR at 1-87-88; Decision and Order at 25.

²⁶ Specifically, the ALJ noted that at the Miner's last visit with Dr. Kraynak on June 19, 2019, just a few days before the Miner died, Dr. Kraynak recommended follow up only for urinary retention, congestive heart failure, and diabetes. Decision and Order at 23 (citing SC Director's Exhibit 13 at 46). Other treatment notes in 2019 indicated follow up for chronic kidney disease and atrial fibrillation but did not discuss respiratory diseases. *Id.* (citing SC Director's Exhibit 13 at 47-49, 52, 55).

Accordingly, the ALJ's Decision and Order Denying Benefits in Miner's Claim, on Request for Modification[] and Denying Benefits in Survivor's Claim is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge