U.S. Department of Labor

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

BRB No. 21-0391 BLA

LONNIE D. ROSS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SHAMROCK COAL COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 12/13/2022
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for Claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky for Employer.

Before: ROLFE, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2019-BLA-05765) rendered pursuant to the Black Lung

Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent miner's claim filed on June 25, 2018.[1]

The ALJ credited Claimant with 15.24 years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, the ALJ determined Claimant established a change in an applicable condition of entitlement[2] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in calculating the length of Claimant's coal mine employment and in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a brief, unless requested.

The Benefit Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in

[1] This is Claimant's third claim. The district director denied his first claim as abandoned. Director's Exhibit 1. A denial by reason of abandonment is "deemed a finding the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409. Claimant filed a second claim but withdrew it. Director's Exhibit 6. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant did not establish any element of entitlement in his prior claim, he had to submit evidence establishing at least one element to obtain review of the merits of his current claim. *See* 20 C.F.R. §725.309(c); *White*, 23 BLR at 1-3.

[3] 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

accordance with applicable law.[4] 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).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mine employment, or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he 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); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

Employer argues the ALJ erred in finding at least fifteen years of coal mine employment established. We disagree. The ALJ considered Claimant's deposition and hearing testimony, employment history forms, and Social Security Administration (SSA) earnings records. Decision and Order at 4-7; Director's Exhibits 13, 14; Hearing Transcript at 13-15, 18-21; Employer's Exhibit 1 at 44-52. He permissibly found Claimant's SSA earnings records and testimony to be the most probative evidence. *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984); Decision and Order at 6.

The ALJ applied the calculation method at 20 C.F.R. §725.101(a)(32)(iii) to calculate Claimant's employment.[5] Decision and Order at 5-7. He divided Claimant's yearly earnings as reported in his SSA earnings records by the coal mine industry's average yearly earnings for 125 days of employment, as reported in Exhibit 610 of the *Coal Mine*

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Employer's Exhibit 1 at 39-40; Hearing Transcript at 12.

[5] If an ALJ cannot ascertain the beginning and ending dates of a miner's coal mine employment, or the miner's employment lasted less than a calendar year, the ALJ may divide the miner's annual earnings by the average daily earnings for a coal miner as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual.* 20 C.F.R. §725.101(a)(32)(iii).

(*Black Lung Benefits Act*) *Procedure Manual*.[6] Decision and Order at 5-7. For each year in which Claimant's earnings met or exceeded the Exhibit 610 average yearly earnings for 125 days of employment, he credited Claimant with a full year of coal mine employment. *Id*. For the years in which Claimant's earnings fell short, he credited him with a fractional year, calculated by dividing Claimant's annual earnings by the Exhibit 610 average yearly earnings. *Id*. In applying this formula, the ALJ credited Claimant with 15.24 years of coal mine employment. *Id.*

Employer argues the ALJ erred in calculating coal mine employment for the years 1990 and 1991 because it asserts he credited Claimant with employment during a time when he had been fired by Employer (Shamrock Coal) and thus was not involved in coal mining.[7] Employer's Brief at 3-4. We are not persuaded by its argument.

Claimant testified he was fired sometime in 1990 for filing a whistleblower action and did not work in coal mining for a period of fifteen months between 1990 and 1991. Hearing Transcript at 19; Employer's Exhibit 1 at 46. He further testified that after winning a lawsuit, he received his job back as well as back pay for the time that he was out of work. Employer's Exhibit 1 at 46-47. Contrary to Employer's argument, the ALJ did not include Claimant's backpay wages when calculating the length of his 1990 and 1991 coal mine employment. Employer's Brief at 3-4. As the ALJ correctly noted, Claimant testified that his backpay wages for the fifteen-month period when he was out of work in the years 1990 and 1991 are reflected in the year 1993 in his SSA earnings records. Decision and Order at 5, 7 n.19; *see* Employer's Exhibit 1 at 47. The ALJ found Claimant's SSA earnings records corroborated his testimony, showing "Claimant earned $42,686.27 for a year of coal mine work in 1989 with Shamrock," then his earnings "dropped during 1990 to $26,394.90" when Claimant was fired, and finally he "earned $8,935.74 with Shamrock, which is consistent with Claimant's testimony that he was rehired during 1991." Decision and Order at 5. Thus the ALJ properly accounted for the fifteen month period when Claimant was not working for Employer when calculating his coal mine employment in the years 1990 and 1991.[8] *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406-07 (6th Cir. 2019).

[6] The "average yearly earnings" figures appear in the center column of Exhibit 610 and reflect multiplication of the "average daily wage" by 125 days.

[7] We affirm, as unchallenged, the ALJ's finding of 13.99 years of coal mine employment for the years 1978-1989 and 1992-1997. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see* Decision and Order at 4-8.

[8] To the extent these backpay wages are reflected in any other years in Claimant's SSA earnings records, the ALJ highlighted that Claimant had $82,589.05 in earnings in the

Based on Claimant's testimony and his SSA wages for the applicable years, the ALJ rationally credited Claimant with 1.52 years of coal mine employment in the years 1990 and 1991. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 5-7.

Because it is supported by substantial evidence, we affirm the ALJ's finding Claimant established 15.24 years of coal mine employment. Employer does not challenge the ALJ's finding that all of Claimant's coal mine employment occurred underground for purposes of invoking the Section 411(c)(4) presumption. Decision and Order at 7. We therefore also affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(b)(1)(i); Decision and Order at 8, 18.

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

A miner is totally disabled if he has a pulmonary or respiratory impairment that, standing alone, prevents him from performing his usual coal mine work.[9] *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. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv).[10]

Employer argues the ALJ erred in weighing the medical opinions. Employer's Brief at 6-10. We disagree. The ALJ weighed Dr. Ajjarapu's opinion that Claimant is totally disabled by a respiratory or pulmonary impairment and the contrary opinions of Drs. Dahhan and Tuteur that he is not. Decision and Order at 13-17; Director's Exhibits 17, 27;

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year 1992. Decision and Order at 7; Director's Exhibit 12. This is almost twice as much as Claimant earned for one year of coal mine employment in 1989.

[9] The ALJ found Claimant's usual coal mine employment was working "as a scoop operator and required heavy manual labor during each shift." Decision and Order at 14. We affirm this finding is unchallenged. *Skrack*, 6 BLR at 1-711.

[10] The ALJ found Claimant did not establish total disability based on the pulmonary function and arterial blood gas study evidence, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 7, 12-13.

Employer's Exhibits 5, 12; Claimant's Exhibit 1. He found Dr. Ajjarapu's opinion reasoned and documented and the opinions of Drs. Dahhan and Tuteur unpersuasive. Decision and Order at 13-17. He also found Dr. Tuteur relied on evidence the parties did not designate, and thus he further discredited his opinion for that reason. *Id*. at 16-17.

Dr. Ajjarapu

Employer argues the ALJ erred in finding Dr. Ajjarapu's opinion reasoned and documented. Employer's Brief at 8-13. We disagree.

Dr. Ajjarapu noted Claimant's work as a scoop operator required him to haul rock dust and lift very heavy objects fifty percent of the time. Director's Exhibit 17. In addition, she noted Claimant experienced daily wheezing, frequent coughing, and dyspnea when walking on a level surface fifty to one-hundred feet. *Id*. She opined Claimant's July 31, 2018 pulmonary function study is consistent with a severe pulmonary impairment. *Id*. Ultimately, she concluded Claimant is totally disabled by this impairment because his job as a scoop operator required heavy exertional work. *Id*.

After reviewing Claimant's December 17, 2018 pulmonary function study, Dr. Ajjarapu reiterated that Claimant is totally disabled. Claimant's Exhibit 1 at 15. She noted "the values [from this study] still . . . show that [Claimant] has a moderate degree of pulmonary impairment" and "he would not be able to do what was required of him day in and day out with the exertional requirements that are needed for his job." *Id*.

The ALJ found "Dr. Ajjarapu based her opinion upon relevant histories, physical examination, and Claimant's July 31, 2018 and December 17, 2018" valid pulmonary function studies. Decision and Order at 14-15. He also found "Dr. Ajjarapu demonstrated an understanding of the exertional requirements of Claimant's usual coal mine work" and her opinion consistent with the testing she reviewed. *Id*. Finally, the ALJ found she explained "how Claimant's ventilatory limitation seen on" pulmonary function testing precludes Claimant from performing his usual coal mine work." *Id*. Thus, the ALJ permissibly found Dr. Ajjarapu's opinion reasoned and documented.[11] *Napier*, 301 F.3d at 713-14; *Rowe*, 710 F.2d at 255; Decision and Order at 14-15.

[11] Although Dr. Ajjarapu also diagnosed complicated pneumoconiosis, the ALJ permissibly credited her total disability opinion because it was based on the pulmonary function testing that evidences an obstructive impairment and the doctor's explanation for how the obstructive impairment prevents Claimant from performing his usual coal mine employment. *Napier*, 301 F.3d at 713-14; *Rowe*, 710 F.2d at 255; Decision and Order at 14-15.

Employer argues the ALJ erred in crediting Dr. Ajjarapu's opinion because the ALJ erroneously found Claimant's July 31, 2018 pulmonary function study valid. Employer's Brief at 9-13. This argument is not persuasive.

When addressing a pulmonary function study conducted in anticipation of litigation, an ALJ must determine whether it is in substantial compliance with the regulatory quality standards.[12] 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see also* 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ must then, in his role as factfinder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987); *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are suspect or unreliable).

Dr. Vuskovich opined the July 31, 2018 pulmonary function study is invalid. Director's Exhibit 28 at 6. He asserted Claimant failed to "put forth the effort required to generate valid spirometry results." *Id.* He explained as follows:

> [Claimant's] deep breath efforts were variable. Not taking an initial deepest breath possible artificially lowered his FVC and FEV1 results. He prematurely terminated his expiratory efforts which artificially lowered his FVC result. He did not generate smooth continuous exhalation efforts as required. He did not generate three acceptable trials with tracings as required. His respiratory rate and tidal volume were not sufficient to generate a valid MVV result.

Id. In acknowledging the administering technician's comments that Claimant provided "good effort," Dr. Vuskovich explained pulmonary function testing is "not a 'good' effort

[12] An ALJ must consider a reviewing physician's opinion regarding a claimant's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

test. It is a maximum effort test." *Id.* He explained tracings are necessary "to determine whether or not a subject put forth maximum effort."[13] *Id.*

As the ALJ noted, Appendix B to 20 C.F.R. Part 718 sets out the quality standards for the administration of pulmonary function studies. A miner's effort "shall be judged unacceptable" when there is "excessive variability between the three acceptable curves. The variation between the two largest FEV1's of the three acceptable tracings should not exceed [five] percent of the largest FEV1 or 100 [milliliters (mL)] , whichever is greater. . . . Failure to meet this standard should be clearly noted in the test report by the physician conducting or reviewing the test." 20 C.F.R. Part 718, App. B. The ALJ noted Claimant's best three FEV1 values on the July 31, 2018 study are 1,850 mL, 1,840 mL, and 1,750 mL. Decision and Order at 10; *see* Director's Exhibit 17. Thus the variation between the two highest FEV1 values is ten mL or less than 0.01% of the largest FEV1. Decision and Order at 10. Contrary to Employer's argument, the ALJ permissibly found the results of the study contradicted Dr. Vuskovich's opinion that variation in the FEV1 values establish Claimant did not put forth maximum effort. *See Napier,* 301 F.3d at 713-14; *Rowe,* 710 F.2d at 255; *Keener,* 23 BLR at 1-237; 20 C.F.R. §718.103(c); Decision and Order at 10; Employer's Brief at 10-12.

Next, the ALJ found Dr. Vuskovich failed to explain how he determined the following: (1) "Claimant did not take an initial deepest breath possible" (2) the "spirometry computer printout volume-time display scale factor does not comply with ATS standards," and (3) the "equipment artificially shows poor-initial-effort volume time tracings as maximum efforts." Decision and Order at 10-11, *citing* Director's Exhibit 28. Thus the ALJ permissibly found his invalidation of the July 31, 2018 study inadequately explained.[14] *See Napier,* 301 F.3d at 713-14; *Rowe,* 710 F.2d at 255; Decision and Order at 10-11.

The ALJ also acknowledged Dr. Tuteur opined "Claimant's pre-bronchodilator MVV values [a]re invalid," but permissibly found he "neither identified how the MVV

[13] Dr. Vuskovich further stated the "spirometry computer printout volume-time display scale factor ratio" failed to meet the American Thoracic Society standards and the "equipment artificially shows poor-initial effort volume time tracings as maximum effort tracings." Director's Exhibit 28 at 6.

[14] Because the ALJ provided valid reasons for according less weight to Dr. Vuskovich's opinion regarding the validity of the July 31, 2018 pulmonary function study, we need not address Employer's additional allegations of error regarding the ALJ's consideration of his opinion. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

maneuvers fail to comply with the quality standards nor how the non-compliance renders the results unreliable." Decision and Order at 11; *see Napier*, 301 F.3d at 713-14; *Rowe*, 710 F.2d at 255; Employer's Exhibit 5. Because Employer failed to establish the July 31, 2018 pulmonary function study is suspect or unreliable, *Vivian*, 7 BLR at 1-361, we affirm the ALJ's finding that the July 31, 2018 pulmonary function study is valid and therefore does not undermine Dr. Ajjarapu's reliance on the study.

Employer argues that Dr. Ajjarapu's opinion is not adequately reasoned on the issue of total disability. Employer's Brief at 9-13. We consider Employer's argument to be a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus we affirm the ALJ's finding that Dr. Ajjarapu's opinion is reasoned and documented. Decision and Order at 14-15.

Dr. Dahhan

Employer argues the ALJ erred in discrediting Dr. Dahhan's opinion. We disagree. Dr. Dahhan noted Claimant's December 17, 2018 pulmonary function and arterial blood gas studies are non-qualifying.[15] Director's Exhibit 27 at 2-3. Although he stated Claimant "showed inconsistent effort with premature termination of airflow" when performing the December 17, 2018 pulmonary function study, Dr. Dahhan did not opine this study is invalid.[16] *Id.* Rather, he diagnosed Claimant with a mild restrictive ventilatory impairment based on the study's FVC values. *Id.* He also noted the study had an FEV1 value 64% of

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

[16] Although Employer summarily states that the December 17, 2018 study is invalid when discussing Dr. Dahhan's opinion, Employer's Brief at 7-8, the ALJ correctly found "Dr. Dahhan did not specifically opine that the [study is] invalid, or that it could not be used to make a disability determination." Decision and Order at 12. Further, after reviewing the tracings for this study, the medical opinions of Drs. Tuteur and Dahhan, and the notations of the administering technicians, the ALJ found the evidence insufficient to establish the study is invalid. *Id.* Thus he found the study "sufficiently reliable." *Id.* Employer identifies no error in this finding. Thus we affirm it. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b).

predicted. *Id*. Ultimately, he concluded Claimant is not totally disabled from his usual coal mine employment "operating a scoop," or as a roof bolter and shuttle car operator. *Id*. at 1, 3. The ALJ rationally discredited Dr. Dahhan's opinion because he did not set forth "an understanding of the exertional requirements of Claimant's usual coal mine work" or "explain how Claimant could perform the heavy manual labor associated with his usual coal mine work when considered" with his mild restrictive impairment or the reduced FEV1 value. Decision and Order at 15-16; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991) (a physician who asserts a claimant is capable of performing assigned duties should state his knowledge of the physical efforts required and relate them to the miner's impairment); *Walker v. Director, OWCP*, 927 F.2d 181, 184-85 (4th Cir. 1991). Thus we affirm the ALJ's discrediting of Dr. Dahhan's opinion.

Dr. Tuteur

Employer contends the ALJ erred in discrediting Dr. Tuteur's opinion as inadequately explained. Employer's Brief at 7-8. But it does not challenge two of the ALJ's credibility findings. The ALJ found Dr. Tuteur did not identify Claimant's usual coal mine employment or the exertional requirements of that job and thus his opinion is not credible. *Cornett*, 227 F.3d at 587; *Eagle*, 943 F.2d at 512-13; *Walker*, 927 F.2d at 184-85; Decision and Order at 16. In addition. the ALJ found Dr. Tuteur reviewed and relied on pulmonary function testing that the parties did not designate, thus further undermining the credibility of his opinion on total disability. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004); Decision and Order at 16-17. Employer does not specifically challenge these findings. Thus we affirm them. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); *Skrack*, 6 BLR at 1-711; 20 C.F.R. §802.211(b).

The ALJ also noted Dr. Tuteur diagnosed a mild restrictive lung impairment based on pulmonary function testing, but the doctor did not explain why this impairment does not prevent Claimant from performing his usual coal mine employment. *Napier*, 301 F.3d at 713-14; *Cornett*, 227 F.3d at 587; Decision and Order at 16-17; Employer's Exhibits 5, 12. Employer argues the ALJ erred in making this finding because Dr. Tuteur credibly explained that any pulmonary function study abnormality is due to an extrinsic condition such as obesity rather than an intrinsic pulmonary process. Employer's Brief at 7-8; Employer's Exhibits 5, 12. Employer conflates the issues of total disability and causation. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the

Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). Thus we affirm the ALJ's discrediting of Dr. Tuteur's opinion.

Thus, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion evidence under 20 C.F.R. §718.204(b)(2)(iv). We also affirm the ALJ's finding that Claimant established total respiratory disability when considering the record as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232. Consequently, we affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305. Because Employer does not challenge the ALJ's finding that it failed to rebut the presumption, we therefore also affirm the award of benefits. *See Skrack*, 6 BLR at 1-711; Decision and Order at 18-27.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge