**U.S. Department of Labor**

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

BRB Nos. 22-0545 BLA
and 22-0546 BLA

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| OLLIE C. DYE<br>(o/b/o and Widow of CHARLES W. DYE)<br><br>Claimant-Respondent<br><br>v.<br><br>MEADOWS COAL COMPANY<br><br>and<br><br>OLD REPUBLIC INSURANCE COMPANY<br><br>Employer/Carrier-<br>Petitioners<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | DATE ISSUED: 02/27/2024<br><br>DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Sarah M. Hurley (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2020-BLA-05795 and 2021-BLA-05789) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on April 25, 2018,[1] and a survivor's claim filed on February 5, 2021.[2]

The ALJ found Employer is the properly designated responsible operator. She credited the Miner with 19.38 years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined Claimant 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] and

[1] This is the Miner's third claim for benefits. Miner's Claim (MC) Director's Exhibits 1, 2. On June 7, 2011, ALJ Richard T. Stansell-Gamm denied his most recent prior claim because he did not establish pneumoconiosis or total disability. MC Director's Exhibit 2.

[2] Claimant is the widow of the Miner, who died on December 26, 2020, while his claim was pending before ALJ Jodeen M. Hobbs (the ALJ). MC Director's Exhibit 46. She is pursuing the miner's claim on his behalf and her survivor's claim. *Dye v. Meadows Coal Co.*, Case Nos. 2020-BLA-05795 and 2021-BLA-05789 (Nov. 3, 2021) (Order) (unpub.); MC Director's Exhibit 63. Employer's appeal in the miner's claim was assigned BRB No. 22-0545 BLA, and its appeal in the survivor's claim was assigned BRB No. 22-0546 BLA. The Benefits Review Board has consolidated these appeals for purposes of decision only. *Dye v. Meadows Coal Co.*, BRB Nos. 22-0545 BLA and 22-0546 BLA (Oct. 25, 2022) (Order) (unpub.).

[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

established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c).[4] She further found Employer did not rebut the presumption and awarded benefits in the miner's claim. Because the Miner was entitled to benefits at the time of his death, the ALJ found Claimant automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[5]

On appeal, Employer asserts the ALJ erred in determining it is the responsible operator. It also contends the ALJ erred in admitting Dr. Green's supplemental medical report under the Department of Labor (DOL) pilot program. On the merits, Employer argues the ALJ erred in finding the Miner had a totally disabling impairment. Alternatively, it argues the ALJ erred in finding it failed to rebut the presumption. Claimant responds in support of the awards of benefits.[6] The Director, Office of Workers' Compensation Programs (the Director), filed a limited response urging the Board to reject Employer's responsible operator challenges and its challenge to Dr. Green's report obtained pursuant to the pilot program.

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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(b).

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she 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). ALJ Stansell-Gamm denied the Miner's most recent prior claim because the evidence did not establish pneumoconiosis or total disability; therefore, Claimant had to submit new evidence establishing at least one of these elements of entitlement to warrant review of the Miner's subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

[5] Section 422(*l*) of the Act provides that 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 benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[6] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 19.38 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11.

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, 361-62 (1965).

**Responsible Operator**

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R. §725.495(a)(1). To meet the regulatory definition of a "potentially liable operator," the coal mine operator must have employed the miner for a cumulative period of not less than one year and be financially capable of assuming liability for the payment of benefits.[8] 20 C.F.R. §725.494(c). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director properly identifies a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

The district director issued a Notice of Claim to Employer on September 13, 2018, stating it had been identified as a potentially liable operator. MC Director's Exhibit 25. Employer filed a response on September 18, 2018, generally denying liability for the claim. Director's Exhibit 28.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.6; MC Director's Exhibits 5, 7, 8.

[8] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

On June 18, 2019, the district director issued the Schedule for the Submission of Additional Evidence (SSAE) stating the Miner worked for Employer (Meadows Coal Company) for at least one year from 1964 to 1968, 1973 to 1976, and from 1978 to 1979. MC Director's Exhibit 29 at 10. The district director recognized the Miner subsequently worked for R & H Coal Company (R & H) from 1979 to 1984 and from 1987 to 1994 but did not identify it as a potentially liable operator because it is not financially capable of assuming liability.[9] *Id.* at 10-11; *see* 20 C.F.R. §725.494(e). Specifically, the district director explained R & H is insolvent, it was not covered by an insurance policy or approved to self-insure on the date it last employed the Miner, the Virginia State Corporation Commission had purged all records concerning R & H from its files, and the owners of that company could not be located. MC Director's Exhibit 29 at 11; *see* 20 C.F.R. §725.494(e).

In its response to the SSAE, Employer again generally argued it is not liable for the payment of benefits. MC Director's Exhibit 33. Employer did not submit any liability evidence. On February 25, 2020, the district director issued a Proposed Decision and Order awarding benefits and naming Employer as the responsible operator. MC Director's Exhibit 35. Employer requested a hearing on the issues of its liability and Claimant's entitlement, and the case was referred to the Office of Administrative Law Judges. MC Director's Exhibits 47, 50.

At the hearing before the ALJ on December 9, 2021, Employer argued R & H should have been identified as the potentially liable operator instead of Employer because it more recently employed the Miner for more than one year. Hearing Transcript at 28. Employer acknowledged the district director filed the statements required by 20 C.F.R. §725.495(d) which indicated R & H was not identified as a potentially liable operator because it is insolvent and uninsured. *Id.* However, Employer argued the submitted statements were insufficient because they had been developed in connection with the Miner's prior claim. *Id.* at 28-29. It further asserted R & H is financially capable of assuming liability because the Virginia Uninsured Employer's Fund (Uninsured Fund) and the Virginia Property

[9] The district director also acknowledged that, subsequent to Employer, the Miner also worked for Roger Brown Coal for 0.75 years from 1979 to 1981, Evie Coal Company, Incorporated for 0.35 years in 1986, Wilco Mining, Incorporated for 0.46 years in 1986, D & F Logging, Incorporated for less than one year, and Doncar, Incorporated for 0.36 years from November 1994 to March 1995, but did not identify them as potentially liable operators because they did not employ the Miner for at least one year. MC Director's Exhibit 29 at 10-11.

Casualty and Insurance Guarantee Association (VPCIGA) guaranteed the liability of R & H. *Id.* at 28.

In its post-hearing brief, Employer reiterated its assertion that the DOL had failed in its obligations to properly investigate R & H's financial capability of assuming liability because it had not submitted a 20 C.F.R. §725.494(d) statement in connection with the Miner's present claim. Employer's Post-Hearing Brief at 15-17. It further reiterated its contention that the Uninsured Fund and VPCIGA guarantee R & H's liability, arguing that Virginia "created the [U]ninsured [F]und to provide coverage for Workers' Compensation claims when the employer is uninsured" and the VPCIGA to "provide coverage when insurers are insolvent." *Id.* at 16-20.

The Director responded, arguing that "any evidence submitted in connection with a prior claim[ ] is part of the record in this claim unless it was excluded in the adjudication of the prior claims," and that the statements required by 20 C.F.R. §725.495(d) developed in connection with the Miner's prior claim were thus part of the record in the Miner's present claim. Director's Post-Hearing Brief at 5. He further argued the Uninsured Fund only covers claims arising under Virginia law and would thus not cover this claim arising under federal law. *Id.* at 6. In addition, he asserted that, although the VPCIGA may potentially be liable if an employer's carrier becomes insolvent, there is no evidence to suggest that R & H's carrier became insolvent but rather the evidence establishes that R & H was uninsured on the last day it employed the Miner. *Id.* at 6-7. Therefore, he asserted Employer is the correctly identified responsible operator. *Id.* at 7.

In her Decision and Order, the ALJ determined that the statements required by 20 C.F.R. §725.495(d) developed in connection with the Miner's prior claim had been properly admitted in the present claim and thus satisfied the DOL's burden. Decision and Order at 6 (citing MC Director's Exhibit 1 at 54, 178). She further agreed with the Director's position that the Uninsured Fund and VPCIGA did not guarantee R & H's liability, and that the district director therefore correctly found R & H is not a potentially liable operator. *Id.*

On appeal, Employer argues, for the first time, that the Black Lung Disability Trust Fund (Trust Fund) should be liable for benefits because the DOL failed to enforce the insurance coverage regulations against R & H prior to its bankruptcy. Employer's Brief at 25-27. As is noted above, however, Employer raised multiple arguments before the district director and the ALJ to support its assertion that it should not be held liable for benefits in this claim but did not raise this assertion until its appeal to the Board. Director's Exhibits 28, 33, 47, 61; Employer's Post-hearing Brief at 15-20. As it failed to assert before the ALJ that it should be absolved of liability because the DOL failed to enforce the insurance

coverage regulations against R & H, we decline to address its arguments.[10] 20 C.F.R. §802.301(a) (Board's review authority limited to "findings and conclusions of law on which the decision or order appealed from was based"); *see Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-4-7 (1995); Employer's Post-Hearing Brief.

Employer further asserts the Trust Fund should be liable for benefits because the DOL failed to notify the Uninsured Fund of its potential liability. Employer's Brief at 27-31. The Director responds that the Uninsured Fund applies only to cases arising under the Virginia Workers' Compensation Act, not federal law, and that he is not obligated to notify a party of a claim for which it cannot be held liable as a matter of law. Director's Response Brief at 7-8. Similarly, it argues that VPCIGA coverage is not available, so it also cannot be held liable.

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, rejected Employer's argument in *RB & F Coal, Inc. v. Mullins,* 842 F.3d 279, 283, 286-87 n.9 (4th Cir. 2016). In that case, the Fourth Circuit affirmed the ALJ's and the Board's holdings that "the district director had no duty to notify the [VPCIGA] or name it as a party" for claims for which "the Guaranty Association is not liable."[11] *Mullins,* 842 F.3d at 283. We agree with the Director's arguments that the Uninsured Fund and the VPCIGA cannot provide coverage for this claim. Director's Brief at 7. For the reasons set forth in *Mullins,* the Director had no obligation to notify VPCIGA. With respect to the Uninsured Fund, we note Employer submitted no evidence before the district director or the ALJ showing that the Uninsured Fund would cover this claim. Further, the Virginia legislature created the Fund to provide for workers' compensation benefits awarded against any uninsured or self-insured employer under any provision of the Virginia Workers' Compensation Act. Va. Code §65.2-1201(A). Thus, it is specifically for workers' compensation claims arising under Virginia law. Because this claim arises under federal law, the Uninsured Fund cannot provide coverage for the Miner's claim or the survivor's

[10] Even had Employer preserved its argument, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that, as the Director correctly notes, the Trust Fund is not required to assume liability if the DOL failed to ensure that a later operator-employer "secured its future ability to pay benefits." Director's Response Brief at 8 (quoting *Armco, Inc. v. Martin,* 277 F.3d 468, 475-76 (4th Cir. 2002)).

[11] The Fourth Circuit's rationale in *RB & F Coal, Inc. v. Mullins,* 842 F.3d 279, 283, 286-87 n.9 (4th Cir. 2016), is equally applicable to the Uninsured Fund.

claim.[12] *See id.* As the Uninsured Fund cannot guarantee the obligations of R & H, Employer cannot establish that it would provide coverage for this claim nor, contrary to Employer's contention, can the Trust Fund be liable on the basis that the Uninsured Fund should have been notified of liability. *See* 20 C.F.R. §725.495(c)(2). We therefore affirm the ALJ's finding that Employer is the responsible operator. Decision and Order at 6-7; 20 C.F.R. §725.495(c), (d).

**Evidentiary Issue**

Employer contends the ALJ erred by failing to address its objections to admitting and considering the supplemental opinions of Dr. Green obtained as part of the DOL pilot program. Employer's Brief at 21-25. Employer asserts the DOL has no legal authority to request supplemental opinions under the pilot program, that the pilot program deprives it of due process, that the implementation of the pilot program, without notice and comment, violates the Administrative Procedure Act (APA), and that the pilot program transforms the DOL into an advocate for claimants. *Id.* For the reasons set forth in *Smith v. Kelly's Creek Res.*, BLR , BRB No. 21-0329 BLA, slip op. at 7-12 (June 27, 2023), we reject Employer's arguments.

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

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or 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 Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-11 (4th Cir. 2000) (all types of relevant evidence must be weighed together); *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 the pulmonary function and blood gas studies did not establish total disability and that there was no evidence of cor pulmonale; however, the medical opinion evidence supported finding total

[12] We reject Employer's assertion that *Mounts* stands for the proposition that the Uninsured Fund is liable for this claim. Employer's Brief at 29-30 (citing *Uninsured Employer's Fund v. Mounts*, 484 S.E.2d 140 (Va. Ct. App. 1997), *aff'd*, 497 S.E.2d 464 (Va. 1988)). *Mounts* is distinguishable from this case because it involved a Virginia state workers' compensation claim. 484 S.E.2d at 466

disability and when weighed as a whole, the evidence established total disability.[13] 20 C.F.R. §718.204(b)(2)(iv).

Before weighing the medical opinions, the ALJ addressed the exertional requirements of the Miner's usual coal mine work as a shuttle car operator. Decision and Order at 11-13. She considered the Miner's Form CM-913 (Description of Coal Mine Work), his employment history forms, his testimony before ALJ Stansell-Gamm, his statements to Drs. Green, Fino, Nader, Fino, and Basheda, and Claimant's hearing testimony. *Id.* (citing Hearing Transcript at 43; MC Director's Exhibits 2, 5, 6, 15, 18; MC Claimant's Exhibit 2; MC Employer's Exhibit 6). Specifically, the ALJ noted the Miner testified before ALJ Stansell-Gamm that his job as a shuttle car operator required "pretty heavy work." MC Director's Exhibit 2 at 78. Further, she noted Dr. Fino reported the Miner last worked as a shuttle car operator and that this position required ten percent "very heavy labor," forty percent "heavy labor," forty percent "moderate labor," and ten percent "light labor." MC Director's Exhibit 18 at 3. And likewise, Drs. Green and Nader reported the Miner's last coal mining job as a shuttle car operator required heavy labor. MC Director's Exhibit 20 at 3; MC Claimant's Exhibit 2 at 1. Based on this evidence, she determined the Miner's usual coal mine work required that he shovel loose coal, move a belt and cable, and overall required moderate to heavy exertion. Decision and Order at 13.

Employer contends the evidence shows the Miner's work was "far less demanding," Employer's Brief at 14, 17-18, but its argument amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's determination that the Miner's usual coal mine work required moderate to heavy exertion.[14] Decision and Order at 13.

The ALJ next considered the medical opinions of Drs. Green and Nader that the Miner was totally disabled and the contrary opinions of Drs. Fino and Basheda that he was not. Decision and Order at 18-24; MC Director's Exhibits 15, 20, 23; MC Claimant's Exhibit 2; MC Employer's Exhibits 1, 6, 11, 12; Survivor's Claim (SC) Exhibits 8, 9.

[13] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 15-17.

[14] We thus reject Employer's assertion that Drs. Green and Nader, who opined the Miner's usual coal mine work required lifting fifty to one-hundred pounds at a time, did not understand the exertional requirements of the Miner's usual coal mine work. Decision and Order at 12-13; MC Director's Exhibits 15 at 3; 20 at 2; MC Claimant's Exhibit 2 at 2; Employer's Brief at 14-15.

Crediting the opinions of Drs. Green and Nader over those of Drs. Fino and Basheda, the ALJ found the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 24-25.

Employer contends the ALJ erred in crediting the opinions of Drs. Green and Nader, in discrediting the opinions of Drs. Fino and Basheda, and in failing to explain her credibility determinations. Employer's Brief at 9-18. We disagree.

Dr. Green initially opined the Miner was totally disabled due to hypoxemia, as demonstrated by the July 10, 2018 arterial blood gas study, as well as his symptoms of shortness of breath and chronic cough. MC Director's Exhibit 15 at 3. In a supplemental opinion, Dr. Green further explained that the July 10, 2018 blood gas study showed significant hypoxemia and an abnormally high alveolar-arterial oxygen gradient, that the Miner was "working hard with hyperventilation," and that he was thus unable to perform his usual coal mine work, which required lifting fifty to one-hundred pounds at a time. MC Director's Exhibit 20 at 2. Dr. Green authored a second supplemental report on February 5, 2020, again opining the Miner was totally disabled due to an impaired gas exchange and hypoxemia, so he could not perform his usual coal mine work.[15] MC Director's Exhibit 23 at 2. Dr. Nader likewise opined, based on the July 28, 2020 arterial blood gas testing, that the Miner had "significant hypoxemia" and was "unable to perform the specific task requirement[s of his] last coal mine job." MC Claimant's Exhibit 2 at 3.

Dr. Fino conceded the Miner had "mild resting hypoxemia," based on his arterial blood gas testing, but attributed it to obesity rather than a respiratory or pulmonary impairment and opined the Miner could have returned to his last coal mining job. MC Director's Exhibit 18 at 11; MC Employer's Exhibits 1 at 10; 11 at 5; SC Employer's Exhibit 8 at 5. Dr. Basheda opined the Miner had no oxygenation impairment or other respiratory or pulmonary impairment, and that he could have returned to his usual coal mining work. MC Employer's Exhibit 6 at 8; SC Employer's Exhibit 9 at 13.

Contrary to Employer's contention, the ALJ was not required to discredit Drs. Green's and Nader's opinions because they based their conclusions on non-qualifying

[15] Thus, contrary to Employer's argument, Employer's Brief at 13-14, Dr. Green did not base his disability opinion on an assertion that it would be harmful for the Miner to return to coal mine employment but rather based it on his inability to perform the exertional requirements of his last coal mining job. MC Director's Exhibits 15 at 3; 20 at 2; 23 at 2.

studies.[16] Employer's Brief at 10-14. As the ALJ observed, the regulations provide that despite non-qualifying pulmonary function studies or blood gas studies, total disability may be established if a physician, exercising reasoned medical judgment based on medically acceptable diagnostic techniques, concludes the miner's respiratory or pulmonary condition prevented him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21. Thus, a physician may offer a reasoned medical opinion diagnosing total disability even though the objective studies are non-qualifying. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Decision and Order at 19.

Here, the ALJ acknowledged the underlying objective studies are non-qualifying but permissibly found Drs. Green's and Nader's opinions well-reasoned because they explained that the hypoxemia demonstrated by the blood gas studies would prevent the Miner from performing the exertional requirements of his last coal mining job. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Compton*, 211 F.3d at 211; *Scott*, 60 F.3d at 1142. Thus, having found Drs. Green and Nader qualified to offer an opinion and that they understood the exertional requirements of the Miner's usual coal mine employment, she permissibly found their opinions well-documented and reasoned. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 19, 21-22.

Conversely, the ALJ permissibly found the opinions of Drs. Fino and Basheda not well-reasoned because they did not explain why the Miner's hypoxemia would not prevent him from performing the exertional requirements of his last coal mine job. *See Looney*, 678 F.3d at 310, 316-17; *Akers*, 131 F.3d at 441; Decision and Order at 21, 24; MC Employer's Exhibits 1, 6, 11, 12. Because Employer has not identified any specific error in these findings beyond its assertion that the ALJ erred in finding the Miner's coal mine work required moderate to heavy exertion, which we have already rejected, we affirm her rationales for discrediting the opinions of Drs. Fino and Basheda.[17] *See Looney*, 678 F.3d

[16] A "qualifying" blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix C, for establishing total disability. 20 C.F.R. §718.204(b)(2)(ii). A "non-qualifying" study exceeds those values.

[17] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Fino and Basheda, we need not address Employer's additional arguments regarding the weight

at 310, 316-17; *Akers*, 131 F.3d at 441; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Thus, we affirm the ALJ's finding that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption in the miner's claim. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309(c); *see Eastern Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511 (4th Cir. 2015).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[18] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

**Legal Pneumoconiosis**

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

Employer relies on the medical opinions of Drs. Fino and Basheda. Dr. Fino opined the miner had mild hypoxemia caused by obesity and unrelated to coal mine dust exposure. MC Director's Exhibit 18 at 11; MC Employer's Exhibit 11 at 6. Dr. Basheda diagnosed intermittent asthma unrelated to coal mine dust exposure but opined the Miner did not have

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the ALJ assigned them. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 13-18.

[18] "Legal pneumoconiosis" includes any "chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment that is 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).

any oxygenation impairment. MC Employer's Exhibits 6 at 8; 12 at 27; SC Employer's Exhibit 9 at 13. The ALJ found the opinions of Drs. Fino and Basheda not well-reasoned and thus found Employer failed to disprove the existence of legal pneumoconiosis.

Employer asserts the ALJ erred in rejecting the opinions of Drs. Fino and Basheda. Employer's Brief at 5-14. We disagree. The ALJ permissibly discredited Dr. Fino's opinion because he did not adequately explain why the Miner's nineteen years of coal mine dust exposure did not contribute to or aggravate the Miner's hypoxemia. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Compton*, 211 F.3d at 212; Decision and Order at 30. She likewise reasonably discredited Dr. Basheda's opinion because he opined the Miner did not have any oxygenation impairment, contrary to her finding that the Miner was totally disabled due to hypoxemia, and thus "his opinion regarding the cause of any such impairment has little probative value." Decision and Order at 32; *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Clark v. Karst-Robbins Coal Co*, 12 BLR 1-149, 1-155 (1989); *see also Looney*, 678 F.3d at 316 (if a reviewing court can discern what the ALJ did and why she did it, the duty of explanation under the APA is satisfied). As Employer identifies no fault in the ALJ's rationale, we affirm it.[19] *Skrack*, 6 BLR at 1-711.

Because the ALJ permissibly discredited the opinions of Drs. Fino and Basheda, the only medical opinions supportive of Employer's burden on rebuttal, we affirm her finding that Employer failed to disprove legal pneumoconiosis. 20 C.F.R.§718.305(d)(1)(i)(A); Decision and Order at 32-33. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[20] *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 34.

**Disability Causation**

The ALJ next considered whether Employer established "no part of [the Miner's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 34-36. She permissibly discredited the opinions of Drs. Fino and Basheda on disability causation because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer

[19] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Fino and Basheda, we need not address Employer's additional arguments regarding the weight the ALJ assigned them. *Kozele*, 6 BLR at 1-382 n.4; Employer's Brief at 19-21.

[20] As we have affirmed the ALJ's determination that Employer failed to disprove legal pneumoconiosis, we need not address Employer's argument that it disproved clinical pneumoconiosis. Employer's Brief at 19.

did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (physician who fails to diagnose pneumoconiosis, contrary to the ALJ's finding, cannot be credited on rebuttal of disability causation absent specific and persuasive reasons); Decision and Order at 34-36. We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's total respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56.

Thus, we affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and the award of benefits in the miner's claim.

**Survivor's Claim**

Because we have affirmed the ALJ's award of benefits in the miner's claim and Employer raises no specific challenge to his award of benefits in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 39; Employer's Brief at 31.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge