U.S. Department of Labor

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

BRB No. 23-0040 BLA

GREGORY A. COLLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MEADE & SHEPHERD COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS' MUTUAL INSURANCE	)	DATE ISSUED: 02/09/2024
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Granting Modification and Awarding Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Thomas L. Ferreri and Matthew J. Zanetti (Ferreri Partners, PLLC), Louisville, Kentucky, for Employer.

Jeffrey S. Goldberg (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, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Granting Modification and Awarding Benefits (2019-BLA-05668) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a claim filed on October 22, 2012.

In a June 23, 2017 Decision and Order Denying Benefits, ALJ William J. King found that although Claimant had twenty-and-one-half years of coal mine employment, he had only six months of underground coal mine employment and his employment in surface coal mines was not in conditions substantially similar to those in an underground mine. Thus, he found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, ALJ King found that while Claimant established legal pneumoconiosis, he did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.201(a)(2), 718.204(b)(2). Thus, he denied benefits.

Claimant timely filed a request for modification on August 28, 2017. Director's Exhibit 83. In a September 28, 2022 Decision and Order Granting Modification and Awarding Benefits, the subject of the current appeal, ALJ Kane (the ALJ) found Employer is the responsible operator. He also found Claimant established 17.07 years of coal mine employment, at underground mines and surface mines in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and, therefore, found Claimant established modification based on a

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

mistake in a determination of fact. 20 C.F.R. §725.310. In addition, he found granting modification would render justice under the Act. Consequently, he awarded benefits.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator. On the merits of entitlement, it argues he erred in finding Claimant established total disability and invoked the Section 411(c)(4) presumption. It further argues the ALJ erred in finding that granting Claimant's request for modification would render justice under the Act.[2] Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to affirm the ALJ's responsible operator determination and reject Employer's argument that the ALJ erred in finding that granting modification would render justice under the Act.

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.[3] 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).

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner.[4] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 17.07 years of underground coal mine employment and surface coal mine employment in conditions substantially similar to those in an underground mine. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8, 22-23.

[3] 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); Hearing Tr. at 67; Director's Exhibit 3.

[4] 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).

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 designates a responsible operator, that operator may be relieved of liability only if it proves either it is financially incapable of assuming liability for benefits or another potentially liable operator that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c)(2).

A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof." 20 C.F.R. §725.492(a). It is created when an operator ceases to exist due to reorganization, liquidation, sale of assets, merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3). Where an operator is considered a successor operator, any employment with a prior operator "is deemed to be employment with the successor." 20 C.F.R. §725.493(b)(1). Thus, if a successor relationship is established, a miner's tenure with a prior and successor operator may be aggregated to establish one year of employment. *See* 20 C.F.R. §§725.101(a)(32), 725.103, 725.494(c).

On his employment history form (Form CM-911a), Claimant stated he was employed in coal mining by Meade & Shepherd Coal Company, Inc. (Employer) from 1975 to 2008, Gentry Brothers[5] from 2010 to 2011, and Witch's Broom, LLC (Witch's Broom) and Ram Trucking Company, Inc. (Ram Trucking) in 2012. Director's Exhibit 3. Claimant's Social Security Administration (SSA) earnings records indicate he earned income from Breeding Brothers Coal, Inc. from 1973 to 1974, RW Coal Company from 1976 to 1977, RW Trucking Company in 1978, Employer from 1976 to 2008, Ram Trucking and Roxana Transport, Inc. (Roxana Transport) in 2011, and Witch's Broom in 2011 and 2012. Director's Exhibits 6, 7. In addition, his SSA earnings records indicate he was self-employed from 1984 to 1987, and from 1990 to 1991. *Id*. During the hearing before the ALJ, Claimant testified that he last worked for Employer from 2004 to 2008, he worked for Ram Trucking and Roxana Transport in 2011, and he worked for Witch's Broom in 2011 and 2012. Hearing Tr. at 26-30, 46-49. He also testified that Roxana Transport was purchased by Ram Trucking, and Ram Trucking was sold to Witch's Broom. *Id*. at 48, 63.

On November 23, 2012, the district director determined that because Claimant was not employed for one year by Witch's Broom, Ram Trucking, or Roxana Transport,

[5] The ALJ found that Gentry Brothers is Roxana Transport, Inc. because "Claimant's Social Security Itemized Statement of Earnings list 'Hobert Gentry' under the company name 'Roxana Transport Inc.' (DX 7 at 4)." Decision and Order at 10 n.22.

Employer was the last operator to employ him for more than one year. Director's Exhibit 19 at 6 (Notice of Claim Responsible Operator Rationale). The district director thus designated Employer as a potentially liable operator, *id*., and then as the responsible operator. Director's Exhibit 43.

At the hearing, Employer asserted that Witch's Broom was the last operator to employ Claimant for at least one year and a successor operator relationship exists among Witch's Broom, Ram Trucking, and Roxana Transport. Employer's Post-Hearing Brief at 5-6. The ALJ found Employer failed to establish Witch's Broom was a successor operator of Ram Trucking or Roxana Transport. Decision and Order at 10. He further found Employer did not produce any evidence that it is unable to pay benefits in this case. *Id*. Therefore, he found that the district director properly designated Employer as the responsible operator. *Id*.

Employer does not contest, and we therefore affirm, that it meets the requirements of a potentially liable operator that employed Claimant for at least one year. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10. Nor does it contest that Witch's Broom, Ram Trucking, and Roxana Transport each employed Claimant for less than one year subsequent to his work with Employer. *Id*. Rather, it contends Claimant's hearing testimony establishes Witch's Broom is liable because it had a successor operator relationship with Ram Trucking and Roxana Transport. Employer's Brief at 2-3 (unpaginated).

We agree with the Director's argument, however, that the ALJ rationally found Claimant's testimony is insufficient to establish a successor relationship among the companies. Director's Brief at 6; *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *see also Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc) (ALJ has discretion to assess witness credibility and the Board will not disturb his findings unless they are inherently unreasonable).

Claimant testified that he started working for Roxana Transport in 2011. Hearing Tr. at 47. He also testified that Roxana Transport was purchased by Ram Trucking, and Ram Trucking was sold to Witch's Broom. *Id*. at 48, 63. Further, he testified that Witch's Broom only used some of Ram Trucking's equipment and did not employ its workers. Hearing Tr. at 64-65. In addition, he initially testified that Witch's Broom and Ram Trucking were located at the same site, but then stated he did not know whether they were located at the same site. Hearing Tr. at 65-66.

The ALJ concluded that "there is no evidence to show that the Claimant worked in management or had any inside knowledge regarding the purported transfer or sale of Roxana Transport or Ram Trucking." Decision and Order at 10. He also found Claimant's

testimony "fails to establish that Roxana Transport or Ram Trucking ceased to exist when the Claimant began working at Witch[']s Broom." *Id*. Thus, he permissibly found Claimant's testimony failed to establish that "Witch[']s Broom acquired a mine or mines, or substantially all the assets thereof, or the coal mining business, or substantially all the assets of either Roxana Transport or Ram Trucking." *Id*.; *see Morrison*, 644 F.3d at 478; *see also Tackett*, 12 BLR at 1-14. Moreover, he noted that "[t]he record contains no other evidence regarding the acquisition, reorganization, liquidation, merger, consolidation, or any other transaction that would establish a successor operator relationship between Witch[']s Broom, Ram Trucking, or Roxana Transport." Decision and Order at 10.

Because Employer failed to establish a successor operator relationship among Witch's Broom, Ram Trucking, or Roxana Transport, we affirm the ALJ's finding that he could not aggregate the time Claimant was employed with any of the coal mine companies he worked for in 2011 and 2012. *See Morrison*, 644 F.3d at 478; Decision and Order at 10. Consequently, we affirm as supported by substantial evidence the ALJ's finding that Employer is the properly designated responsible operator liable for payment of benefits. 20 C.F.R. §§725.493(a)(1), 725.495(c)(2); *see Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 10.

Request for Modification – Award of Benefits

In a miner's claim, the ALJ may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). When a request for modification is filed, "any mistake may be corrected [by the ALJ], including the ultimate issue of benefits eligibility." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Jessee v. Director, OWCP*, 5 F.3d 723, 725 (4th Cir. 1993); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993).

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. *See* 20 C.F.R. §718.204(b)(1). A miner 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 established total disability based on the medical opinions and the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11-21.

Medical Opinions

Before considering whether the medical opinion evidence establishes total disability, the ALJ determined the exertional requirements of Claimant's usual coal mine employment.[7] Decision and Order at 11-12. He correctly noted Claimant testified that his usual coal mine work required him to haul coal, run a dozer, run a drill, run equipment, drive rock trucks, operate loaders, and get in and out of his truck about 35 to 40 times per day. Decision and Order at 11-12; Hearing Tr. at 26-27, 32, 36, 44, 46-47, 52. Further, the ALJ noted Claimant testified that he had to walk about 400 to 500 yards to get a dozer to help release other people "stuck" in their dozers "[p]robably once a night." Decision and Order at 11-12; Hearing Tr. at 52-53.

He additionally noted Claimant stated in his Description of Coal Mine Work and Other Employment form that his "[d]uties varied from each day," he "[o]perated all types of equipment," and the amount of time and weight he had to sit, stand, crawl, or lift varied. Decision and Order at 11-12; Director's Exhibit 4. Finally, he considered the medical experts' statements regarding the exertional requirements of Claimant's job as an equipment operator and coal truck driver. Decision and Order at 12; Director's Exhibits 11 at 21; 14 at 3; 62 at 3.

Based on this evidence, the ALJ concluded that because "Claimant's job required him to walk up to 500 yards, climb in and out of a truck up to forty times, and lift 50 to 100 pounds during each shift, I find that it involved moderate to heavy manual labor." Decision and Order at 12.

We reject Employer's argument that the ALJ erred because "there is no evidence in the record to establish that [Claimant] had to lift 50 to 100 pounds per shift as a coal driver." Employer's Brief at 3-4 (unpaginated). Contrary to Employer's assertion, as the ALJ

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 11, 15-16.

[7] A miner's usual coal mine employment is the most recent job he performed regularly and over a substantial period of time. *See Pifer v. Florence Mining* Co., 8 BLR 1-153, 1-155 (1985); *Daft v. Badger Coal Co*., 7 BLR 1-124, 1-127 (1984); *Shortridge v. Beatrice Pocahontas Coal Co*., 4 BLR 1-534, 1-539 (1982).

found, Dr. Green documented that Claimant's usual coal mine job required him to lift "50 to 100 pounds at any given time during the work day." Decision and Order at 12; Director's Exhibit 62 at 3. Moreover, Dr. Nader described the exertional requirements of Claimant's usual coal mine work as a coal truck driver and heavy equipment operator to be heavy. Decision and Order at 12; Employer's Exhibit 1 at 5.

As it is supported by substantial evidence, we affirm the ALJ's finding that Claimant's usual coal mine work required "moderate to heavy" exertional levels based on Claimant's testimony, his employment history form, and the physicians' reports. *See Martin*, 400 F.3d at 305 (substantial evidence is relevant evidence a reasonable mind might accept as adequate to support a conclusion); Decision and Order at 12.

The ALJ next considered the medical opinions of Drs. Alam and Green that Claimant is totally disabled and those of Drs. Jarboe, Nader, and Dahhan[8] that he is not. Decision and Order at 17-21. He found Drs. Alam's and Green's opinions persuasive and entitled to probative weight, and Drs. Jarboe's, Nader's, and Dahhan's opinions unpersuasive and entitled to "little" probative weight. *Id*. Thus, he found the medical opinion evidence supports a finding of total disability. *Id*. at 17, 20-21.

Employer argues the ALJ erred in crediting Drs. Alam's and Green's opinions because they did not review all of the objective tests in the record; specifically, Dr. Alam only relied on the qualifying arterial blood gas study he conducted, and Dr. Green only relied on the qualifying pulmonary function study he conducted. Employer's Brief at 6 (unpaginated). We disagree.

Contrary to Employer's argument, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when his opinion, as is the case here, is well-reasoned, documented, and based on his own examination and objective test results. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Dr. Alam conducted Claimant's Department of Labor-sponsored complete pulmonary evaluation on December 13, 2012. Director's Exhibit 11. He noted Claimant's coal mine employment included work as an equipment operator and coal truck driver. *Id*.

[8] Dr. Dahhan initially opined Claimant's pulmonary function study exhibited a moderately severe obstructive ventilatory impairment that rendered him disabled from a respiratory standpoint. Director's Exhibit 14 at 20. After reviewing the earlier studies Dr. Alam conducted, Dr. Dahhan changed his opinion to conclude Claimant's pulmonary function studies exhibit a mild obstructive ventilatory defect. Director's Exhibit 52 at 4. He concluded Claimant's mild obstructive impairment, paired with his normal blood gas studies, does not render him totally disabled. *Id*.

at 21. Further, he noted Claimant has a history of wheezing, sputum, dyspnea, and cough. *Id*. at 22-23. He opined Claimant is totally disabled given his severe hypoxia, low FEV_1 on pulmonary function testing, and shortness of breath. *Id.* at 24; Director's Exhibits 30 at 1; 33 at 1.

Dr. Green likewise noted Claimant's work history included running the drill, auger, and jack hammers, operating the loader and dozer during his surface coal mine employment, and shoveling coal and picking out jack rocks during his underground coal mine employment. Director's Exhibit 62 at 3. He also stated Claimant's surface coal mine employment entailed lifting anywhere from 50 to 100 pounds at any given time during the day. *Id.* Further, he noted Claimant's respiratory symptoms include almost daily sputum, nightly wheezing, shortness of breath on exertion, and a dry cough. *Id.* at 4. When reviewing the pulmonary function study, he observed that there was a significant response to a bronchodilator and a severe degree of chronic airflow obstruction based on the FEV_1 and FEV_1/FVC ratio. *Id.* at 5. Based on these factors, he opined Claimant does not retain the respiratory capacity to return to his usual coal mine employment due to his severe degree of chronic airflow obstruction. *Id.* at 5-6.

The ALJ permissibly credited Drs. Alam's and Green's opinions as supporting a finding of total disability because they understood the exertional requirements of Claimant's usual coal mine work and adequately explained how his impairment, based on his qualifying objective tests and respiratory symptoms, prevents him from performing the labor required of his usual coal mine work. *See Jericol Mining, Inc., v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 17, 20-21. We see no error in the ALJ's finding that Drs. Alam's and Green's opinions are well-reasoned and sufficient to satisfy Claimant's burden of proof. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 17, 20-21.

We also reject Employer's argument that the ALJ erred in discrediting the opinions of Drs. Jarboe and Nader because he allegedly mischaracterized their recitation of Claimant's subjective complaints as his actual symptoms. Employer's Brief at 4-5 (unpaginated). Contrary to Employer's assertion, the ALJ rationally considered Claimant's statements to Drs. Jarboe and Nader about his respiratory symptoms, as the doctors confirmed them through examination or specifically relied on them in diagnosing Claimant's respiratory conditions. *See Jordan v. Benefits Review Bd. of the U.S. Dep't of Labor*, 876 F.2d 1455, 1460 (11th Cir. 1989) (physician's "recitation of [the miner's] symptoms" constituted relevant evidence that the ALJ must consider absent a specific "basis for a finding that the listed limitations are the patient's rather than the doctor's conclusions"); *see also Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (ALJ

may not consider a physician's identification of symptoms "as being nothing more than mere notations of the patient's descriptions unless there is specific evidence for doing so in the report"; physician's identification of "shortness of breath," "acute shortness of breath," and "mild shortness of breath" with various activities constitutes a "reasoned medical opinion").

Dr. Jarboe noted Claimant's respiratory symptoms include shortness of breath, especially after walking a short distance, dyspnea after walking about 100 yards, and daily and nightly cough, mucus production, and wheezing. Director's Exhibit 60 at 2. He also diagnosed chronic bronchitis based on the "history [of cough and mucus production] obtained by Drs. Alam and Dahhan." Director's Exhibit 56 at 10. Similarly, Dr. Nader noted Claimant's current respiratory symptoms include daily wheezing, daily productive cough, intermittent mucus expectoration, orthopnea, and shortness of breath mainly with exertion. Employer's Exhibit 1 at 6. She further noted Claimant could walk uphill for only twenty feet before having to stop to catch his breath. *Id*. Specifically, she diagnosed chronic obstructive pulmonary disease/legal pneumoconiosis based in part on his history of chronic cough, shortness of breath, and mucus expectoration. *Id*. at 7.

The ALJ noted Dr. Jarboe considered Claimant's "physical limitations such as shortness of breath when walking on level ground for a short distance or up to one flight of stairs," and Dr. Nader considered Claimant's "physical limitations related to his shortness of breath," such as not being able to "walk more than twenty feet uphill or more than 100 feet on ground level before stopping." Decision and Order at 19, 21. He permissibly found Drs. Jarboe's and Nader's opinions unpersuasive because they did not explain how Claimant "could meet the [moderate to heavy] exertional demands of his usual coal mine work in light of the physical limitations caused by his shortness of breath and dyspnea." *Id*. at 21; *see Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185.

We further reject Employer's argument that the ALJ erred in discrediting Dr. Dahhan's opinion based on the ALJ's finding that Claimant's usual coal mine work involved moderate to heavy manual labor. Employer's Brief at 5-6 (unpaginated). As discussed, in determining the exertional requirements of Claimant's usual coal mine employment, the ALJ permissibly considered that Claimant reported to Dr. Green that his usual coal mine job required him to lift "50 to 100 pounds at any given time during the work day." Decision and Order at 12; Director's Exhibit 62 at 3. We thus affirm the ALJ's permissible finding that Dr. Dahhan's opinion did not adequately address the exertional requirements of Claimant's usual coal mine work and thus is entitled to little weight. Decision and Order at 18.

The ALJ has discretion to weigh the medical evidence and draw his own inferences. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-77 (6th Cir. 2013); *Banks*, 690 F.3d at

482-83; *Napier*, 301 F.3d at 713-14. The Board is not empowered to reweigh the evidence or substitute its inferences for those of the ALJ. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). Because the ALJ acted within his discretion in crediting the opinions of Drs. Alam and Green and discrediting the opinions of Drs. Dahhan, Jarboe, and Nader, we affirm his finding that the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Martin*, 400 F.3d at 305.

We further affirm his finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; Decision and Order at 21. Therefore, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305; Decision and Order at 21-23, 32.

Because Employer does not challenge the ALJ's finding that it failed to rebut the Section 411(c)(4) presumption, we affirm it. *See* 30 U.S.C. §921(c)(4) (2018); *Skrack*, 6 BLR at 1-711; Decision and Order at 30. Thus, we affirm his finding that Claimant established a mistake in a determination of fact. 20 C.F.R. §718.310; Decision and Order at 21.

Justice Under the Act

Employer argues the ALJ erred in determining that granting modification renders justice under the Act because "there is no new evidence of total disability that was filed into the record since" ALJ King denied benefits on June 23, 2017. Employer's Brief at 7 (unpaginated). It contends that "without any new evidence of total disability, there is no proof in the record to support the ALJ's finding that [C]laimant's pneumoconiosis had progressed to the point where he was entitled to benefits under the Act." *Id*. at 8. It thus asserts the ALJ erred in weighing the relevant justice under the Act factors of accuracy, quality of the new evidence, and the diligence and motive of the party seeking modification. *Id*. at 7-9.

Assessing whether granting modification would render justice under the Act is committed to the broad discretion of the ALJ. *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255-56 (1971). Therefore, the Board reviews an ALJ's findings in this regard under an abuse of discretion standard. *See Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996). Employer has not demonstrated an abuse of discretion in this case.

In *Kinlaw v. Stevens Shipping & Terminal Co.*, the Board held that an ALJ's authority to reopen a case based on any mistake in fact "is discretionary, and requires consideration of competing equities in order to determine whether reopening the case will indeed render justice." 33 BRBS 68, 72 (1999) (citing *Wash. Soc'y for the Blind v. Allison*, 919 F.2d 763, 769 (D.C. Cir. 1991)). Courts have recognized that, in considering whether

to reopen a claim, an adjudicator must exercise the discretion granted under 20 C.F.R. §725.310 by assessing factors relevant to rendering justice under the Act. *Sharpe v. Director, OWCP* (*Sharpe I*), 495 F.3d 125, 132-33 (4th Cir. 2007); *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547 (7th Cir. 2002); *D.S.* [*Stiltner*] *v. Ramey Coal Co.*, 24 BLR 1-33, 1-38 (2008). These factors include the need for accuracy, the quality of the new evidence, the diligence and motive of the party seeking modification, and the futility or mootness of a favorable ruling. *Sharpe I*, 495 F.3d at 132-33; *Hilliard*, 292 F.3d at 547; *Stiltner*, 24 BLR at 1-38.

The ALJ applied the factors relevant to determining whether granting modification renders justice under the Act. Decision and Order at 30-32. He found the need for accuracy clearly weighs in favor of granting the request for modification, as the evidence shows Claimant has been entitled to benefits since he filed his claim in 2012. *See Hilliard*, 292 F.3d at 547; Decision and Order at 31. In addition, he found the quality of the evidence weighs in favor of granting modification because "the evidence previously submitted persuasively establish[es] that the Claimant is totally disabled from a respiratory or pulmonary impairment" and invoked "the regulatory presumption at 20 C.F.R. §718.305," i.e., the Section 411(c)(4) presumption. Decision and Order at 31. Further, he found Claimant's diligence and "good faith" weigh in favor of granting modification as he filed a timely request and Employer did not offer "any evidence that he had an improper motive." *Id*. Finally, he found that Claimant's request is neither futile nor moot as the evidence demonstrates he is eligible for benefits. *Id.*

Employer provides no support for its allegation that, because "Claimant did not file any new medical evidence in support of a finding of total disability," "it was error for the ALJ to find that the first and second factors [the need for accuracy and the quality of the new evidence] weighed in favor of modification" and the third factor, the diligence and motive of the party seeking modification, was "improperly analyzed." Employer's Brief at 8-9 (unpaginated). Contrary to Employer's assertions, the ALJ was authorized to consider wholly new evidence or cumulative evidence, or merely further reflect on the evidence initially submitted, in determining whether a mistake of fact was made. *See O'Keeffe,* 404 U.S. at 256.

Employer's argument that the ALJ erred in considering the relevant factors in determining whether granting modification renders justice under the Act amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because Employer has not established an abuse of discretion, we affirm the ALJ's determination that granting modification renders justice under the Act. *See Worrell*, 27 F.3d at 230; *Branham*, 20 BLR at 1-34; Decision and Order at 32.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge