U.S. Department of Labor

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

BRB Nos. 20-0496 BLA
and 20-0497 BLA

PATRICIA ANN JONES (o/b/o and Widow of JERRY LEE JONES) Claimant-Respondent v. PEABODY COAL COMPANY and PEABODY ENERGY CORPORATION Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 01/27/2023 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Yonts, Sherman & Driskill, PSC), Greenville, Kentucky, for Claimant.

Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Awarding Benefits (2018-BLA-05783, 2018-BLA-06175) 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 claim filed on November 18, 2016, and a survivor's claim filed on May 4, 2018.[1]

The ALJ found Peabody Coal Company (Peabody Coal) is the responsible operator and Peabody Energy Corporation (Peabody Energy) the responsible carrier. He credited the Miner with at least seventeen 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, the ALJ determined Claimant invoked the presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] He further determined 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).[3]

[1] Claimant is the widow of the Miner, who died on December 11, 2017. Survivor's Claim (SC) Director's Exhibit 7. She is pursuing the miner's claim as well as her own survivor's claim. SC Director's Exhibit 6.

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

[3] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier. Employer also contends the ALJ deprived it of due process by applying a page limit to the post-hearing briefs and that the ALJ failed to determine the location of the Miner's last coal mine employment. On the merits, Employer argues the ALJ erred in invoking the Section 411(c)(4) presumption and in finding it not rebutted.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's constitutional challenge and due process arguments, and to affirm the ALJ's determination that Peabody Energy is liable for benefits.

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.[5] 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).

Due Process Challenge - Page Limit

Employer argues the ALJ violated due process by setting an equal page limitation for all of the parties in his July 23, 2019 Briefing Order because the page limitation placed "a greater burden" on it because it had to brief both entitlement and liability issues, whereas Claimant only had to brief entitlement issues and the Director only had to brief liability issues. Employer's Brief at 11. The Director asserts the ALJ did not violate Employer's due process rights because the page limitation applied equally to all parties and the decision to brief issues is a litigation choice. Director's Brief at 31-32. We agree with the Director.

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having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[4] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had at least seventeen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2, 12.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Miner's Claim (MC) Director's Exhibit 4. Although, Employer alleges the ALJ failed to identify the location of the Miner's last coal mine work for determining appellate jurisdiction, the ALJ correctly applied Sixth Circuit law. Decision and Order at 15-16, 21; Employer's Brief at 14-15. Therefore, this assertion of error is moot.

The ALJ's Briefing Order provided briefs should be submitted on or before October 21, 2019 and that "[b]riefs shall not exceed 25 pages in 12-point Times New Roman font, 1-inch margins, double-spaced. Non-conforming briefs will not be accepted by the [ALJ]." July 23, 2019 Briefing Order. On August 26, 2019, Employer submitted a motion requesting leave to file a brief in excess of twenty-five pages. Employer's August 26, 2019 Motion for Leave to File Brief in Excess of 25 Pages. On August 26, 2019, via email, the ALJ granted Employer's request in part, allowing the parties to submit an additional ten pages for addressing liability issues. August 26, 2019 Email from the Office of Administrative Law Judges (OALJ). On October 17, 2019, Employer requested a ruling on its August 26, 2019 motion and that the ALJ issue a new briefing order. Employer's October 17, 2019 Motion for Ruling and New Briefing Order. The ALJ stated Employer's August 26, 2019 motion had already been granted in part on August 26, 2019 via email and thus denied the October 17, 2019 motion. October 17, 2019 Order Denying Employer's Motion for Ruling and New Briefing Order. The ALJ granted the parties an extension until November 15, 2019 to submit briefs due to "the late submission of [Employer's October 17, 2019] motion." October 17, 2019 Order Denying Employer's Motion.

We see no abuse of discretion in the ALJ's procedural ruling, and we reject Employer's assertion of a due process violation. Due process requires that a party be given notice and the opportunity to respond. *See Arch of Kentucky, Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 478 (6th Cir. 2009); *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 883-84 (6th Cir. 2000). The parties were notified that post-hearing briefs had a page limitation. *See Hatfield*, 556 F.3d at 478; July 23, 2019 Briefing Order. Employer filed a motion requesting leave to file a brief in excess of twenty-five pages and the ALJ granted Employer's motion in part by allowing each party to submit an additional ten pages. Employer's August 26, 2019 Motion; August 26, 2019 Email from OALJ. Moreover, nowhere does Employer argue that it was unable to adequately address the issues within the page limitations the ALJ set. We therefore reject Employer's assertion that the ALJ abused his discretion in setting an equal page limitation for all of the parties. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc) (ALJ has broad discretion over procedural matters).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Peabody Coal is the correct responsible operator and it was self-insured by Peabody Energy on the last day Peabody Coal employed the Miner; thus we affirm these findings.[6] *See Skrack*, 6 BLR at 1-711; 20

[6] Employer also states it intends to "preserve" its "ability to challenge" Black Lung Benefits Act (BLBA) Bulletin No. 16-01 as an invalid rule. Employer's Brief at

C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 19-21. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Trust Fund. Employer's Brief at 16-61.

Patriot was initially another Peabody Energy subsidiary. MC Director's Exhibit 42. In 2007, after the Miner ceased his coal mine employment with Peabody Coal, Peabody Energy transferred a number of its other subsidiaries, including Peabody Coal, to Patriot. *Id.* at 3-57. That same year, Patriot was spun off as an independent company. *Id.* On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id.* at 58. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Peabody Coal, Patriot later went bankrupt and can no longer provide for those benefits. *Id.*; MC Director's Exhibit 25. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Peabody Coal when Peabody Energy owned and provided self-insurance to that company. Decision and Order at 20-21.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated the self-insured carrier in this claim and thus the Trust Fund is responsible for the payment of benefits:[7] (1) the district director is an inferior officer not

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58. Employer generally argues Bulletin No. 16-01 contradicts liability rules under the Act, was issued without notice and comment, violates the Administrative Procedure Act, and the DOL has acted arbitrarily and capriciously by not following its own self-insurance regulations. *Id.* Apart from one sentence summarizing its arguments, Employer has not set forth sufficient detail to permit the Board to consider the merits of these issues. *See* 20 C.F.R. §802.211(b); *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).

[7] Employer argues the time limitation for its submission of liability evidence at 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act (Longshore Act) and the APA, 5 U.S.C. §556(d), because it divests the ALJ of authority under those Acts to receive evidence and adjudicate issues de novo. Employer's Brief at 60-61. We reject this argument. As the Director correctly argues, 30 U.S.C. §932(a) incorporated the provisions of the Longshore Act and the APA into the BLBA "except as otherwise provided . . . by regulations of the Secretary." 30 U.S.C. §932(a). Thus, even if we were to accept Employer's interpretation of the regulation, the Secretary of Labor has the "authority to adopt regulations that differ from the APA and the Longshore Act." Director's Brief at 31, *citing Nat'l Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C.

properly appointed under the Appointments Clause;[8] (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (4) the DOL released Peabody Energy from liability; (5) the Director is equitably estopped from imposing liability on the company; (6) the regulatory scheme, whereby the district director, a DOL employee, determines the liability of a responsible operator and its carrier, while the DOL administers the Trust Fund, creates a conflict of interest that violates its due process right to a fair hearing; and (7) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond and failing to comply with its duty to monitor Patriot's financial health.[9] Employer's Brief at 16-61. It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. *Id.*

The Board has previously considered and rejected these arguments in in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 18-19 (Oct. 25, 2022) (en banc); *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289, 1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments.

Thus, we affirm the ALJ's determination that Peabody Coal and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

Miner's Claim

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 and comparable gainful

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2001), *rev'd in part on other grounds*, *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002).

[8] Employer first contested the district director's appointment in its brief before the ALJ. Employer's Post-Hearing Brief at 19.

[9] Employer also states it wants to "preserve" its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 56-58. Employer neither asks the Board to address this issue nor sets forth any argument that would permit our review. *See* 20 C.F.R. §802.211(b); *Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21.

work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies, qualifying arterial blood gas studies,[10] 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 Claimant established total disability based on the medical opinion evidence and the weight of the evidence as a whole.[11] Decision and Order at 15. Employer asserts the ALJ erred in finding the one pulmonary function study of record valid and thereby erred in weighing the medical opinions relying on that study to find Claimant totally disabled. We reject Employer's contentions.

Pulmonary Function Studies

The ALJ considered one pulmonary function study. Decision and Order at 3, 13. Dr. Chavda's December 22, 2016 study produced narrowly non-qualifying pre-bronchodilator results and qualifying post-bronchodilator results. MC Director's Exhibit 16 at 10. Although the ALJ found the study was valid, he noted the post-bronchodilator results were "considered anomalous by the [physicians]" and gave them little weight. Decision and Order at 13. Because the pre-bronchodilator results were non-qualifying he found the study did not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i), but he further noted that "the results must be taken into account within the context of the medical opinions offered into evidence." *Id.*

Employer contends that in considering the results in conjunction with the medical opinions, the ALJ failed to adequately address Dr. Rosenberg's and Broudy's views regarding the validity of that December 22, 2016 pulmonary function study. Employer's

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

[11] The ALJ found the pulmonary function study and blood gas study evidence did not establish total disability and found 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 13.

Brief at 11-14, *citing* 20 C.F.R. Part 718, App. B (2)(ii)(G); Employer's Post-Hearing Brief at 11-12.[12] We disagree.

When weighing pulmonary function studies that are conducted in anticipation of litigation, the ALJ must determine whether they are in substantial compliance with the quality standards. 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). 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 fact-finder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987).

Contrary to Employer's contentions, the ALJ discussed all of the opinions regarding the validity of the December 22, 2016 study. Decision and Order at 4-8, 14-15. The ALJ noted that Dr. Rosenberg "opined the [pulmonary function tests] were not valid because of the inconsistencies in the spirometric curves" due to lack of maximum effort and further "point[ed] to the variance in values for the FEV1 results pre-bronchodilator which varied by more than 100cc (110cc)."[13] Decision and Order at 7-8; Employer's Exhibits 3, 20 at 10-11, 24. The ALJ permissibly concluded, however, that while "[Dr.] Rosenberg

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[12] Employer contends Dr. Rosenberg's opinion establishes that the study does not strictly conform to quality standards, which state:

> The effort shall be judged unacceptable when the patient . . . [h]as an excessive variability between the three acceptable curves. *The variation between the two largest FEV1's of the three acceptable tracings should not exceed 5 percent of the largest FEV1 or 100 ml, whichever is greater.* As individuals with obstructive disease or rapid decline in lung function will be less likely to achieve this degree of reproducibility, tests not meeting this criterion may still be submitted for consideration in support of a claim for black lung benefits. 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 (2)(ii)(G). However, Employer does not dispute that neither Dr. Chavda nor the technician administering the December 22, 2016 study indicated the study was unreliable under this standard or otherwise questioned the reproducibility of it.

[13] Dr. Rosenberg referenced "110" cubic centimeters (cc), which is equivalent to 110 milliliters (ml) as the two measurement terms (cc or ml) may be used interchangeably. Carolyn Robbins, *How to Convert Milliliters into CCs*, April 24, 2017, https://sciencing.com/convert-milliliters-ccs-7893311.html.

challenged whether the test results were *even valid under the regulations*," three other physicians specifically concluded the December 22, 2016 study was valid and reliable. *Id.* at 14 (emphasis added).

Because it is supported by substantial evidence, we affirm the ALJ's permissible finding that the December 22, 2016 pulmonary study is valid based on Dr. Gaziano's validation report,[14] and the "very detailed" opinions of Drs. Chavda[15] and Sood who considered the study sufficiently reliable to assess the Miner's respiratory capacity. *Id.* at 4-8, 14-15; *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005) (substantial evidence is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion); *see also Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the Administrative Procedure Act is satisfied); *Keener*, 23 BLR at 1-237 (2007).[16]

[14] Dr. Gaziano incorrectly listed the date of the December 22, 2016 pulmonary function study as "12/27/2016" on the form validating the study. MC Director's Exhibits 16, 18.

[15] Dr. Gaziano reported that the study was "acceptable." MC Director's Exhibit 18. Dr. Chavda disputed Dr. Rosenberg's opinion that the study was invalid and "recounted the criteria for validity in detail, as compared to the values achieved on different trials, and explained why the test complied with [American Thoracic Society] standards." Decision and Order at 5; *see* Claimant's Exhibit 3. He "reviewed the flow volume loops and compared them to the ATS standards, asserting that there was no interruption or inconsistency or other issue that would negate the validity of the test." Decision and Order at 5; Claimant's Exhibit 5. Dr. Sood agreed, based on a review of the raw data, "that the ATS criteria for acceptability and repeatability were met with respect to prebronchodilator spirometry and postbronchodilator spirometry." Claimant's Exhibit 2. Even Dr. Broudy, in his February 7, 2019 report, agreed that the study was valid, noting "satisfactory effort, at least on the predilation results." Employer's Exhibit 2.

[16] Notably, Employer -- in its very sparse discussion of the issue -- simply points to Dr. Rosenberg's attempt to invalidate the study without discussing any of the other physician conclusions the study was valid. Employer Brief at 12-13. It does not acknowledge the ALJ already recognized Dr. Rosenberg believed the study did not strictly conform with the regulations, but he found the study valid based on three other detailed medical opinions to the contrary. Decision and Order at 14. Employer similarly does not attempt to articulate how the ALJ on remand could reasonably reverse that conclusion and suddenly find the study not in substantial compliance with the regulations or how that finding would undermine the rest of the ALJ's analysis of the medical opinions if he did.

Medical Opinions

The ALJ considered four medical opinions relevant to the Miner's total disability.[17] Dr. Chavda conducted the DOL's complete pulmonary evaluation of the Miner on December 27, 2016. MC Director's Exhibit 16. He noted the Miner worked as an electrician in surface coal mining and described that he had to walk 2 to 3 miles per shift, climb two flights of stairs if he had to make repairs, wore a 15-pound tool belt, carried a light that weighed 7 to 8 pounds, and had to fit motors weighing 75 to 125 pounds. *Id.* Based on the Miner's pulmonary function testing he diagnosed a moderate respiratory impairment. *Id.* He specifically noted that the Miner's pre-bronchodilator FEV1 value of 1.78 and FVC of 2.33 were just above qualifying values per the regulatory criteria and considered this to be of "no clinical difference" in determining his respiratory disability. *Id.* Dr. Chavda concluded the Miner was totally disabled from performing his usual coal mine employment and further stated he should not be exposed to additional coal mine dust exposure. *Id.*

Dr. Sood prepared a report based on his review of the Miner's medical records and occupational history, including Dr. Chavda's examination report and testing. Claimant's Exhibit 2. Dr. Sood noted the December 22, 2016 post-bronchodilator pulmonary function study showed an unexplained decline in values and gave it little weight in assessing the Miner's disability. *Id.* He noted that while the pre-bronchodilator results were non-qualifying, the Miner's FEV1 was only sixty percent of predicted and showed an impairment that would have prevented him from performing his usual coal mine work. *Id.* at 8-9. As the ALJ noted, Dr. Sood "expanded on these conclusions" by analyzing the FEV1 results in terms of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides). Decision and Order at 10; Claimant's Exhibit 2. He stated that the FEV1 results meet the criteria for a class II respiratory impairment and cited the statistics from the AMA Guides and related studies indicating a linear correlation between FEV1 results and a person's oxygen use/needs.[18] Claimant's Exhibit 2. Based

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Employer's Brief at 11. Employer has thus fallen short of meeting its burden on appeal. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

[17] We affirm, as unchallenged, the ALJ's finding that the Miner's last coal mine work was as an electrician which "required extensive walking and heavy physical labor." *Skrack*, 6 BLR at 1-711; Decision and Order at 15.

[18] He explained that the "peak oxygen consumption [] levels in individuals [with] class II impairment . . . are expected to be between 18-21 [ml/kg/min] which corresponds to 5.1 to 6.0 [metabolic equivalents (METS)]." Claimant's Exhibit 2 at 9. He indicated

on these correlations, Dr. Sood concluded that the Miner's reduced FEV1 measurement showed he lacked available oxygen to meet the heavy exertional levels required for his last coal mine job. *Id.*

Dr. Broudy reviewed the medical record and opined the Miner's blood gas study results were normal and that his pulmonary function study showed a "mild to moderate" restrictive impairment that was not totally disabling. Employer's Exhibit 2. at 4 (unpaginated). At his May 8, 2019 deposition, Dr. Broudy testified that "if [the Miner] were otherwise healthy," he would have retained the respiratory capacity to return to his last coal mine work. Employer's Exhibit 19 at 15. In his July 24, 2019 supplemental report, Dr. Broudy agreed with Dr. Sood that the Miner's "FEV1 value translates to a class II impairment" but stated "[t]here was no evidence of record" establishing the METS required of the Miner's work to support Dr. Sood's calculations under the AMA. Employer's Exhibit 24 at 2 (unpaginated).

Dr. Rosenberg reviewed the medical record and opined that the December 22, 2016 pulmonary function study was invalid but even if it were not the Miner's pre-bronchodilator values were non-qualifying and thus the Miner was not totally disabled. Employer's Exhibit 3. He further explained "[t]he [DOL] tables only provide values up to age 71" and the Miner was seventy-four years old when the December 22, 2016 study was conducted. *Id.* Dr. Rosenberg used the "Knudson predictive equation" to calculate the "predicted values" for the Miner's age and height and concluded that the Miner was not totally disabled. *Id.* Dr. Rosenberg stated the Miner's "recorded FEV1 equates to a [c]lass II impairment" but disagreed with Dr. Sood's use of the Miner's FEV1 to predict his "maximum oxygen consumption." Employer's Exhibit 25 at 3.

The ALJ found all of the medical opinions to be well-documented and reasoned. Decision and Order at 14-15. However, he noted neither Dr. Broudy nor Dr. Rosenberg "explained their conclusions in terms of [the Miner's] actual coal mine work, which required extensive walking and heavy physical labor with up to 12-hour days, six to seven days a week." Decision and Order at 15. He gave more weight to the opinions of Drs. Chavda and Sood because they explained their conclusions in more detail with regard to the exertional requirements of the Miner's usual coal mine work, while Drs. Broudy and Rosenberg focused on the non-qualifying nature of the Miner's pulmonary function

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that the METS requirement for the Miner's specific job is unknown but that a study found "the median exertion level for coal miners was 3.3 METS and the 90th percentile exertion level was 6.3 METS." *Id.* He concluded the Miner would be unable to perform the median exertion level for a prolonged period of time or the 90th percentile level. *Id.*

study.[19] Decision and Order at 14-15. Thus, the ALJ found Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the evidence as a whole. *Id.*

Employer asserts the ALJ failed to fully address all the arguments raised in its Post-Hearing Brief as to why the opinions of Drs. Chavda and Sood lack credibility.[20] Employer's Brief at 11-14; Employer's Post-Hearing Brief at 11-12. We disagree.

Employer first contends Drs. Chavda's and Sood's opinions are not well-documented because they relied on an invalid pulmonary function study. Employer's Brief at 12-13. Having already found Employer failed to meet its burden to demonstrate the study is invalid, we reject this argument.

Employer next argues Dr. Chavda's opinion is insufficient to satisfy Claimant's burden of proof because it appears to be "based, in part, on an inadvisability" to return to occupational dust exposure. Employer's Brief at 13, *citing W.C. v. Whitaker Coal Corp.*, 24 BLR 1-20, 1-30 (2008); Employer's Post-Hearing Brief at 13. While Dr. Chavda generally indicated that the Miner could not work in a dusty environment, he specifically opined that the Miner did not retain the pulmonary capacity to continue his last coal mine work based on his pulmonary function results. MC Director's Exhibit 16 at 8. Thus, we reject this argument.

We further reject Employer's argument that the ALJ should have discredited Drs. Chavda's and Sood's opinions because they did not review all of the evidence of record.[21]

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[19] Additionally, the ALJ noted "when Dr. Broudy stated his conclusion that no respiratory impairment prevented [the Miner] from returning to his former coal mining job, it was in response to a specific question from Peabody: 'In your opinion, would his pulmonary impairment, if any, prevent Mr. Jones from performing his prior position as an electrician or similarly arduous work *in a dust-free environment*?' (emphasis) added) Dr. Broudy simply answered no" without any rationale. Decision and Order at 15, quoting Employer's Exhibit 2.

[20] As Employer has not challenged the ALJ's findings that the opinions of Drs. Rosenberg and Broudy were not explained in relation to the exertional requirements of the Miner's last work, we affirm the ALJ's findings. *See Skrack*, 6 BLR at 1-711; Decision and Order at 15.

[21] Employer also asserts Dr. Sood referenced data that is not of record. Employer's Brief at 13. However, Dr. Sood relied on the Miner's FEV1 to estimate his work capacity. Decision and Order at 16; Claimant's Exhibit 2 at 9. Dr. Sood along with Employer's physicians referenced the AMA Guides and thus we see no error in the ALJ's crediting of

Employer's Brief at 12. An ALJ is not required to discredit a physician who did not review all of a miner's medical records if the opinion is otherwise well-reasoned and documented. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Dr. Chavda's opinion was based on his examination of the Miner and the objective testing results he obtained. MC Director's Exhibit 16. Dr. Sood based his opinion on his review of the Miner's objective testing results, treatment records, and x-rays, and the medical reports of Drs. Chavda, Broudy, and Rosenberg. Claimant's Exhibit 2 at 1-2. We see no error in the ALJ's finding that the opinions of Drs. Chavda and Sood 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 14-15.

Finally, Employer contends the ALJ should have determined whether the "difference between [the] Miner's [pulmonary function study] results and the [] extrapolated values [calculated by Dr. Rosenberg] for his age *still* supported Dr. Chavda's determination"[22] and that the ALJ failed to adequately address Dr. Broudy's and Rosenberg's criticisms of Dr. Sood's methodology of using the FEV1 to calculate the Miner's oxygen use/needs in his job.[23] Employer's Brief at 13-14. Employer's arguments

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Dr. Sood's opinion as sufficiently documented based on record evidence. *Banks*, 690 F.3d at 489; *Rowe*, 710 F.2d at 255.

[22] We are unpersuaded that remand is necessary for the ALJ to further consider Dr. Chavda's opinion. Dr. Chavda focused on the actual FEV1 value in concluding whether the Miner was totally disabled as opposed to how far the values ranged from disability standards in the DOL tables at Appendix B. MC Director's Exhibit 16; Claimant's Exhibit 3. The ALJ permissibly credited Dr. Chavda's opinion based on the information he had before him when rendering his opinion. *Banks*, 690 F.3d at 489; *Rowe*, 710 F.2d at 255; Decision and Order at 14-15. Moreover, the ALJ noted that Dr. Rosenberg did not actually explain why using the Knudson formula supported a conclusion that the Miner's FEV1 would not have disabled him for work, other than the fact it was non-qualifying for his age. Decision and Order at 15.

[23] We consider any error by the ALJ in failing to resolve the conflict as to whether Dr. Sood could estimate the Miner's oxygen needs based on the FEV1 value to be harmless. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). The ALJ accurately observed that Dr. Sood's discussion of the AMA Guides was only supplemental to his otherwise reasoned conclusion that the Miner's FEV1 value showed a significant restrictive respiratory impairment that disabled the Miner from his usual coal mine work. Decision and Order at 14-15; Claimant's Exhibit 2.

are a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

After reviewing the conflicting medical opinions, the ALJ permissibly determined Drs. Chavda's and Sood's opinions on total disability were better explained than Drs. Rosenberg's and Broudy's opinions. *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); Decision and Order at 15. Because it is supported by substantial evidence, we affirm the ALJ's determination that Claimant established the Miner was totally disabled based on the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762, (4th Cir. 1999) (APA duty of explanation is satisfied if reviewing court can discern what the ALJ did and why he did it); Decision and Order at 15. We therefore affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(b)(2); Decision and Order at 15.

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,[24] 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 Claimant failed to "establish[] that [the Miner] had clinical pneumoconiosis."[25] Decision

[24] "Legal pneumoconiosis" includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[25] Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the ALJ erred by requiring Claimant to establish the Miner had clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). This error is harmless, however, because Employer failed to rebut the presumption of legal pneumoconiosis and thus cannot establish rebuttal at 20 C.F.R. §718.305(d)(1)(i). *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

and Order at 16. The ALJ also found Employer did not rebut the presumption that he had legal pneumoconiosis or that no part of his total disability was caused by it. Decision and Order at 16-18.

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). The Sixth Circuit holds Employer can "disprove the existence of legal pneumoconiosis by showing that [the Miner's] coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal-dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id*. at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

Employer relies on the opinions of Drs. Rosenberg and Broudy to disprove legal pneumoconiosis.[26] Decision and Order at 16-18. Dr. Rosenberg opined any restriction the Miner had was due to obesity and general weakness caused by multiple non-pulmonary medical issues. Employer's Exhibit 3 at 4. Similarly, Dr. Broudy opined the Miner's respiratory impairment was due to obesity or multiple sclerosis. Employer's Exhibit 19 at 15. The ALJ found their opinions insufficient to satisfy Employer's burden of proof. Decision and Order at 17-18.

Employer contends the ALJ applied an improper standard in requiring its experts to establish "no part" of Claimant's impairment was related to his coal mine employment in order to disprove legal pneumoconiosis. Employer's Brief at 15, *citing Young*, 947 F.3d 399. We disagree.

The ALJ correctly stated the standard for disproving legal pneumoconiosis, explaining Employer must establish by a preponderance of the evidence that the Miner does not have a lung disease "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 16, *citing* 20 C.F.R. §718.201(b). The ALJ then permissibly found neither Dr. Rosenberg nor Dr. Broudy offered a reasoned opinion that adequately explained why they themselves completely

[26] The ALJ also considered Drs. Chavda's and Sood's opinions. Decision and Order at 16-18. Drs. Chavda and Sood both opined the Miner's pulmonary disability was caused by coal dust exposure. MC Director's Exhibit 16 at 8; Claimant's Exhibit 2 at 6.

excluded coal mine dust exposure as a causative factor for the Miner's respiratory condition, beyond stating that any impairment is likely due to other medical issues. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 17-18. Because Employer does not allege any error regarding the ALJ's rationale for his credibility determinations, we affirm the ALJ's discrediting of their opinions. *Skrack*, 6 BLR at 1-711; Decision and Order at 25. We therefore affirm his finding that Employer did not rebut the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A).

Disability Causation

The ALJ next considered whether Employer established "no part of the [M]iner'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 18. Contrary to Employer's contention, the ALJ correctly identified this legal standard and found Drs. Rosenberg's and Broudy's opinions on disability causation unpersuasive because they did not diagnose legal pneumoconiosis, contrary to his finding. *See Ogle*, 737 F.3d at 1074; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 18; Employer's Brief at 15. As Employer does not challenge the ALJ's credibility findings, we affirm them. *See Skrack*, 6 BLR at 1-711. We therefore affirm the ALJ's determination that Employer failed to rebut the Section 411(c)(4) presumption and the award of benefits in the miner's claim. *See* 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 18.

Survivor's Claim

The ALJ found Claimant established each element necessary to demonstrate entitlement under Section 422(*l*): she filed her claim after January 1, 2005; she is an eligible survivor of the Miner; her claim was pending on or after March 23, 2010; and the Miner was determined to be eligible to receive benefits at the time of his death. 30 U.S.C. §932(*l*) (2012); Decision and Order at 18-19. Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award of

benefits in the survivor's claim, we affirm it. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge