U.S. Department of Labor

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

BRB No. 20-0461 BLA

HIRAM HOGG	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RICH, INCORPORATED	)	
	)	
and	)	DATE ISSUED: 09/28/2021
	)	
KENTUCKY EMPLOYER'S MUTUAL INSURANCE	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

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

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2017-BLA-05202) rendered on a claim filed pursuant to the Black Lung Benefits act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This claim involves a request for modification[1] of a subsequent claim for benefits[2] filed on April 3, 2015. Director's Exhibit 3.

The ALJ found Claimant established at least fifteen years of coal mine employment in underground mines and at surface mines in conditions substantially similar to those in an underground mine. He further found Claimant established a totally disabling respiratory or pulmonary impairment,[3] 20 C.F.R. §718.204(b)(2), and therefore invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[4] 30 U.S.C. §921(c)(4) (2018). He therefore determined Claimant established a change in an

[1] The district director denied Claimant's current claim on February 22, 2016, for failure to establish total disability. Director's Exhibit 83. Claimant timely requested modification, which the district director granted. Director's Exhibit 84.

[2] On December 22, 2008, ALJ Janice K. Bullard denied Claimant's prior claim, filed on October 27, 2006, for failing to establish any element of entitlement. Director's Exhibit 1 at 482, 1076. The district director thereafter denied Claimant's three requests for modification. *Id.* at 210, 223, 336, 398. The district director finally denied his claim on February 28, 2012, for failure to establish any element of entitlement. *Id.* at 210. Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c)(1); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant did not establish any element of entitlement in his prior claim, he had to submit evidence establishing one of these elements in order to obtain review of the merits of his current claim. Director's Exhibit 1.

[3] The ALJ also found Claimant failed to establish complicated pneumoconiosis and thus was not entitled to the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. Decision and Order at 29.

[4] Section 411(c)(4) 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.

applicable condition of entitlement since the prior denial and found that modification would render justice under the Act. He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred by excluding certain evidence and failing to consider its closing brief. On the merits, it argues the ALJ erred in finding the Section 411(c)(4) presumption invoked because he erred in finding Claimant totally disabled.[5] It also argues the ALJ erred in finding the presumption unrebutted. Claimant filed a response brief, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Evidentiary Challenge

Employer argues the ALJ erred in excluding Dr. Jarboe's supplemental report that it submitted post-hearing and failing to consider its closing argument when rendering his decision. Employer's Brief at 5-8. We disagree.

At the formal hearing, the ALJ granted the parties' request to submit post-hearing evidence by December 6, 2019, and closing briefs by January 6, 2020. Hearing Transcript at 60. The ALJ specifically afforded Employer time to obtain a re-reading of a March 7, 2016 x-ray that Employer asserted Claimant submitted, and supplemental medical opinions addressing Claimant's treatment records. *Id*.

Prior to the post-hearing evidence deadline, Employer submitted the supplemental medical opinion of Dr. Tuteur. Employer's Exhibit 12. Then, on November 22, 2019, Employer filed a "Motion for [Extension] of Post-Hearing Evidentiary & Briefing Deadline or Alternatively Motion to [Strike] March 7, 2016 X-Ray." Employer requested "an additional 30 days to obtain this x-ray from the Claimant's counsel, forward it to its

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has at least fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-6.

[6] We will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 18, 59.

physician for review and receive and file the report of the physician." Employer's Motion for Extension at 1-2. Alternatively, it requested that the ALJ exclude Claimant's x-ray reading from the record. *Id.* at 2. It also requested an extension of the deadline to submit its post-hearing brief. *Id.*

Four days after the December 6, 2019 deadline to submit evidence had passed, Employer submitted Dr. Jarboe's November 28, 2019 supplemental medical opinion.[7] Employer's Exhibit 13. On January 7, 2020, after the time for its proposed extension to submit evidence had elapsed and the initial deadline to submit closing arguments had passed, Employer submitted a second motion asking for an extension of the deadline to submit post-hearing evidence. Employer's Second Motion for Extension. As grounds, Employer stated it received the x-ray in question from Claimant's counsel just prior to the Christmas holiday, and therefore it's "expert witness was unable to complete a reading by [Employer's proposed extended deadline of] January 6, 2020." *Id.*, at 2. Employer stated it was "awaiting an x-ray report from [its] expert witness, but expect[ed] to receive it soon," and therefore requested an additional thirty days to "receive and file its post-hearing evidence." *Id.* Alternatively, it again asked the ALJ to exclude the March 7, 2016 x-ray. *Id.* It further requested that the deadline to submit closing arguments be extended based upon its request for an extension of time to file evidence and because it did not receive the hearing transcript until January 6, 2020, the day closing arguments were due. *Id.*

On January 10, 2020, the ALJ issued an "Order on Evidence and Employer's Motion to Strike March 7, 2016 X-Ray." Because Employer did not request an extension of time to submit Dr. Jarboe's supplemental report or request that it be admitted late, the ALJ excluded the report as untimely. Order on Evidence at 1-2. Alternatively, he found Employer did not argue or attempt to demonstrate "that its failure was in good faith" or "outside of its reasonable control." *Id.* at 2. While he found Claimant would not be prejudiced by the late filing of the supplemental report, he found the late submission without a motion for leave to admit it had a potentially negative impact on his ability to effectively manage his docket, the orderly submission of evidence, and equity. *Id.* He therefore found Employer did not establish "excusable neglect" for its untimely

[7] Employer erroneously submitted Dr. Jarboe's report to the Office of Administrative Law Judges in San Francisco, California. Employer's Exhibit 13. That office received his report on December 13, 2019, and forwarded it to the ALJ's office in Cincinnati, Ohio, where it was received on December 19, 2019. *Id.*

submission. *Id.* at 2, *citing* 29 C.F.R. §18.32(b)(2). However, he granted Employer's uncontested motion to strike the March 7, 2016 x-ray.[8] *Id.*

On February 4, 2020, Employer filed its closing arguments and a motion for reconsideration of the ALJ's order excluding Dr. Jarboe's supplemental report. Employer argued the title of its initial motion indicated it was requesting a general extension of time for all post-hearing evidence, and not just the "additional 30 days to obtain the x-ray" that it explicitly requested in its motion. Employer's Motion for Reconsideration at 2; Employer's Motion for Extension at 2. It further argued good cause existed to admit Dr. Jarboe's untimely opinion for two reasons: Claimant was not prejudiced by its admission, and Employer received the report the day before the original deadline and was unable to review and submit the report until after the deadline had expired. *Id.* at 2.

On February 10, 2020, the ALJ issued an "Order on Employer's Motion for Reconsideration of Order to Exclude Dr. Jarboe's Supplemental Report from Evidence," denying Employer's motion for reconsideration. The ALJ found Employer's motion was an attempt to circumvent its failure to timely request an extension of time in which to submit Dr. Jarboe's opinion or to offer valid reasons for its untimely submission. Order on Employer's Motion for Reconsideration at 2-3. The ALJ further found that while Employer generally asked for an extension of the post-hearing deadlines, he did not grant such a request. *Id.* at 2-3. Moreover, he found the basis for Employer's request had nothing to do with its inability to timely submit Dr. Jarboe's supplemental report, but was limited to its difficulty obtaining an x-ray reading. *Id.* Therefore, he found the submission untimely. *Id.* at 3.

Moreover, given that Dr. Jarboe's report was dated November 28, 2019 – several days prior to the evidentiary deadline – the ALJ found Employer's explanation for its failure to timely submit the report unpersuasive as it did not indicate: why the physician was not asked to fax or email his report; what procedures counsel employs to avoid late submissions; or why other attorneys in counsel's firm could not have performed the work of reviewing and submitting the report. *Id.* Thus, he again found Employer had not raised any arguments or facts establishing excusable neglect for the untimely submission of the report. *Id.* Similarly, the ALJ declined to consider Employer's untimely closing brief, as

[8] The ALJ noted that while there are no readings of a "March 7, 2016" x-ray to rebut, Claimant designated an affirmative interpretation of a March 17, 2016 x-ray. Order on Evidence at 3. However, as Employer stated it requested the "March 7, 2016" x-ray from Claimant's counsel and referenced it in both of its motions, the ALJ declined to rewrite and correct Employer's errors and exclude the March 17, 2016 x-ray interpretation. *Id.* As Employer does not challenge this ruling, we affirm it. *See Skrack*, 6 BLR at 1-711.

it also failed to move to admit the closing brief out of time or attempt to demonstrate why its late submission should be admitted. Decision and Order at 2 n.4.

On appeal, Employer argues the ALJ erred in excluding Dr. Jarboe's report and its post-hearing brief because the Administrative Procedure Act (APA) requires parties be given the opportunity to submit facts and arguments "when time, the nature of the proceedings, and the public interest permit." Employer's Brief at 6-8, *citing* 5 U.S.C. §544(c). We disagree.

An ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). Thus, a party seeking to overturn the disposition of a procedural or evidentiary issue must establish an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). While the provision of the APA that Employer cites requires agencies to give parties "the opportunity" to submit evidence and arguments, Employer clearly was given the opportunity but failed to timely exercise its rights. Nothing in that provision implicates an abuse of discretion where, as here, the ALJ declines to dispense with reasonable deadlines for the submission of evidence and arguments.

First, the ALJ did not err in finding Employer failed to timely request an extension to submit Dr. Jarboe's November 28, 2019 supplemental report. Under the Rules of Practice and Procedure before the Office of Administrative Law Judges, a motion must "state with particularity the grounds for seeking the order." 29 C.F.R. §18.33(a)(2). As the ALJ found, Employer asked for "an additional 30 days to obtain a rebuttal reading of the x-ray dated March 7, 2016," on the grounds that it had been unable to obtain the x-ray at that point in time. Employer's Motion for Extension at 1. It did not request additional time to submit Dr. Jarboe's medical opinion, or give any grounds for such a request. Moreover, even when Employer ultimately submitted Dr. Jarboe's report, it did not include a motion to admit the report as untimely. Consequently, Employer has not shown how the ALJ abused his discretion in finding it did not timely request an extension to submit Dr. Jarboe's supplemental report. *See McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016); *Blake*, 24 BLR at 1-113.

Second, we reject Employer's argument that the ALJ erred in not finding good cause to admit the untimely report as it was only four days late and Claimant was not prejudiced by the submission. Employer's Brief at 6-7. Although the ALJ stated Claimant would not be prejudiced by the report's admission, he found this factor outweighed by Employer's failure to offer sufficient reasons for not submitting the report in a timely manner and the corresponding disruption to the judicial proceedings, particularly given that the physician prepared it several days prior to the evidentiary deadline. Order on Evidence at 2; Order

on Motion for Reconsideration at 2-3. We discern no abuse of discretion in the ALJ's determination or in his finding that Employer failed to establish excusable neglect for untimely submitting the evidence. *See McClanahan*, 25 BLR at 1-175; *Blake*, 24 BLR at 1-113; *see also Pioneer Investment Serv. Co. v. Brunswick Assoc.* LTD, 507 U.S. 380, 398 (1993) (giving little weight to upheaval in counsel's law practice in establishing excusable neglect); *In re Harlow Fay, Inc.*, 993 F.2d 1351, 1352 (8th Cir. 1993) (counsel's relocation to a different state and reduction in staff was not excusable neglect); *cf. Selph v. Council of L.A.*, 593 F.2d 881, 884 (9th Cir. 1979) (excusable neglect does not cover the excuse that the lawyer is too busy, which can be used in almost every case).

Finally, we reject Employer's argument that the ALJ erred in excluding its post-hearing brief. Employer's Brief at 7-8. Employer argues it was prejudiced because the ALJ did not deny its motion for an extension of time to submit post-hearing x-ray evidence until after the deadline for submitting its closing brief expired, leaving Employer to prepare a brief while not knowing what evidence was in the record. *Id.* However, Employer allowed the deadline to submit closing arguments to expire before it filed its second motion for an extension of time to submit evidence, knowing its first motion had not been granted. Moreover, it did not submit its closing argument for nearly a month after the ALJ issued his Order denying Employer's motion for an extension of the evidentiary deadline, and did not file a motion to admit the brief as untimely.

Under these circumstances, the ALJ was within his discretion in declining to consider Employer's closing brief as untimely filed. *See McClanahan*, 25 BLR at 1-175; *Blake*, 24 BLR at 1-113. Regardless, the ALJ addressed all the issues Employer raised in its closing brief; therefore, Employer has not demonstrated it was prejudiced by the ALJ's statement that he was excluding the brief as untimely.[9] *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have

[9] Employer contends the ALJ's statement that his ruling granting Employer's request to exclude an x-ray interpretation that did not exist "may be cute, perhaps too cute," and indicates bias in his ruling. Employer's Brief at 6, citing Decision and Order at 3 n.6. A charge of bias against an ALJ is not substantiated by a mere allegation but must be established by concrete evidence of prejudice against a party's interest. *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 107 (1992). Employer points to no concrete evidence establishing the ALJ exhibited a bias due to its untimely submission of evidence and arguments without an explanation for their tardiness. Moreover, the ALJ's reference here was to his granting of Employer's motion to exclude any x-ray dated "March 7, 2016" – while admitting Claimant's x-ray dated March 17, 2016 – neither of which Employer challenges. *See* Order on Evidence at 3 n.6.

made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Closing Brief.

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. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must consider all relevant evidence and weigh the evidence supporting total disability against the 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 arterial blood gas studies and the medical opinions, and when weighing the evidence as a whole.[10] Decision and Order at 16, 21-22.

The ALJ considered five arterial blood gas studies conducted on May 5, 2015, October 29, 2015, November 11, 2015, December 15, 2017, and February 9, 2018. The May 5, 2015 study was non-qualifying at rest and with exercise.[11] Director's Exhibit 12. The October 29, 2015 and November 11, 2015 studies were non-qualifying at rest and no exercise testing was conducted. Director's Exhibits 20, 22. The December 15, 2017 study was non-qualifying at rest and qualifying with exercise. Claimant's Exhibit 1. The February 9, 2018 study was non-qualifying at rest. Claimant's Exhibit 2.

The ALJ found the exercise blood gas studies a better indicator of Claimant's ability to work in the mines and therefore accorded them more weight. Decision and Order at 16. He further found the more recent qualifying exercise study, taken over two and a half years after the May 5, 2015 non-qualifying study, was more probative than the earlier study. *Id.* He therefore found the December 15, 2017 qualifying exercise blood gas study the most probative and the arterial blood gas study evidence as a whole establishes total disability. Decision and Order at 16; 20 C.F.R. §718.204(b)(2)(ii).

[10] The ALJ found the pulmonary function studies did not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 7-9.

[11] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

Employer contends the ALJ erred in finding the December 15, 2017 exercise blood gas study valid, and in finding the blood gas study evidence established total disability when the preponderance of the studies were non-qualifying. Employer's Brief at 9. We disagree.

The ALJ considered the opinions of Drs. Tuteur, Jarboe, and Vuskovich that the December 15, 2017 exercise study appeared to be a venous rather than arterial blood sample, and therefore was not a reliable indicator of total disability. Employer's Exhibits 3, 4, 6. He found the opinions of Drs. Tuteur and Jarboe that the study was likely venous, because it was inconsistent with the prior non-qualifying study, unpersuasive as they did not address why Claimant's condition could not have deteriorated over the course of two and a half years. Decision and Order at 15. He further found Dr. Vuskovich's conclusory statement that the study was consistent with a venous sample even less persuasive. *Id.* The ALJ found Dr. Nader's opinion more persuasive as he was present at the administration of the study and repeatedly explained why the sample was arterial and not venous.[12] *Id.* Thus, contrary to Employer's arguments, the ALJ did not credit Dr. Nader "simply because he 'was present.'" Employer's Brief at 9. Rather, he considered all of the physicians' opinions and permissibly found Dr. Nader's opinion more persuasive. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 15. Therefore, we affirm the ALJ's determination that the December 15, 2017 exercise blood gas study is reliable and supports a finding of total respiratory or pulmonary disability. Decision and Order at 15.

We further reject Employer's argument that the ALJ erred by relying on one arterial blood gas study to find the studies as a whole support total disability. Employer's Brief at 9. The ALJ permissibly found the two exercise blood gas studies to be more probative of Claimant's ability to perform exertional work and further found the more recent qualifying study, by more than two and half years, is the most accurate representation of Claimant's current lung function; thus, he rationally found the December 15, 2017 exercise arterial blood gas study worthy of the most weight. Decision and Order at 16; *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624 (6th Cir. 1988) (an ALJ may give greater weight to more recent evidence as more probative of the miner's current condition); *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984) (an exercise blood gas study may be provided more weight than resting blood gas studies); *see also Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993) (an ALJ may not rely solely on numerical superiority to resolve

[12] Dr. Nader repeatedly testified he was physically present during the exercise portion of the test. Employer's Exhibit 8 at 46, 48, 49. He further testified he was sure the sample was arterial and not venous because of the blood flow and the SpO2 correlates with the PO2. *Id.* at 56-62.

conflicts in the evidence); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016). Accordingly, we affirm the ALJ's finding that the arterial blood gas study evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 16.

Employer also contends the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 10. We disagree.

Initially, as addressed above, the ALJ did not abuse his discretion in excluding Dr. Jarboe's supplemental report. Further, his supplemental report provided no additional opinion on the issue of total disability or address any additional evidence on the issue. Dr. Jarboe's review of new evidence focused primarily on his disagreement with Dr. Cohen on the issues of complicated and simple clinical pneumoconiosis, while the remainder of his opinion reiterated his prior conclusion that Claimant is not totally disabled by a respiratory impairment. *See* Employer's Exhibit 13 (excluded). Thus, we reject Employer's argument that the ALJ's findings cannot be upheld because he did not consider Dr. Jarboe's supplemental report. Employer's Brief at 9-10.

Moreover, Employer's argument that the ALJ erred in crediting Dr. Nader's opinion because he did not review all of the medical evidence of record is without merit.[13] Employer's Brief at 10. 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, documented, and based on his own examination of the miner and objective test results. *Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984). Employer's argument is 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).

Nor is there merit to Employer's argument that the ALJ erred in crediting the opinions of Drs. Raj and Nader because the physicians lacked an adequate understanding of the exertional requirements of Claimant's usual coal mine employment. Employer's

[13] Employer specifically argues Dr. Nader failed to consider Dr. Rosenberg's report. Employer's Brief at 10. However, the record does not contain a report from Dr. Rosenberg, and it is unclear which evidence Employer is referring to. Dr. Nader offered his opinion based upon his own examination of Claimant, which included medical and employment histories, a physical examination, chest x-ray, a pulmonary function study conducted before and after the administration of bronchodilators, an arterial blood gas study conducted at rest and with exercise, and an EKG. Claimant's Exhibit 1. During his deposition, Dr. Nader considered additional evidence and responded to the opinions of Drs. Jarboe, Tuteur, and Vuskovich. Claimant's Exhibit 8,

Brief at 10. The ALJ found Claimant's usual coal mine employment as a dozer and loader operator required heavy manual labor, a finding that Employer does not challenge. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7. He further found that both Drs. Raj's and Nader's understanding that Claimant was required to lift eighty pounds at any given time was consistent with his finding that Claimant's usual coal mine employment required heavy labor. Decision and Order at 19, 21. Employer points to no evidence to support its argument that Drs. Raj and Nader did not understand the physical requirements of Claimant's usual coal mine employment. Employer's Brief at 10. Thus, the ALJ's rational finding that Drs. Raj and Nader understood that Claimant's usual coal mine employment required heavy labor is affirmed. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

We also reject Employer's argument that Drs. Raj's and Nader's opinions should have been discredited because they erroneously diagnosed complicated pneumoconiosis. Employer's Brief at 10. As the ALJ correctly found, while both physicians opined complicated pneumoconiosis was present in their initial reports, Claimant's Exhibits 1-2, they both concluded Claimant does not have complicated pneumoconiosis after considering additional evidence. Decision and Order at 19-21, *citing* Employer's Exhibits 8 at 67, 9 at 17-18. Further, their total disability opinions were independent of a complicated pneumoconiosis diagnosis as each opined that Claimant was totally disabled based on his abnormal arterial blood gas exchange. Claimant's Exhibits 1-2; Employer's Exhibits 8-9. We therefore reject Employer's arguments and affirm as supported by substantial evidence the ALJ's determination that the opinions of Drs. Nader and Raj are well-reasoned and documented based on their examinations, understanding of Claimant's usual coal mine employment, and the objective evidence. *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 20-21.

Finally, Employer argues the ALJ erred in discrediting the opinions of Drs. Jarboe and Tuteur that Claimant is not totally disabled, asserting their opinions are the most well-documented and reasoned because they reviewed all the evidence and their opinions are in accord with the objective testing. Employer's Brief at 10. This, too, is a request for the Board to reweigh the evidence, which we cannot do.[14] *Anderson*, 12 BLR at 1-113.

[14] Employer also argues that the ALJ seems to "rely on the heart rate" for discrediting the opinions of Drs. Jarboe and Tuteur, without taking into consideration the timing and circumstances surrounding Claimant's heart rates. Employer's Brief at 10. Employer points to no finding where the ALJ relied on Claimant's heart rate as a factor in discrediting the opinions of Drs. Jarboe and Tuteur, nor does it explain what timing or circumstances the ALJ should have considered in making his findings. As Employer's

As Employer raises no further arguments, we affirm the ALJ's finding that the medical opinion evidence establishes total disability as supported by substantial evidence. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005). Accordingly, we affirm the ALJ's determination that the evidence as a whole establishes total disability and Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305(b); Decision and Order at 22.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal[15] nor clinical pneumoconiosis,[16] or "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 failed to establish rebuttal by either method.

We affirm, as unchallenged on appeal, the ALJ's determination that Employer did not rebut the existence of legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 33. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). We therefore need not address Employer's contentions regarding clinical pneumoconiosis. Employer's Brief at 11. Moreover, as Employer also raises no specific allegations of error regarding the ALJ's findings on disability causation, we affirm his determination that Employer failed to establish no part of Claimant's respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *Skrack*, 6 BLR at 1-711; Decision and Order at 17.

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argument is unclear and inadequately briefed, we decline to address it. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b).

[15] "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).

[16] "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).

Because we have affirmed the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and Employer did not rebut the presumption, Claimant has established his entitlement to benefits and a change in an applicable condition of entitlement. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309(c). Moreover, as Employer does not challenge the ALJ's determination that granting modification would render justice under the Act, we affirm it. *Skrack*, 6 BLR at 1-711; Decision and Order at 35.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge