**U.S. Department of Labor**

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

BRB No. 20-0524 BLA

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| BILLY J. RIDINGS | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| POWELL MOUNTAIN COAL COMPANY | ) | DATE ISSUED: 9/27/2022 |
| | ) | |
| Employer-Petitioner | ) | |
| | ) | |
| 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 Carrie Bland, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2018-BLA-05334) rendered on a claim filed on October 3, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant had at least fifteen years of underground coal mine employment and established a totally disabling respiratory or pulmonary impairment. 20

C.F.R. §718.204(b)(2). Thus, the ALJ found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established he is totally disabled, and therefore erred in finding he invoked the Section 411(c)(4) presumption.[2] Neither Claimant nor the Director, Office of Workers' Compensation Programs has filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order Awarding Benefits 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, 362 (1965).

**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 and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must 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

[1] Under Section 411(c)(4) of the Act, a miner is presumed totally disabled due to pneumoconiosis if he has 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.

[2] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant has 25.14 years of coal mine employment, at least fifteen of which were underground. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2, n. 2; Hearing Transcript at 14.

Claimant established total disability based on the pulmonary function study evidence and medical opinion evidence.[4] 20 C.F.R. §718.204(b)(2)(i), (iv).

**Pulmonary Function Studies**

The ALJ considered four pulmonary function studies conducted on September 13, 2016, November 7, 2016, May 24, 2017, and July 6, 2018. Decision and Order at 14-15. The September 13, 2016, November 7, 2016 and July 6, 2018 pulmonary function studies produced qualifying results,[5] while the May 24, 2017 study produced non-qualifying results. Director's Exhibits 13, 17, 20; Claimant's Exhibit 3. The ALJ determined the May 24, 2017 and July 6, 2018 studies were not reliable for determining total disability. Decision and Order at 14-15. As the remaining two reliable studies were qualifying, the ALJ found a preponderance of the pulmonary function study evidence established total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 15.

Employer argues the ALJ erred in finding the non-qualifying May 24, 2017 pulmonary function study invalid, and therefore erred in finding the pulmonary function study evidence establishes total disability. Employer's Brief at 6-7. Employer contends the ALJ erred in failing to consider Dr. Sargent's opinion that the study demonstrated a mild restrictive impairment, which it believes constitutes relevant contrary probative evidence that the test is valid. *Id.* We disagree.

The ALJ accurately noted the May 24, 2017 pulmonary function study included a note stating "ALL FVC TRIALS LESS THAN 4 SECONDS. Patient was unable to produce Acceptable and Reproducible Spirometry data, best effort reported" and "DLCO may be underestimated." Director's Exhibit 20; Decision and Order at 14 & n.21. As this was the only evidence regarding the validity of the test, the ALJ determined the study was not reliable for determining total disability. Decision and Order at 14-15; *see* 20 C.F.R. Part 718, Appendix B. While Employer contends the ALJ should have inferred that Dr. Sargent believed the test was valid, the test itself indicates Claimant was unable to produce acceptable and reproducible results, and Dr. Sargent commented on neither the validity of the test nor these notations. Employer's Brief at 6-7; Director's Exhibit 20. Employer has not explained why Dr. Sargent's silence necessarily constitutes contrary probative

[4] The ALJ found that Claimant could not establish total disability based on the blood gas studies and there is no evidence he has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 16.

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

evidence that would contradict comments appearing on the face of the test. Because it is supported by substantial evidence, we affirm the ALJ's permissible finding that the May 24, 2017 pulmonary function study is unreliable. *See Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

Moreover, even if Employer were correct that the ALJ erred in finding the May 24, 2017 non-qualifying pulmonary function study invalid, the record still contains two valid and qualifying pulmonary function studies. Director's Exhibits 13, 20. Consequently, Employer has not demonstrated how its arguments would make any difference in the ALJ's determination that a preponderance of the pulmonary function study evidence establishes total disability. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Decision and Order at 15. Therefore, any error in the ALJ's analysis would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Because is it supported by substantial evidence, we affirm the ALJ's determination that a preponderance of the pulmonary function study evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 15.

**Medical Opinions**

The ALJ also considered the medical opinions of Drs. Ajjarapu and Sargent. Decision and Order at 18-19. Dr. Ajjarapu opined Claimant is totally disabled from performing his usual coal mine employment. Director's Exhibit 13. Conversely, Dr. Sargent opined Claimant has a mild impairment that does not meet the disability standards. Director's Exhibit 20. The ALJ found Dr. Ajjarapu's opinion well-reasoned and well-documented and accorded it greater weight. Decision and Order at 18-19. She accorded less weight to Dr. Sargent's opinion as he did not address whether Claimant could perform his usual coal mine employment.[6] *Id.* at 18.

Employer contends the ALJ erred in her weighing of the medical opinions. Employer's Brief at 8-10. We are not persuaded that is the case.

The ALJ accurately noted Dr. Ajjarapu diagnosed Claimant with a severe pulmonary impairment based on pulmonary function studies, moderate hypoxemia based

[6] The ALJ found Claimant's usual coal mine employment working as a foreman required heavy labor, "changing wheel units on tires and mine motors, splicing belts, and building brattices." Decision and Order at 3, 13. We affirm this determination as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

on arterial blood gas studies, and an abnormal physical examination that showed coarse breath sounds. Decision and Order at 16-17; Director's Exhibit 13. She opined Claimant does not have the pulmonary capacity to perform his prior coal mine employment as a foreman. Director's Exhibit 13. Contrary to Employer's arguments, Dr. Ajjarapu reviewed the non-qualifying pulmonary function study and blood gas study study results from Dr. Sargent's subsequent examination but explained the results of the studies still demonstrate a pulmonary impairment that would render Claimant unable to perform his usual coal mine employment. Director's Exhibit 22; Employer's Brief at 9-10. Moreover, even if Dr. Ajjarapu's opinion were restricted to the results of her examination, the ALJ was not required to discount her opinion for that reason. *See 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 Brief at 9-10. The ALJ permissibly credited Dr. Ajjarapu's opinion as it was based upon Claimant's medical and work histories, symptoms, a physical examination, a valid pulmonary function study, a valid arterial blood gas study, and a review of Dr. Sargent's examination. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Hicks*, 138 F.3d at 533; Decision and Order at 18-19.

We also reject Employer's argument that the ALJ failed to adequately explain her determination that Dr. Sargent's opinion was entitled to no weight. Employer's Brief at 8-10. The ALJ accurately noted that Dr. Sargent diagnosed a mild impairment based on pulmonary function studies and arterial blood gas studies that he stated did not meet the Department of Labor's criteria for total disability. Decision and Order at 17; Director's Exhibit 20. She reasonably discredited this opinion because it did not address whether Claimant's mild impairment would prevent him from performing the heavy manual labor required by his usual coal mine employment. *See Scott v. Mason Coal Co*., 60 F.3d 1138, 1142 (4th Cir. 1995); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Decision and Order at 18.

Employer's arguments amount to a request to reweigh the evidence, which we cannot do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). As it is supported by substantial evidence, we affirm the ALJ's determination that Claimant established total disability based on the medical opinions. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19. As Employer raises no further argument, we affirm the ALJ's conclusions that the evidence as a whole establishes total disability, 20 C.F.R. §718.204(b)(2), and that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); Decision and Order at 19-20. Moreover, we affirm, as unchallenged on appeal, the ALJ's determination that Employer did not rebut the presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20-21.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge