U.S. Department of Labor

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

BRB No. 22-0272 BLA

LAWRENCE GARY BLEDSOE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BUFFALO MINING COMPANY c/o HEALTHSMART CCS	)	
	)	
	)	DATE ISSUED: 9/06/2023
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 Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

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

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Awarding Benefits (2020-BLA-05671) rendered on a subsequent claim filed on

August 28, 2015,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 23.44 years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] and established a change in an applicable condition of entitlement.[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309. She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled and thus invoked the Section 411(c)(4) presumption. It also argues she erred in finding it did not rebut the presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), declined to file a response unless requested.

[1] The ALJ noted the Federal Records Center destroyed the records from Claimant's prior claims. Decision and Order at 5. Thus she proceeded as if Claimant had not established any element of entitlement in the prior claims. *Id*.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is 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.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the ALJ presumed Claimant failed to establish any element of entitlement in the prior claim, she found he had to submit new evidence establishing at least one element of entitlement to proceed with this claim. *See* 20 C.F.R. §725.309(c); *White*, 23 BLR at 1-3; Decision and Order at 5.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 23.44 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9.

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.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based upon 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 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas studies, medical opinions, and evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 24.

Arterial Blood Gas Studies

Employer argues the ALJ erred in finding the blood gas study evidence supports total disability. Employer's Brief at 15-16, 28-30. We disagree.

The ALJ considered four blood gas studies dated September 30, 2015, March 1, 2017, May 1, 2019, and August 20, 2019. Director's Exhibit 14; Employer's Exhibit 1;

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 33.

[6] The ALJ found the pulmonary function studies do not establish 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 24.

Claimant's Exhibits 1, 2. None of the studies produced qualifying[7] values at rest. *Id.* However, the September 30, 2015 and the May 1, 2019 studies produced qualifying values during exercise, Director's Exhibit 14; Claimant's Exhibit 1, whereas the March 1, 2017 and August 20, 2019 studies did not include any exercise testing. Employer's Exhibit 1; Claimant's Exhibit 2. The ALJ permissibly assigned controlling weight to the exercise blood gas studies because they are better indicators of Claimant's ability to perform the exertional requirements of his usual coal mine employment. *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984); Decision and Order at 14. She also found the blood gas study evidence overall supports total disability because all the studies taken during exercise are qualifying, including the most recent exercise study Claimant performed on May 1, 2019. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *Milburn Colliery v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 14.

Employer argues the ALJ erred in relying on the September 30, 2015 blood gas study because she did not address Dr. Zaldivar's explanation that, because the blood sample was not immediately put on ice, this study is not reliable.[8] Employer's Brief at 15-16, *citing* Employer's Exhibit 1. Employer has not explained why the error it alleges would make a difference, as the ALJ found the blood gas study evidence supports total disability based on the most recent exercise blood gas test, which Claimant performed on May 1, 2019, as part of Dr. Raj's examination. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); Decision and Order at 14. Thus we affirm her finding the blood gas study evidence supports total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 14.

Medical Opinions

The ALJ considered the medical opinions of Drs. Everhart, Raj, and Green that Claimant is totally disabled and those of Drs. Zaldivar and Spagnolo that he is not. Decision and Order at 15-23; Director's Exhibit 14; Claimant's Exhibits 1, 2; Employer's Exhibits 1, 3, 9, 10. She found the opinions of Drs. Everhart, Raj, and Green reasoned and documented. Decision and Order at 23. She discredited Dr. Zaldivar's opinion because he failed to explain why Claimant is not totally disabled in light of Dr. Raj's May 1, 2019 exercise blood gas study that produced qualifying values. *Id.* She also

[7] A "qualifying" arterial blood gas study yields results equal to or less than the applicable table values listed in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

[8] Employer cites to Dr. Zaldivar's discussion of the September 30, 2015 blood gas study. Employer's Brief at 15-16, *citing* Employer's Exhibit 1.

discredited Dr. Spagnolo's opinion because he conflated the issues of total disability and total disability causation. *Id*.

Employer argues the ALJ erred in weighing the opinions of Drs. Zaldivar and Spagnolo.[9] Employer's Brief at 16-18, 26-30. We disagree.

Employer argues that the ALJ erred in finding Dr. Zaldivar failed to discuss the May 1, 2019 qualifying exercise blood gas study. Employer's Brief at 16-18. It argues that, in regard to the later qualifying exercise test, Dr. Zaldivar "explained that blood gas studies can deteriorate in an individual with cardiac disease as a result of the aging process, circulatory problems[,] and fluid retention." *Id*. Thus, it argues he credibly explained there is no intrinsic pulmonary impairment evidenced by blood gas testing. *Id*. This argument is not persuasive, as the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023).

Employer next argues that Dr. Zaldivar's opinion is credible because he "based his opinion upon the totality of the clinical record and not just the exercise studies." Employer's Brief at 17. Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 34-35. Because it is supported by substantial evidence, we affirm the ALJ's finding that Dr. Zaldivar's opinion is unpersuasive. *Underwood*, 105 F.3d at 949; *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

We also reject Employer's argument that the ALJ erred in weighing Dr. Spagnolo's medical opinion. Employer's Brief at 26-28. Dr. Spagnolo opined the record was insufficient to diagnose Claimant with pneumoconiosis and attributed any disability he has to heart disease. Employer's Exhibit 3. He opined that there was no evidence of chronic dust disease significantly related to, or substantially aggravated by, Claimant's occupational exposure to dust. Employer's Exhibit 10 at 24-25. Further, he opined Claimant "probably" has a disabling cardiac condition but not a disabling pulmonary impairment. *Id.* at 26-27. Once again, we note the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary

[9] We affirm, as unchallenged on appeal, the ALJ's findings that the opinions of Drs. Everhart, Raj, and Green are reasoned and documented and thus support a finding that Claimant is totally disabled. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23.

impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco*, 892 F.2d at 1480-81; *Johnson*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11. Thus, we discern no error in the ALJ's finding that Dr. Spagnolo did not adequately explain why Claimant is not totally disabled despite the qualifying exercise blood gas studies, and merely conflated the issues of total disability and total disability causation.[10] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 23.

Thus, we affirm the ALJ's findings that the medical opinions support total disability at 20 C.F.R. §718.204(b)(2)(iv), and Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 24. We therefore affirm the ALJ's conclusion that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018).

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 nor clinical pneumoconiosis,[11] 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 did not establish rebuttal by either method.[12]

[10] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Zaldivar and Spagnolo, we need not address Employer's additional arguments as to why the ALJ erred in weighing their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 24-28.

[11] "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).

[12] The ALJ found Employer disproved legal pneumoconiosis. Decision and Order at 32-33.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ found the x-rays, computed tomography (CT) scan, medical opinions, and treatment records insufficient to rebut the presumption of clinical pneumoconiosis. Decision and Order at 31-33, 36. Employer argues the ALJ erred. Employer's Brief at 8-35. We agree, in part.

X-rays

The ALJ considered eight interpretations of four x-rays dated September 30, 2015, March 1, 2017, May 1, 2019, and August 20, 2019. Decision and Order at 26-27; Director's Exhibits 14, 15, 17; Employer's Exhibits 1, 4-6; Claimant's Exhibits 1, 2. She noted all of the interpreting physicians are dually-qualified as Board-certified radiologists and B-readers except Dr. Zaldivar, who is only a B-reader. Decision and Order at 27-28. She permissibly assigned greater weight to the dually-qualified radiologists as they have superior credentials. *Adkins*, 958 F.2d at 52; *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); Decision and Order at 27.

Drs. Crum, Gaziano, and Miller read the September 30, 2015 x-ray as positive for pneumoconiosis, while Dr. Seaman read it as negative for the disease. Director's Exhibits 14, 15, 17; Employer's Exhibit 4. Dr. Zaldivar read the March 1, 2017 x-ray as negative for pneumoconiosis. Employer's Exhibit 1. Dr. DePonte read the May 1, 2019 and August 20, 2019 x-rays as positive for pneumoconiosis, while Dr. Meyer read both x-rays as negative for the disease. Claimant's Exhibit 1; Employer's Exhibits 5, 6.

The ALJ found the September 30, 2015 x-ray is positive for pneumoconiosis because a greater number of dually-qualified radiologists read it as positive for the disease; the March 1, 2017 x-ray is negative for pneumoconiosis because one physician read it as negative and his reading is unrebutted; and the May 1, 2019 and August 20, 2019 x-rays are in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for pneumoconiosis. Decision and Order at 27-28. The ALJ assigned diminished weight to Dr. Zaldivar's March 1, 2017 negative x-ray reading, however, because he is only a B reader and the other x-rays were read by dually-qualified radiologists. *Id.* Thus, she found the x-ray evidence overall "slightly supports" a finding

of clinical pneumoconiosis because, based on the more credible x-ray readings from dually-qualified radiologists, one x-ray is positive and two x-rays are in equipoise. *Id.*

Employer argues the ALJ erred in considering Dr. Zaldivar's March 1, 2017 negative x-ray reading rather than Dr. Seaman's negative reading of the same x-ray. Employer's Brief at 9, 30-33. It contends that, unlike Dr. Zaldivar, Dr. Seaman is a dually-qualified radiologist. *Id*.

The record reflects that Employer designated Dr. Seaman's reading of the March 1, 2017 x-ray as its affirmative x-ray evidence. Employer's Evidence Form. In rebuttal to Claimant's affirmative x-rays, it also designated Dr. Meyer's respective readings of the May 1, 2019 and August 20, 2019 x-rays. *Id*. Finally, it designated Dr. Seaman's reading of the September 30, 2015 x-ray in rebuttal to the Department of Labor-sponsored x-ray. *Id*. The ALJ erroneously considered Dr. Zaldivar's reading of the March 1, 2017 x-ray even though no party had designated it. Decision and Order at 26-28.

Although the ALJ erred in considering Dr. Zaldivar's reading of the March 1, 2017 x-ray rather than Dr. Seaman's reading, Employer has not established reversible error. Dr. Seaman read the March 1, 2017 x-ray as negative for clinical pneumoconiosis. Employer's Exhibit 4. As discussed above, the ALJ found the dually-qualified radiologists the most qualified and gave their readings equal weight. Decision and Order at 27. Had the ALJ considered Dr. Seaman's reading of this x-ray, she would have still found it negative for clinical pneumoconiosis based on the doctor's unrebutted reading. Although the ALJ may not have assigned diminished weight to the March 1, 2017 x-ray because Dr. Seaman, unlike Dr. Zaldivar, is equally qualified as the other doctors who provided readings, and thus not found the preponderance of the x-rays positive, the x-ray evidence would still be in equipoise. In other words, even had the ALJ considered Dr. Seaman's reading rather than Dr. Zaldivar's, the record would contain one x-ray that is positive for pneumoconiosis, one x-ray that is negative for the disease, and two x-rays that are in equipoise. Because the weight of the x-rays neither proves nor disproves clinical pneumoconiosis, Employer would still not have satisfied its burden to rebut the presumption of clinical pneumoconiosis through x-ray evidence. *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 843 (6th Cir. 2016); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014). Thus we conclude the ALJ's error is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Employer further argues the ALJ erred by engaging in a "headcount" when considering the x-ray readings. Employer's Brief at 30-33. Contrary to Employer's argument, the ALJ did not merely engage in a headcount when resolving the conflicting x-ray readings; instead, she properly performed both a qualitative and quantitative analysis of the x-ray evidence, taking into consideration the physicians' qualifications, their specific

interpretations, and the number of readings of each film.[13] *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); *Adkins*, 958 F.2d at 52.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the x-ray evidence does not rebut the presumption of clinical pneumoconiosis. Decision and Order at 28.

Medical Opinions

We next address the ALJ's finding that the medical opinions do not rebut the presumption of clinical pneumoconiosis. Dr. Zaldivar opined there is no radiographic evidence of clinical pneumoconiosis. Employer's Exhibits 1, 2, 9. The ALJ permissibly discredited his opinion as contrary to her finding that the x-ray evidence does not rebut the presumption of clinical pneumoconiosis. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 30. In addition, during his deposition Dr. Zaldivar was asked if Claimant's symptoms are supportive of a coal mine dust-induced lung disease, and he opined they are not because they began "fairly recent[ly]." Employer's Exhibit 9 at 13-14. The ALJ acted within her discretion in finding this reasoning undermines his exclusion of clinical pneumoconiosis, as it is contrary to the regulation that recognizes pneumoconiosis "as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure."[14] 20 C.F.R. §718.201(c); *see Epling*, 783 F.3d at 506 (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited).

As Employer does not challenge the ALJ's finding that Dr. Spagnolo's opinion and Claimant's treatment records are insufficient to rebut the presumption of clinical

[13] Employer contends the ALJ erred in weighing the conflicting readings without considering the doctors' "academic" credentials. Employer's Brief at 33-34. We disagree. An ALJ is not required to assign greater weight to the x-ray interpretation of one physician over another based on their academic appointments, but may permissibly accord them equal weight based on their dual qualifications as radiologists and B readers. *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003).

[14] Employer argues the ALJ erred in calculating Claimant's cigarette smoking history and then discrediting Dr. Zaldivar's opinion because he overestimated the smoking history. Employer's Brief at 9, 12-24. Because the ALJ provided a valid reason for discrediting Dr. Zaldivar's opinion on clinical pneumoconiosis, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 15-24.

pneumoconiosis, we also affirm these findings.[15] *Skrack*, 6 BLR at 1-711; Decision and Order at 30-34. Thus we affirm her finding the medical opinions do not rebut the presumption of clinical pneumoconiosis. Decision and Order at 34.

CT Scans

Finally, we address Employer's argument that the ALJ erred in weighing the single CT scan reading in the record. The ALJ considered Dr. Vanhoose's reading of the February 12, 2016 CT scan. Decision and Order at 32-33. Dr. Vanhoose read the scan as revealing no "acute pathology within the thorax" and no "suspicious nodules." Employer's Exhibit 7.

The ALJ assigned the CT scan reading little weight because Dr. Vanhoose's credentials are not in the record. Decision and Order at 33. In addition, she found the CT scan not credible because radiologists more recently interpreted x-rays as positive for clinical pneumoconiosis. *Id*. Finally, she found a single negative CT scan is not sufficiently reliable to rebut the presumption of clinical pneumoconiosis. *Id*. at 32-33.

We agree with Employer that the ALJ erred in discrediting Dr. Vanhoose's CT scan reading because "the record includes countervailing evidence in the form of positive chest [x]-ray interpretations taken more recently than [the] 2016 CT scan." Decision and Order at 33. As Employer argues, while the record contains more recent positive x-ray readings, it also includes more recent negative x-ray readings. Employer's Brief at 18-19. As discussed above, Dr. Seaman read the March 1, 2017 x-ray as negative for pneumoconiosis. Employer's Exhibit 4. Dr. DePonte read the May 1, 2019 and August 20, 2019 x-rays as positive for pneumoconiosis, while Dr. Meyer read both x-rays as negative for the disease. Claimant's Exhibit 1; Employer's Exhibits 5, 6. Because the ALJ failed to consider all relevant evidence when rendering this credibility finding, we vacate it. *See Addison*, 831 F.3d at 252-53; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

We also agree with Employer that the ALJ erred to the extent that she held a single CT scan cannot rebut the presumption of clinical pneumoconiosis as a matter of law based on language in the preamble to the 2001 revised regulations. Decision and Order at 32-33. In the preamble, in pertinent part, the Department of Labor (DOL) addressed and rejected a commenter's assertion that a "CT scan is sufficiently reliable that a negative result effectively rules out the existence of pneumoconiosis." 65 Fed. Reg. 79,940, 79,945 (Dec.

[15] Although Employer argues the ALJ erred in crediting the opinions of Drs. Everhart, Green, and Raj that Claimant has clinical pneumoconiosis, the ALJ correctly found their opinions do not assist Employer in meeting its burden on rebuttal. *See Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.9 (2015); 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 31.

20, 2000). Discussing legal pneumoconiosis, the DOL explained that because the "statutory definition of 'pneumoconiosis . . . encompasses a broader spectrum of diseases than those pathologic conditions which can be detected by clinical diagnostic tests such as x-rays or CT scans," there is no basis to conclude that a negative CT scan disproves pneumoconiosis as a matter of law. *Id.*, *quoting Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000). Thus, a CT scan that establishes a miner does not have clinical pneumoconiosis does not necessarily prove the miner does not have a chronic lung disease significantly related to, or substantially aggravated by, coal mine dust exposure. 20 C.F.R. §718.201(a)(2), (b). However, neither the preamble nor the regulations suggest that a CT scan cannot constitute probative evidence as to the presence or absence of clinical pneumoconiosis. Rather, the DOL has acknowledged that a "CT scan may provide reliable evidence in a particular claim that the miner does not have any evidence of the disease which can be detected by that particular diagnostic technique." *Id.* And in this claim specifically, the ALJ found, under the regulation for consideration of "other medical evidence" at 20 C.F.R. §718.107, that CT scans are medically acceptable and relevant to determining clinical pneumoconiosis.[16] Decision and Order at 33. We therefore cannot affirm the ALJ's conclusion that, as a matter of law, "a single CT scan is not sufficiently reliable" to rebut the presence of clinical pneumoconiosis.[17]

[16] The ALJ also cited two circuit court cases in her discussion. In *Consol. Coal Co. v. Director, OWCP* [*Stein*], the United States Court of Appeals for the Seventh Circuit rejected an employer's argument that CT scans are more "sophisticated and sensitive diagnostic" tests than x-rays, so an ALJ must credit them as a matter of law over x-rays. 294 F.3d 885, 890-94 (7th Cir. 2002). Rather, the court stated, in addressing clinical pneumoconiosis ALJs must base their findings "on the totality of the medical and scientific evidence contained in the record . . . ." *Id.* at 893. Further, in *Island Creek Coal Co. v. Compton*, the Fourth Circuit held that although 20 C.F.R. §718.202(a) provides four distinct methods of establishing the existence of pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a miner suffers from the disease. 211 F.3d 203, 211 (4th Cir. 2000). Neither case supports the proposition that a credible CT scan cannot meet Employer's burden to establish Claimant does not have clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B).

[17] We also agree with Employer that the ALJ failed to explain why she used the internet to obtain some physicians' qualifications (i.e., Dr. Everhart's) but discredited Dr. Vanhoose's CT scan because his qualifications are not in the record and thus are "unknown." Decision and Order at 33. In an October 27, 2020 Notice of Hearing, the ALJ stated the parties are "hereby provided notice that [she] may, but is not required to, utilize the internet to obtain the qualifications or credentials of physicians." Notice of Hearing at 10-11. She further stated a "party who has not provided evidence of a physician's qualifications or credentials shall be deemed to have waived any objection to [her] use of

Based on the foregoing errors, we vacate the ALJ's finding that the CT scan evidence does not rebut the presumption of clinical pneumoconiosis. Decision and Order at 33. We further vacate the ALJ's finding that Employer did not disprove clinical pneumoconiosis based on consideration of all relevant evidence, 20 C.F.R. §718.305(d)(1)(i)(B), and her finding that Employer failed to establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 34-36.

The ALJ weighed Dr. Spagnolo's opinion that Claimant's reduced arterial blood gas study results during exercise can be explained by his cardiac disease and thus was not caused by clinical pneumoconiosis. Employer's Exhibits 3, 10. The ALJ acknowledged Dr. Spagnolo testified that "although Claimant had not required surgical intervention for his heart disease since 2010, he was still symptomatic, complaining of chest pain and shortness of breath." Decision and Order at 35, *citing* Employer's Exhibit 10 at 13. However, the ALJ found "Claimant did not testify that he sees any physician for ongoing treatment" of his heart disease, nor does the record support the conclusion that Claimant is actively treated for heart disease. Decision and Order at 36 n. 26. The ALJ permissibly found Dr. Spagnolo did not adequately explain "why he found heart disease to be the sole contributor to Claimant's pulmonary impairment given the lack of active treatment for

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the internet for this purpose." *Id*. In her Decision and Order, the ALJ reiterated she "may utilize the internet to obtain physician credentials where the party submitting the physician opinion has not included them." Decision and Order at 15 n.16, *citing* Notice of Hearing at 10-11. Because the Director did not submit Dr. Everhart's credentials in conjunction with his medical opinion, the ALJ used the internet to obtain his credentials and found he is Board-certified in internal medicine and pulmonary diseases. Decision and Order at 15 n.16. As discussed above, however, the ALJ discredited Dr. Vanhoose's reading of the February 12, 2016 CT scan because his qualifications are not in the record. Decision and Order at 33. Employer argues that, had the ALJ searched the internet for Dr. Vanhoose's qualifications, she would have ascertained that he is a Board-certified radiologist. Employer's Brief at 10-11. Because the ALJ has not explained why she used the internet to obtain Dr. Everhart's qualifications and not Dr. Vanhoose's qualifications, her finding does not satisfy the explanatory requirements of the Administrative Procedure Act. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc) (ALJ must apply equal scrutiny to the relevant evidence).

heart disease." Decision and Order at 36; *see Underwood*, 105 F.3d at 949 (ALJ has the discretion to weigh the evidence and draw inferences therefrom); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.[18]

The ALJ discredited Dr. Zaldivar's disability causation opinion because he failed to diagnose clinical pneumoconiosis, contrary to her finding Employer did not disprove the disease. Decision and Order at 34-35. As the ALJ's errors in weighing the CT scan evidence may have affected her discrediting of Dr. Zaldivar's opinion on the issue of disability causation, we must vacate this credibility finding. Thus, we vacate the ALJ's finding that Employer failed to establish no part of Claimant's respiratory disability is caused by clinical pneumoconiosis.[19] 20 C.F.R. §718.305(d)(1)(ii). However, if the ALJ again finds Employer has failed to rebut the presumption of clinical pneumoconiosis on remand, she may reinstate this credibility finding. 20 C.F.R. §718.305(d)(1)(ii); *see Epling*, 783 F.3d at 506; *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995).

Remand Instructions

On remand, the ALJ must reconsider the credibility of Dr. Vanhoose's CT scan reading. Employer's Exhibit 7. She must consider the explanations for his conclusions, the documentation underlying his medical judgment, and the sophistication of, and bases for, his diagnoses. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. If she finds his CT scan reading is not credible, Employer will have failed to rebut the presumption of clinical pneumoconiosis. If she finds his reading is credible, she must then weigh all relevant evidence together to determine whether Employer has rebutted the presumption of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); *see Compton*, 211 F.3d at 211.

If the ALJ finds Employer has rebutted the presumption of clinical pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(B), Employer has established rebuttal under 20 C.F.R. §718.305(d)(1)(i) and the ALJ must deny benefits. If she finds Employer has not rebutted the presumption of clinical pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(B), she may

[18] Because the ALJ's errors in weighing the CT scan evidence on the issue of clinical pneumoconiosis do not affect her credibility findings with respect to Dr. Spagnolo on the issue of total disability causation, we are able to affirm the ALJ's rationale for finding his opinion insufficient to establish no part of Claimant's total disability is caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[19] We need not address whether the ALJ erred in crediting the opinions of Drs. Everhart, Green, and Raj as reasoned and documented on total disability causation as they do not assist Employer in meeting its burden on rebuttal. *See Minich*, 25 BLR at 1-155 n.9; 20 C.F.R. §718.305(d)(1)(ii).

reinstate her findings that Dr. Zaldivar's opinion is not credible on the issue of total disability causation at 20 C.F.R. §718.305(d)(1)(ii) and Claimant is entitled to benefits.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge