4C.
WCB # G1999077
Lobban, Foster, Paprocki
Affirmed

Decided and Entered:  May 19, 2022                    533425
_____

In the Matter of the Claim of
    ALEX RYAN,
                        Appellant,

        v

CITY OF ALBANY et al.,                    MEMORANDUM AND ORDER
                    Respondents.

WORKERS' COMPENSATION BOARD,
                        Respondent.
_____


Calendar Date:   April 19, 2022

Before:   Lynch, J.P., Clark, Aarons, Colangelo and McShan, JJ.

                    _____


        Buckley, Mendleson, Criscione & Quinn, PC, Albany (Brendan
G. Quinn of counsel), for appellant.

        Manes and Manes, Armonk (Mathew T. Keller of counsel), for
City of Albany and another, respondents.

                    _____


Lynch, J.P.

        Appeal from a decision of the Workers' Compensation Board,
filed September 22, 2020, which ruled that claimant remains
unattached to the labor market.

        Claimant established a workers' compensation claim for a
back injury sustained in a 2018 work-related accident.  By
decision filed December 27, 2019, a Workers' Compensation Law
Judge (hereinafter WCLJ) found claimant to be temporarily

partially disabled, awarded benefits from August 29, 2019
forward and, upon the carrier raising the issue of labor market
attachment, directed that claimant produce evidence of job
market search efforts at the next hearing scheduled for February
12, 2020. At that hearing, claimant did not present any
evidence of job search efforts in order to demonstrate labor
market attachment, but instead offered a January 13, 2020
medical report indicating that he was temporarily totally
disabled, in part, due to a right hip injury. The WCLJ, in a
decision filed February 18, 2020, found that claimant
voluntarily removed himself from the labor market and suspended
claimant's benefits as of February 13, 2020. No party appealed
from that decision.

In May 2020, claimant filed a request for further action.
At a May 2020 hearing, the WCLJ denied claimant's request to
revisit the issue of labor market attachment. Upon
administrative appeal, the Workers' Compensation Board, in a
decision filed September 22, 2020, found that no new evidence
regarding claimant's labor market attachment had been presented
at the May 6, 2020 hearing and affirmed the WCLJ's decision.
Claimant appeals.

We find no error in the Board denying claimant's request
to revisit the issue of claimant's labor market attachment. At
the May 6, 2020 hearing, claimant submitted neither new evidence
regarding his attachment to the labor market nor any evidence to
support his assertion that he remained employed with the self-
insured employer. Further, contrary to claimant's contention,
we find no basis to disturb the Board's finding that the January
13, 2020 medical opinion finding that claimant was temporarily
totally disabled did not alleviate him from presenting evidence
of labor market attachment at the February 12, 2020 hearing.
That medical opinion was rendered after claimant was found to be
temporarily partially disabled and directed to demonstrate labor
market attachment, and was based, in part, on an injury to his
right hip that was not part of the established claim. Further,
we find no error in the Board finding that the March 7, 2020
executive order declaring a state of emergency in response to
the COVID-19 pandemic — which suspended the requirement that a

claimant with a partial disability establish labor market
attachment — was inapplicable to claimant inasmuch as claimant's
benefits had already been suspended prior to the state of
emergency.  In view of the foregoing, we find that substantial
evidence supports the Board's determination that claimant has
not demonstrated his entitlement to further benefits as he
remains unattached to the labor market (see Matter of DeWald v
Fiorella's Landscaping, 194 AD3d 1327, 1328 [2021]; Matter of
Bacci v Staten Is. Univ. Hosp., 32 AD3d 582, 584 [2006]).
Claimant's remaining contentions, to the extent they are
preserved for our review, are without merit.

        Clark, Aarons, Colangelo and McShan, JJ., concur.




        ORDERED that the decision is affirmed, without costs.




                    ENTER:


                    Robert D. Mayberger
                    Clerk of the Court