

*State of New York
Supreme Court, Appellate Division
Third Judicial Department*

Decided and Entered: September 17, 2026

CV-25-1005

In the Matter of the Claim of
WILLIAM ALEXANDER,
Appellant,

v

NEW YORK CITY DEPARTMENT
OF HOMELESS SERVICES
et al.,

Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,

Respondent.

Calendar Date: September 8, 2026

Before: Pritzker, J.P., Ceresia, Powers, Corcoran and Ryba, JJ.

John F. Clennan, Ronkonkoma, for appellant.

Steven Banks, Corporation Counsel, Brooklyn (*Michael J. O'Sullivan* of counsel),
for New York City Department of Homeless Services and another, respondents.

Pritzker, J.P.

Appeals (1) from a decision of the Workers' Compensation Board, filed March 26, 2025, which ruled that claimant did not sustain a permanent total disability, and (2) from a decision of said Board, filed June 11, 2025, which denied claimant's application for reconsideration and/or full Board review.

In April 2020, claimant was injured at work, and his subsequent claim for workers' compensation benefits was established for injuries to his left hip, left knee and back.¹ Following medical evaluations and a hearing to address, among other things, the extent of claimant's disability, the Workers' Compensation Law Judge (hereinafter WCLJ), in a May 2024 decision, denied claimant's request for a finding of a permanent total disability, found that claimant had sustained a permanent partial disability and continued the case for, among other things, evidence of labor market attachment. Upon administrative review, the Workers' Compensation Board, in a March 2025 panel decision, found that claimant had submitted insufficient credible medical evidence of a permanent total disability as a result of the established injuries of the claim. In so finding, the Board credited the findings of multiple evaluating physicians who found that claimant was capable of performing sedentary work and that claimant's noncompensable preexisting morbid obesity is a significant contributing condition to the physical limitations. Claimant's ensuing application for reconsideration and/or full Board review was denied, and claimant appeals from both Board decisions.

We affirm. "Workers' Compensation Law § 15 (1)-(3) and (5) provides compensation for four distinct classes of injury: permanent total disability, temporary total disability, permanent partial disability and temporary partial disability" (*Matter of Jennings v Stop & Shop*, 210 AD3d 1272, 1275 [3d Dept 2022], *lv denied* 39 NY3d 911 [2023] [internal quotation marks and citation omitted]). As relevant here, "a permanent total disability is established where the medical proof shows that a claimant is totally disabled and unable to engage in any gainful employment" (*Matter of Williams v Preferred Meal Sys.*, 126 AD3d 1259, 1259 [3d Dept 2015] [internal quotation marks and citation omitted]; *accord Matter of Burgos v Citywide Cent. Ins. Program*, 148 AD3d 1493, 1495 [3d Dept 2017], *affd* 30 NY3d 990 [2017]; *see* Workers' Compensation Law § 15 [1]; *cf. Rubeis v Aqua Club, Inc.*, 3 NY3d 408, 417 [2004]). "The resolution of conflicting medical evidence lies within the province of the Board, but the opinions relied upon must themselves constitute substantial evidence to support the Board's decision" (*Matter of Dingman v Town of Lake Luzerne*, 94 AD3d 1287, 1287-1288 [3d Dept 2012] [citations omitted]; *accord Matter of O'Brien v Carey Ctr. for Global Good*, 140 AD3d 1492, 1493 [3d Dept 2016]).

¹ Claimant also has an established claim for a work-related injury (medial meniscus tear) involving his left knee that occurred in, or about, 2002.

Although Enrico Fazzini, a neurologist who treated claimant, opined in 2022 that claimant "has severe difficulty with his normal activities of daily living such as bending, lifting, and twisting" and "has severe difficulty bathing and dressing due to his symptoms," such opinions were rendered before claimant was evaluated for permanency. In April 2024, however, Fazzini did testify that, absent knee surgery, claimant was 100% permanently impaired without an ability to work in any capacity but further explained that he would have to defer to an orthopedist on the condition of claimant's left knee. In contrast to Fazzini's opinion regarding claimant's ability to work, the balance of the medical evidence and testimony indicated that claimant is capable of performing sedentary work. In a May 2022 report on permanency, Joseph Bosco, claimant's orthopedic surgeon who evaluated claimant's left knee, opined that claimant sustained a permanent partial disability as a result of the injury to his left knee and – because claimant is confined to a motorized scooter and is not a candidate for total knee replacement due to his severe obesity – he is totally disabled from returning to his prior occupation. Bosco testified, however, that claimant has an overall marked degree of permanent impairment and that he is capable of performing sedentary work activity. Frank Hudak, an orthopedic surgeon who performed an independent medical examination of claimant in December 2023 and reviewed claimant's past medical history and records, found that claimant had sustained a nonschedule permanent impairment of the lumbar spine of B severity, a 50% schedule loss of use (hereinafter SLU) of the left leg (knee)² and a 40% SLU of the left leg (hip). Similar to Bosco's finding, Hudak also concluded and testified that claimant was capable of performing sedentary work activity. Although the record medical evidence demonstrates that claimant has difficulty standing, requiring a mobilized scooter to move around, and has difficulty with daily living activities (*see e.g. Employer: County of Fulton*, 2025 WL 2886893, *2, 2025 NY Wrk Comp LEXIS 5729, *4 [WCB G319 0525, Oct 6, 2025]), both Bosco and Hudak concluded that claimant had sustained a permanent partial disability and was still capable of performing sedentary work activity. Given the presence of conflicting medical evidence and that "the ultimate determination of total disability lies with the Board," we find that the Board was clearly entitled to weigh the evidence in the manner that it did (*Matter of VanDermark v Frontier Ins. Co.*, 60 AD3d 1171, 1172 [3d Dept 2009]; *see Matter of Brickner v Medtronic, Inc.*, 241 AD3d 1637, 1639 [3d Dept 2025]; *Matter of Serrano v Bay Park Ctr. for Nursing & Rehabilitation*, 236 AD3d 1256, 1258 [3d Dept 2025]; *Matter of Govan v New York City Health and Hosps. Corp.*, 62 AD3d 1172, 1173 [3d Dept 2009]).

² Hudak apportioned 75% to the prior work-related injury to claimant's left knee and 25% to the current claim involving the left knee.

Given that substantial evidence supports the Board's decision that claimant did not sustain a permanent total disability, we find no reason to disturb it (*see Matter of Serrano v Bay Park Ctr. for Nursing & Rehabilitation*, 236 AD3d at 1258; *Matter of Williams v Preferred Meal Sys.*, 126 AD3d at 1259-1260).

To the extent that claimant argues that the Board erred in denying his application for reconsideration and/or full Board review, "[t]o succeed on such an application, the applicant must demonstrate that newly discovered evidence exists, that there has been a material change in condition, or that the Board improperly failed to consider the issues raised in the application for review in making its initial determination" (*Matter of Serrano v Bay Park Ctr. for Nursing & Rehabilitation*, 236 AD3d at 1258 [internal quotation marks and citations omitted]). Claimant has failed to make such a demonstration here, as his arguments in this regard simply restate applicable standards of review and/or challenge the underlying Board decision, and we therefore discern no basis upon which to conclude that the Board's denial of the application was arbitrary and capricious or otherwise an abuse of discretion. Claimant's remaining contentions, to the extent not specifically addressed, have been considered and found to be without merit.

Ceresia, Powers, Corcoran and Ryba, JJ., concur.

ORDERED that the decisions are affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial 'R'.

Robert D. Mayberger
Clerk of the Court