

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

All City Medical Supply Inc
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No. 17-22-1254-8280
Applicant's File No. 84311
Insurer's Claim File No. 8722327570000001
NAIC No. 22055

ARBITRATION AWARD

I, Antonietta Russo, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: Assignor

1. Hearing(s) held on 02/10/2023
Declared closed by the arbitrator on 02/10/2023

Nison Mirakov from The Law Offices of John Gallagher, PLLC participated virtually for the Applicant

Heather Pliszak from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,100.13**, was NOT AMENDED at the oral hearing.
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The Assignor is a 25-year-old male allegedly involved in a motor vehicle accident on May 26, 2021. Following the accident, Assignor sought medical treatment and Applicant is seeking reimbursement for said treatment rendered to the Assignor on June 18, 2021. Respondent issued a denial based on a Worker's Compensation defense and the only issue presented at the hearing was:

- 1) Whether this forum has jurisdiction to hear the instant arbitration?

4. Findings, Conclusions, and Basis Therefor

The Applicant and the Respondent submitted documentary evidence in support of their respective positions. All such evidence is contained within MODRIA maintained by the American Arbitration Association, as of the date of the hearing. The below-noted decision is based upon my review of the submitted evidence, along with the oral argument of the representatives present at the hearing.

The law in New York is clear on this issue. The No-Fault carrier is obligated to pay first-party benefits only if the workers compensation carrier denied liability for payment of benefits in whole or in part. Arvatz v. Empire Mutual Ins. Co., 171 A.D.2d 262, 575 N.Y.S.2d 836 (1 Dept. 1991). The Workers' Compensation Board has primary jurisdiction to determine factual issues concerning coverage under the Workers' Compensation Law. AR Medical Rehabilitation, P.C. v. American Transit Ins. Co., 27 Misc.3d 133(A), 910 N.Y.S.2d 403 (Table), 2010 N.Y. Slip Op. 50708(U), 2010 WL 1630124 (App. Term 2d, 11th & 13th Dists. Apr. 13, 2010).

Where an insurer raises a defense that the insured was injured in the course of employment, primary jurisdiction over the claim lies with the Workers Compensation Board. Arvatz v. Empire Mutual Ins. Co., 171 A.D.2d 262, 575 N.Y.S.2d 836 (1st Dept. 1991).

Where the evidence is sufficient to raise a question of fact as to whether the eligible injured person was acting as an employee at the time of the accident, the issue must be resolved by the Workers' Compensation Board. A.B. Medical Services, PLLC v. American Transit Ins. Co., 24 Misc.3d 75, 885 N.Y.S.2d 154 (App. Term 9th & 10th Dists. June 18, 2009); Response Equipment, Inc. v. American Transit Ins. Co., 15 Misc.3d 145(A), 841 N.Y.S.2d 823 (Table), 2007 N.Y. Slip Op. 51176(U), 2007 WL 1662679 (App. Term 2d & 11th Dists. June 8, 2007).

Finally, the Appellate Courts have held that the burden of proof is quite low in determining whether Workers' Compensation is primary. In Parkway Mgmt v. American Transit, 39 Misc. 3 133 (App. Term 2d Dept 2013) the Court held: "We find that defendant's proof, including the police accident report was sufficient to raise a question of fact as to whether plaintiff's assignor had been acting as an employee at the time of the accident, which issue must be resolved by the Workers' Compensation Board."

Respondent submits a Notice of Decision from the NYS Worker's Compensation Board by Judge Howard Geasor, indicating a hearing was held on 11/23/2021 and found:

"The claimant...had a work related injury neck, back and right knee...
"Medical treatment and care as necessary for established sites of injury and/or
conditions is authorized."

After reviewing all of the documents on file in the ADR Center maintained
by the American Arbitration Association and considering the arguments set forth
by both sides, I find the Respondent's evidence is sufficient to demonstrate that
the Workers' Compensation Board and not arbitration is the proper form for
deciding the issue.

Accordingly, the Applicant's claim is denied.

Any further issues raised in the record are held to be moot and/or waived
insofar as not raised at the time of the hearing. This decision is in full disposition
of all claims for No-Fault benefits presently before this Arbitrator.

5. Optional imposition of administrative costs on Applicant.
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount
established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**

- The policy was not in force on the date of the accident
- The applicant was excluded under policy conditions or exclusions
- The applicant violated policy conditions, resulting in exclusion from coverage
- The applicant was not an "eligible injured person"
- The conditions for MVAIC eligibility were not met
- The injured person was not a "qualified person" (under the MVAIC)
- The applicant's injuries didn't arise out of the "use or operation" of a motor
vehicle
- The respondent is not subject to the jurisdiction of the New York No-Fault
arbitration forum

Accordingly, the claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY
SS :
County of Nassau

I, Antonietta Russo, do hereby affirm upon my oath as arbitrator that I am the individual
described in and who executed this instrument, which is my award.

03/12/2023
(Dated)

Antonietta Russo

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

Document Name: Final Award Form
Unique Modria Document ID:
fe5989ae6e8fc13a800d87b2a87eda58

Electronically Signed

Your name: Antonietta Russo
Signed on: 03/12/2023