

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

BSD OS LLC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

AAA Case No.	17-23-1328-7919
Applicant's File No.	DK23-403572
Insurer's Claim File No.	0612111140101018
NAIC No.	22055

ARBITRATION AWARD

I, Daniel Felber, 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: JD

1. Hearing(s) held on 05/20/2025
Declared closed by the arbitrator on 05/20/2025

Jennifer Raheb, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Heather Pliszak, Claims Representative from Geico Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$2,826.70**, 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

Assignor JD, a 40-year-old male, was the driver of a motor vehicle involved in an accident on August 23, 2023. Assignor suffered injuries which he received treatment. In dispute is Applicant's claim for a pneumatic compressor provided to Assignor on September 7, 2023. Respondent denied the claim based upon Applicant's failure to appear for an Examination Under Oath ("EUO") ("EUO no-show defense"). The issue to

be determined in this arbitration is whether Respondent sustained its EUO no-show defense, precluding Applicant from receiving assigned first-party benefits under that policy.

4. Findings, Conclusions, and Basis Therefor

This case was decided based upon the submissions of the Parties as contained in the electronic file maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Applicant established its *prima facie* entitlement to reimbursement for the services at issue based on submission of timely completed claim forms setting forth the amounts of the losses sustained and establishing that No-Fault payments are overdue. *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 774 (2d Dept. 2004).

EUO NO-SHOW DEFENSE

A. Legal Framework

It is well settled that the appearance of the Eligible Injured Person ("EIP") or his or her assignee at an EUO is a condition precedent to an insurer's liability on a policy. *See, Mega Billing, Inc. v. State Farm Fire & Casualty Company*, 35 Misc.3d 145(A), 2012 N.Y. Slip Op. 51014(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 2012); *Viviane Etienne Medical Care, P.C v. State Farm Mutual Automobile Ins. Co.*, 35 Misc.3d 127(A), 2012 N.Y. Slip Op. 50589(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 2012). An insurer may deny claims based on the failure to appear for an EUO as it constitutes a breach of a condition precedent to coverage. *Mega Billing, supra*.

Thus, it follows that if an EIP, or his or her assignee, fails to comply with an insurer's timely and valid request for an EUO, so long as the request strictly complies with the governing regulations, the insurer is entitled to dismissal of an action seeking no-fault

benefits. *See, Dover Acupuncture, P.C. v. State Farm Mutual Auto Ins. Co.*, 28 Misc.3d 140(A), 2010 N.Y. Slip Op. 51605(U) (App. Term 1st Dept. 2010); *Great Wall Acupuncture, P.C. v. New York Central Mutual Fire Insurance Company*, 22 Misc.3d 136(A), 2009 N.Y. Slip Op. 50294(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 2009).

In order for Respondent to make a *prima facie* showing of its defense based upon Applicant's failure to appear at scheduled EUOs, it has to demonstrate that its initial and follow-up requests for verification were timely and properly issued pursuant to 11 NYCRR Section 65-3.5(b) and 65-3.6(b) and establish that the provider failed to appear at the EUO's. *Essential Acupuncture Services, P.C. v. Ameriprise Auto & Home Ins. Co.*, 2012 N.Y. Slip Op. 52404(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 2012); *Urban Radiology, P.C. v. Clarendon National Insurance Company*, 31 Misc.3d 132(A), 2011 N.Y. Slip Op. 50601(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 2011); *Advanced Medical, P.C. v. Utica Mutual Insurance Company*, 23 Misc.3d 141(A), 2009 N.Y. Slip Op. 51023(U) (App. Term 2nd, 11th, and 13th Jud. Dists. 2009).

B. The Record

Respondent received the claim on September 26, 2023 and issued the first EUO notice, dated October 5, 2023, scheduling an EUO for October 26, 2023 ("the First EUO Notice"). Respondent issued a second EUO notice, dated October 31, 2023, scheduling an EUO for November 30, 2023 ("the Second EUO Notice"). Respondent submitted an affirmation of mailing for the First and Second EUO Notices and affirmations of non-appearance from the attorneys assigned to conduct each of the scheduled EUOs.

C. Applicant's Contentions

Applicant maintains that Respondent's EUO no-show defense is unsustainable due to defects in the EUO notices; proof of mailing; and proof of non-appearance. Applicant first argues that because the EUO notices offer the option for a virtual appearance via Zoom without providing a Zoom link they are legally deficient. Next, Applicant argues that Respondent's affirmation of mailing is inadequate because it does not contain Respondent's standard office mailing procedures; the address to which the EUO notices

were mailed; does not affirm personal knowledge of the mailing; and is not contemporaneously executed. Finally, Applicant asserts that Respondent's affirmations of non-appearance are fatally flawed.

D. Findings

i. Content of the EUO Scheduling Notices

The EUO scheduling notices explicitly notified Applicant of date, time, and place for the in-person EUOs. The EUO scheduling notices also offered Applicant the option to virtually appear for the EUOs, and expressly informed Applicant that if it chose this method it should call Respondent's representative prior to the EUO to make arrangements (at which time Applicant would have presumably been provided with a Zoom link). The record does not contain evidence that Applicant chose a virtual appearance or sought a Zoom link for this purpose. Nor does the record reflect that Applicant objected to the content of the EUO scheduling notices. *See, e.g., Quality Psychological Services, P.C. v. Hereford Ins. Co.*, 38 Misc.3d 1210(A) (Civ. Ct. Kings Co. 2013). Based upon the foregoing, I find that the content of the EUO scheduling notices are proper.

ii. Proof of Mailing of the EUO Scheduling Notices

Respondent's affirmation of mailing is very detailed as to Respondent's standard office mailing procedures, addresses the mailing of the specific EUO scheduling letters at issue in this case, and affirms that the affirmant was personally familiar with the EUO scheduling letters based upon a personal review of the claims file associated with this case. I also note that the EUO scheduling notices were addressed to the address which appears on Applicant's NF-3. Based upon the foregoing, I find that Respondent met its burden of proving mailing of both the initial and follow-up EUO scheduling notices.

iii. Proof of Non-Appearance for EUOs

Respondent submitted affirmations of the attorneys responsible for conducting scheduled EUOs to take place at their office. Each attorney affirmed that he/she was

present in the office on that date and would have conducted Applicant's EUO or assigned it to one of the other attorneys but for the fact that Applicant failed to appear. I find Respondent's proof of non-appearance suffices to demonstrate that Applicant failed to appear for its EUOs. *See, e.g., Sanford Chiropractic, P.C. v. State Farm Mutual Automobile Ins. Co.*, 75 Misc.3d 138(A) (App. Term 2nd Dept., 2022) (an attorney's affirmation that EUOs were scheduled to take place at certain times in his firm's offices on specified dates, that he/she was "present in the office" on those dates, that no one appeared for either scheduled EUO, and that if someone had appeared, he/she would have conducted the EUO or assigned one of the other attorneys authorized to conduct EUOs to conduct the EUO suffices to

demonstrate non-appearance for the EUOs).

Based upon the foregoing, I find that Respondent sustained its EUO no-show defense.

As such, the claim is denied.

Any further issues raised in the hearing record are held to be moot and/or waived as far as not raised at the time of the hearing.

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 Westchester

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

05/24/2025

(Dated)

Daniel Felber

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:
7d6434fa601d0140d24598354f6c0816

Electronically Signed

Your name: Daniel Felber
Signed on: 05/24/2025