American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Brooklyn Medical Practice, PC (Applicant)	AAA Case No.	17-25-1427-6337
	Applicant's File No.	AR25-28443
- and -	Insurer's Claim File No.	1114534-01
	NAIC No.	16616
American Transit Insurance Company (Respondent)		

ARBITRATION AWARD

I, Matthew K. Viverito, 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: EIP

1. Hearing(s) held on 08/10/2026
   Declared closed by the arbitrator on 08/10/2026

   Jeffrey M. Kramer from Law Office of Jeffrey M. Kramer participated virtually for the Applicant

   Audrey Victor from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$1,888.64**, 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

   This arbitration arises out of medical treatment for the EIP, a 57 year old male driver, related to injuries sustained in a motor vehicle accident that occurred on 5/22/22. Applicant seeks reimbursement in the amount of $1,888.64 for physical therapy services provided between 5/23/22 and 12/14/22. Respondent issued timely denials of claim based on the allegation that the EIP was in the course of his employment at the time of the motor vehicle accident as is therefore eligible for workers' compensation benefits. The issue presented is whether respondent can sustain its workers' compensation defense.

4. Findings, Conclusions, and Basis Therefor

This hearing was conducted using documents contained in MODRIA. Any documents contained in the folder are hereby incorporated into this hearing. I have reviewed all relevant exhibits contained in MODRIA and maintained by the American Arbitration Association.

As indicated above, respondent issued timely denials of claim based on the allegation that the EIP was in the course of his employment at the time of the motor vehicle accident as is therefore eligible for workers' compensation benefits.

I previously decided the within workers' compensation issue in respondent's favor (see AAA # 17-25-1427-6340). In the linked matter, I determined the following:

In support of its defense, respondent presented an affidavit dated 5/2/23 from Michael Duignan, Director or Underwriting. Within his affidavit, Mr. Duignan stated that the subject policy of insurance is a taxi policy issued to the EIP and it bears New York State issued Taxi and Limousine Commission license plate number T753100C. Mr. Duignan further noted that the EIP was the driver of the within "for hire" at the time of the subject motor vehicle accident.

Applicant was unable to rebut respondent's position in any meaningful way.

When respondent proffers sufficient evidence to support its contention that there is a triable issue as to whether the assignor was acting in the course of his employment at the time of the accident, the issue must be resolved in the first instance by the Workers' Compensation Board. See Great Health Care Chiropractic, PC v. Lancer Ins. Co., 42 Misc. 3 145(A), 988 NYS2d 522, 2014 WL 996302 (NY 3rd Sup App Term), 2014 NY Slip Op 50340(U), App Term, 2 Dept., 2014). The respondent must "demonstrate the existence of an issue of fact as to whether the [patient was] injured while acting within the course of his employment" to have the case referred to the Workers' Compensation Board. See Ortho Pro Labs, Inc. v. American Tr. Ins. Co., 26 Misc3d 129(a), 906 NYS2d 781, 2009 WL 5247721 (NY Sup App Term), 2009 NY Slip Op 526(U) App Term, 2 Dept., 2009).

After considering the evidence, I find that a question of fact exists regarding whether the EIP was working at the time of the accident, and accordingly, whether the present matter is Workers' Compensation eligible. I find that the issue of whether the EIP was in the course of his employment at the time of the accident is to be determined by the Workers' Compensation Board. I find that the proof is persuasive and sufficient to meet respondent's burden of proof to sustain its defense that the matter must be referred to the Workers' Compensation Board for consideration.

I see no basis to disturb my prior award.

Accordingly, the within claim is dismissed without prejudice.

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 DISMISSED without prejudice

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

State of NY
SS :
County of Nassau

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

08/10/2026
(Dated)

Matthew K. Viverito

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:
55ae4cf98213e992c2cef371013a129e

Electronically Signed

Your name: Matthew K. Viverito
Signed on: 08/10/2026