

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-153V

Filed: August 5, 2013

████████████████████,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*
*

NOT TO BE PUBLISHED

Special Master Zane

Stipulation; influenza (“Flu”) vaccine;
Guillain-Barre Syndrome (“GBS”)
Attorneys’ fees and costs

Anne Toale, Maglio Christopher and Toale, Sarasota, FL, for Petitioner
Melonie McCall, United States Dep’t of Justice, Washington, DC, for Respondent

UNPUBLISHED DECISION¹

On August 5, 2013, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case as well as attorneys’ fees and costs. As to entitlement, petitioner alleges that he suffered from Guillain-Barre Syndrome (“GBS”) as a consequence of his receipt of the influenza (“Flu”) vaccine, which is a vaccine contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a), and which he received on or about July 15, 2011. Petitioner alleges that he experienced the residual effects of this injury for more than six months. Petitioner also represents that there have been no prior awards or settlement of a civil action for these damages. Petitioner seeks compensation related to his

¹ Because this decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, § 205, 44 U.S.C. § 3501 (2006). The decisions of the special master will be made available to the public with the exception of those portions that contain trade secret or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available. If the special master, upon review of a timely filed motion to redact, agrees that the identified material fits within the categories listed above, the special master shall redact such material from the decision made available to the public. 42 U.S.C. § 300aa-12(d)(4); Vaccine Rule 18(b).

injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the flu vaccine caused Petitioner's GBS or any other injury and denies that Petitioner's current disabilities are sequelae of his alleged vaccine-related injury. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto. The undersigned hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein.

Because Petitioner is being awarded compensation pursuant to this decision, Petitioner is entitled to an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300aa-15(e). In their stipulation, the parties have agreed that an award of \$19,000.00, in attorneys' fees and costs would be reasonable. Petitioner has represented that he personally has not incurred any litigation costs. The undersigned finds that the amount requested is reasonable. In accordance with 42 U.S.C. §§ 300aa-15(e), the undersigned awards the amount of attorneys' fees and costs to which Respondent has agreed.

Specifically, Petitioner is awarded:

- 1) **a lump sum of \$75,000.00, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- 2) **a lump sum of \$19,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Ann C. Toale, Esq.** This amount represents compensation for attorneys' fees and costs that would be available under 42 U.S.C. § 300aa-15(e).

The Court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.