

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1369V

Filed: April 27, 2016

Unpublished

[Redacted]

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

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Ruling on Entitlement; Damages Decision Based on Proffer; Concession; Tetanus, Diphtheria, acellular Pertussis ("Tdap") Vaccine; Shoulder Injury Related to Vaccine Administration ("SIRVA"); Special Processing Unit ("SPU")

Diana Sedar, Maglio, Christopher and Toale, PA (FL), Sarasota, FL, for petitioner. Christine Becer, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT AND DECISION AWARDING DAMAGES ¹

Dorsey, Chief Special Master:

On November 12, 2015, [Redacted] ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.,² (the "Vaccine Act" or "Program"). Petitioner alleges that he suffered injury to his left shoulder causally related to the tetanus, diphtheria, acellular pertussis ("Tdap") vaccination he received on September 24, 2013. Petition at ¶¶ 1-2, 6. Petitioner further alleges that he has suffered the residual effects of his injury for more than six months, and neither he nor any other party has brought an action or received compensation for his vaccine related injuries. Id. at ¶¶ 7, 10-11. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 25, 2016, respondent filed her Rule 4(c) report and Proffer on Damages in which she concedes that that the case is appropriate for compensation.

¹ Because this unpublished ruling and decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Respondent's Rule 4(c) Report and Proffer on Damages at 1. Specifically, respondent agrees "that a preponderance of evidence establishes that the injury to petitioner's left shoulder was caused-in-fact by the administration of his September 24, 2013, Tdap vaccine, and that petitioner's injury is not due to factors unrelated to the administration of the Tdap vaccine." *Id.* at 3 (citations omitted). Respondent further agrees that "the statutory six month sequela requirement has been satisfied." *Id.*

Additionally, "[b]ased upon the evidence of record, respondent proffers that petitioner should be awarded \$25,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)." Respondent's Rule 4(c) Report and Proffer on Damages at 3. Respondent represents that petitioner agrees with the proffered award. *Id.*

In view of respondent's concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation. Further, based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in Respondent's Rule 4(c) Report and Proffer on Damages.

Pursuant to the terms stated in **Respondent's Rule 4(c) Report and Proffer on Damages at 3, the undersigned awards petitioner a lump sum payment of \$25,000.00 in the form of a check payable to petitioner, [REDACTED]** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.