

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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JOHN KUMP,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 13-579V
Special Master Christian J. Moran

Filed: September 26, 2016

Attorneys' fees and costs

Danielle A. Strait, Maglio Christopher and Toale, PA (DC), counsel for petitioner;
Justine E. Walters, United States Dep't of Justice, Washington, DC, for
respondent.

UNPUBLISHED DECISION ON ATTORNEYS' FEES AND COSTS¹

Petitioner John Kump filed his application for attorneys' fees and costs on September 6, 2016. The Secretary objected to the amount Mr. Kump requested. Mr. Kump is awarded **\$45,421.01**.

John Kump alleged that on September 30, 2010, he received an influenza vaccination which caused him to suffer a serious, chronic neurological injury, chronic inflammatory demyelinating polyneuropathy ("CIDP"). The undersigned issued a decision awarding compensation to petitioner based on the parties' stipulation. Decision, issued Feb. 16, 2016, 2016 WL 877839. Because petitioner received compensation, he is entitled to an award of attorneys' fees and costs. 42 U.S.C. § 300aa-15(e).

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

The Secretary objected to the amount Mr. Kump requested. She stated that based on a survey of fees awarded in similar cases and her experience litigating Vaccine Act claims, a suitable amount for fees and costs in the present case would range from \$28,000.00 to \$38,000.00. The Secretary further suggested that the undersigned make a determination as to the amount of an award within that range. See Resp't's Resp. at 3.

Because the Secretary provided virtually no explanation for how she determined the range, the Secretary's representation carries relatively little weight. The attorney's timesheets are sufficiently detailed that her activities are understandable. The attorney stipulates that difficulty obtaining medical records, difficulty assessing damages for a self-employed petitioner, and petitioner's involvement in an active bankruptcy case caused the work in this case to be more involved than many other neuropathy cases in which attorney represents petitioners. While there might be disagreement over some entries, the Secretary did not make any specific objections. Overall, the amount of time is reasonable.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. §15(e). The undersigned finds \$45,421.01 to be a reasonable amount for all attorneys' fees and costs incurred. In compliance with General Order #9, petitioner states that she did not incur any out-of-pocket litigation expenses while pursuing this claim. The undersigned **GRANTS** Mr. Kump's motion and awards **\$45,421.01** in attorneys' fees and costs. This shall be paid as follows:

A lump sum payment of \$45,421.01, in the form of a check made payable jointly to petitioner and petitioner's attorney, Danielle A. Strait, Maglio Christopher and Toale, PA (DC), for attorneys' fees and other litigation costs available under 42 U.S.C. § 300aa-15(e).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.

Any questions may be directed to my law clerk, Dan Hoffman, at (202) 357-6360.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master