

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 13-676V

(Filed: June 6, 2014; Re-Issued: June 20, 2014)

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TERRI AHERN,

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Petitioner,

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Stipulation; Influenza Vaccine;

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Shoulder Injury; Attorneys'

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Fees and Costs

v.

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SECRETARY OF HEALTH

*

AND HUMAN SERVICES,

*

*

Respondent.

*

* * * * *

Paul Brazil, Philadelphia, PA, for Petitioner

Althea Walker Davis, Washington, DC, for Respondent

UNPUBLISHED DECISION¹

On June 5, 2014, Respondent filed a joint stipulation concerning the petition for compensation filed by Terri Ahern on September 12, 2013. In her petition, Petitioner alleged that the influenza vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a), and which she received on September 21, 2010, caused her to develop a shoulder injury. Petitioner further alleges that she suffered the residual effects of this injury for more than six months. Petitioner represents that there has been

¹ Because this unpublished decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this order on the United States Court of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 (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" order will be available to the public. *Id.*

no prior award or settlement of a civil action for damages on his behalf as a result of his condition. Stipulation at ¶¶ 2, 4, 5.

Respondent denies that the influenza vaccine caused Petitioner to suffer a shoulder injury. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- a. A lump sum payment of \$20,000.00 in the form of a check payable to Petitioner, Terri Ahern. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and**
- b. A lump sum of \$15,000.00, in the form of a check payable jointly to Petitioner and Petitioner's attorney, Paul Brazil, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and in compliance with General Order #9, no out-of-pocket expenses were incurred by Petitioner in proceeding on the petition.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 13-676V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Camille Collett, at (202) 357-6361.

IT IS SO ORDERED.

s/Lisa Hamilton-Fieldman
Lisa Hamilton-Fieldman
Special Master

² 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.

THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

_____)	
TERRI AHERN,)	
)	
Petitioner,)	No. 13-676V
)	Special Master Hamilton-Fieldman
v.)	ECF
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Terri Ahern, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza vaccine ("flu"), which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received a flu vaccine on September 21, 2010.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of left arm and shoulder injury immediately following her flu vaccination, and that she suffered the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

6. Respondent denies that the flu vaccine caused petitioner's left arm and shoulder injury or any other injury or her current disabilities.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$20,000.00 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
- b. A lump sum of \$15,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Paul Brazil, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e), and in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioner in proceeding on the petition.

9. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

10. Payments made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award

for attorney's fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on September 21, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about September 12, 2013, in the United States Court of Federal Claims as petition No. 13-676V.

13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's left arm and shoulder injury or any other injury or her current disabilities.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,


PETITIONER:


TERRI AHERN


ATTORNEY OF RECORD FOR
PETITIONER:


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Dated: 5 June 2014