

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-908V

Filed: July 31, 2017

UNPUBLISHED

DANIEL DIVACK,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Uncontested;
Causation-In-Fact; Influenza (Flu)
Vaccine; Guillain-Barre Syndrome
(GBS)

Danielle Strait, Maglio Christopher & Toale, PA, Seattle, WA, for petitioner.

Lisa Ann Watts, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On August 20, 2015, 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”). Petitioner alleges that he suffered Guillain-Barre Syndrome (“GBS”) as a result of an influenza (“flu”) vaccine administered on September 29, 2012. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 31, 2017, respondent filed his Rule 4(c) report in which he states that he does not contest that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at 1. Specifically, “[i]t is respondent’s position that petitioner has satisfied the criteria set forth in the newly revised Vaccine Injury Table (“Table”) and the

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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).

Qualifications and Aids to Interpretation (“QAI”). *Id.* at 3. Respondent further agrees that “[a]lthough the revised Table only governs petitions filed on or after the effective date of the final rule, the evidence shows that petitioner suffered GBS following the administration of a seasonal flu vaccine, and that the onset occurred within the time period specified in the Table.” *Id.* at 3-4. Therefore, “[r]ecognizing that petitioner may re-file this petition and be afforded a presumption of causation under the revised Table, respondent will not contest entitlement to compensation in this case.” *Id.* at 4 (internal citation omitted).

In view of respondent’s position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master