

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1149V

Filed: January 12, 2016

UNPUBLISHED

JOHN SCANNELL,

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*

Damages Decision Based on Proffer;
Influenza (“Flu”) Vaccine; Shoulder
Injury Related to Vaccine Administration
 (“SIRVA”); Special Processing Unit
 (“SPU”)

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On October 8, 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 a shoulder injury related to vaccine administration (“SIRVA”) in his right shoulder as a result of an influenza (“flu”) vaccine he received on October 28, 2014. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 16, 2015, the undersigned issued a ruling finding that petitioner is entitled to compensation. On January 12, 2016, respondent filed a proffer on award of compensation [“Proffer”] stating petitioner should be awarded \$111,000.00. Proffer at 2. In the Proffer, respondent represents that petitioner agrees with the proffered award.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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 (2006)). 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).

Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$111,000.00, in the form of a check payable to petitioner, John Scannell.** This amount represents compensation for all damages that would be available under § 300aa-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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JOHN SCANNELL,)	
)	
Petitioner,)	No. 15-1149V ECF
)	
v.)	Chief Special Master Dorsey
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On October 8, 2015, John Scannell (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. Petitioner alleges that as a result of receiving the influenza (“flu”) vaccine on October 28, 2014,² he suffered a shoulder injury related to vaccine administration (“SIRVA”) in his right shoulder that was caused-in-fact by the vaccination. On December 16, 2015, respondent filed her Vaccine Rule 4(c) report, conceding causation-in-fact for petitioner’s SIRVA. On December 16, 2015, the Chief Special Master issued a ruling on entitlement, finding that petitioner was entitled to compensation for a SIRVA caused by the flu vaccine.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to discuss after the Damages Decision is issued.

² Based on the vaccination record filed, the correct date of vaccination is October 22, 2014. Petitioner’s Exhibit (“Pet. Ex.”) 5 at 1.

\$111,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$111,000.00, in the form of a check payable to petitioner.³

Petitioner agrees.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Senior Trial Attorney
Torts Branch, Civil Division

/s/Darryl R. Wishard
DARRYL R. WISHARD
Senior Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct dial: (202) 616-4357
Fax: (202) 616-4310

Dated: January 12, 2016

³ Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.