

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-0003V

Filed: April 5, 2016

Unpublished

PHYLLIS KOSTURA,

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Ruling on Entitlement; Concession;
Influenza and Tetanus Vaccinations
Shoulder Injury Related to Vaccine
Administration (“SIRVA”);
Special Processing Unit (“SPU”)

*Franklin John Caldwell, Jr., Maglio, Christopher & Toale, Sarasota, FL, for petitioner.
Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for respondent.*

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On January 4, 2016, Phllis Kostura (“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 she suffered injuries from the influenza and tetanus vaccinations she received in her left arm on January 15, 2015. Petition at ¶¶ 1-2, 5. Petitioner further alleges that she has suffered the residual effects of her injury for more than six months, and neither she nor any other party has brought an action for her vaccine related injuries. *Id.* at ¶¶ 6, 9. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 4, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at 1. Specifically, respondent “believes that the alleged injury is consistent with SIRVA

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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

that was caused by the administration of petitioner's flu and Tdap vaccinations." *Id.* at 2. Furthermore, respondent believes that "petitioner meets the statutory requirements by suffering the condition for more than six months, . . . [and] based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Vaccine Act." *Id.* at 2-3 (citations omitted).

In view of respondent's concession and the evidence before me, I find that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master