

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-343V

Filed: October 3, 2018

UNPUBLISHED

HEATHER GILLOTTI,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Motion for Fact Ruling; Findings of
Fact; Onset; Influenza (Flu) Vaccine;
Shoulder Injury

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

Jennifer Leigh Reynaud, U.S. Department of Justice, Washington, DC, for respondent.

FACT RULING¹

Dorsey, Chief Special Master:

On March 16, 2016, Heather Gillotti (“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 she suffered a shoulder injury that was caused-in-fact by her September 30, 2014 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters. For the reasons discussed below, the undersigned finds petitioner suffered the onset of

¹ The undersigned intends to post this ruling on the United States Court of Federal Claims' website. This means the ruling will be available to anyone with access to the Internet. 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. Because this unpublished ruling contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in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).

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).

her left shoulder injury within 48 hours after receipt of her September 30, 2014 flu vaccine.

I. Motion for Fact Ruling

On June 11, 2018, petitioner filed a Joint Status Report on behalf of the parties, requesting a deadline to file a motion for a finding of fact in regard to the onset of petitioner's injury. (ECF No. 51.) The undersigned issued an Order on June 22, 2018 directing petitioner to file a motion for a finding of fact regarding onset by no later than July 23, 2018. (ECF No. 52). Respondent was ordered to file a response to petitioner's motion for a finding of fact regarding onset by no later than August 22, 2018. (*Id.*)

On July 23, 2018, petitioner filed a Motion for Fact Ruling in Regard to the Onset of Petitioner's Symptoms (petitioner's "Motion"). (ECF No. 53). Petitioner argues in her Motion that based on the medical records, and other evidence, the onset of petitioner's shoulder injury was within 48 hours of her September 30, 2014 influenza vaccination. (ECF No. 53).

Respondent filed no response to petitioner's Motion.

II. Finding of Fact Regarding Onset

Pursuant to the parties' Joint Status Report filed June 11, 2018 and petitioner's Motion filed July 23, 2018, the undersigned makes the following finding after a complete review of the record to include: all medical records and other evidence filed by petitioner, petitioner's affidavits, respondent's Rule 4(c) Report, petitioner's expert reports, and petitioner's Motion.

Based upon the record as a whole, and specifically the evidence cited below, the undersigned finds petitioner suffered the onset of her left shoulder injury within 48 hours after the receipt of her September 30, 2014 flu vaccine.

- Prior to petitioner's September 30, 2014 flu vaccination there is no history in the record of pain, inflammation, or dysfunction of petitioner's left shoulder.
- On September 30, 2014, petitioner received an intramuscular flu vaccine in her left shoulder. (Ex. 7 at 5.)
- On October 16, 2014 and October 30, 2014, petitioner presented to Mark Testa, DO and was diagnosed petitioner with "[s]houlder pain, left." (Ex. 2 at 12-13.) No date of onset is detailed in these records.
- Petitioner's employer noted the following in an email dated November 11, 2014 regarding workplace accommodations for petitioner as a result of her injury:

Heather is on Tim's team. She is going OK – but just OK. She came to me today requesting to WFH [work from home]. Reason is that she got a flu shot 9/30 and has been in pain since then. Her doctor at the time suggested maybe the shot went into a tendon instead. She said it is very painful and

hard to drive to work. Can barely raise it at all. She mostly uses her right arm to drive but feels it is “not safe” to only rely on one arm. So she is asking to work from home.

She also no longer has insurance as she was on her father plan and is no longer. She is applying for ins[urance] with us but is waiting on a letter from her father’s plan. Once she has insurance again, she said she could get us a letter from the new doctor.

(Ex.10 at 7.)

- On March 12, 2015, petitioner presented to Dr. Testa who referred her to physical therapy and again diagnosed left shoulder pain. (Ex. 2 at 11.)
- On March 19, 2015, petitioner presented to Daniel E. Walls, PT, for an initial evaluation. (Ex. 4 at 3.) The initial evaluation notes “Inj[ury] Date: 10/1/2014.” The “Mechanism of Injury” is further recorded in the initial evaluation as “Primary Episode: Traumatic: post flu shot injection.” *Id.*
- On June 26, 2015, petitioner presented to Joseph Abboud, MD, as a new patient, in regard to “her left shoulder.” Ex. 3 at 8. Dr. Abboud notes that “[b]ack on 9/30/2014 [petitioner] had a flu shot at CVS. She states it was placed proximal in the arm and [she] did have severe pain. Since then, she has had continued pain. . . . She denies any previous problems with her shoulder.” (*Id.*)
- In a sworn affidavit, dated June 3, 2017, petitioner avers that “[i]mmediately after the vaccination, I felt pain in my shoulder.” (Ex. 9 at 1.)

III. Scheduling Order

In light of the above findings, and petitioner’s expert reports, the parties are directed to engage in discussions to resolve this claim.

The following is hereby ORDERED: Petitioner shall file a Joint Status Report by no later than November 2, 2018 indicating whether the parties are interested in pursuing informal discussions to resolve the claim at this time, or if they wish to pursue alternative proceedings.

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master