

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: July 24, 2023

* * * * *

C. K.,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

* UNPUBLISHED
*
* No. 16-791V
*
* Special Master Dorsey
*
* Motion for Redaction.
*
*
*

Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.
Benjamin Patrick Warder, U.S. Department of Justice, Washington, DC, for Respondent.

ORDER GRANTING PETITIONER'S MOTION FOR REDACTION¹

On June 29, 2023, Petitioner filed a motion to redact the undersigned's June 15, 2023 Decision Based on Stipulation. Petitioner's Motion to Redact ("Pet. Mot."), filed June 29, 2023 (ECF No. 153). For the following reasons, Petitioner's motion is **GRANTED**.

I. RELEVANT PROCEDURAL HISTORY

¹ The undersigned intends to post this Order on the United States Court of Federal Claims' website. Because this unpublished Order contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website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 (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Order 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.

On July 1, 2016, C. K. (“Petitioner”) filed a petition in the National Vaccine Injury Program² alleging that as a result of receiving the influenza (“flu”) vaccine on November 4, 2013, and the tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine on December 11, 2013, she suffered a neurologically demyelinating disease. Petition at Preamble (ECF No. 1). On June 15, 2023, the undersigned issued a Decision Based on Stipulation. Decision dated June 15, 2023 (ECF No. 147).

On June 29, 2023, Petitioner filed a motion to redact her name from the Decision and Stipulation. Pet. Mot. at 1. Petitioner also filed a declaration³ in support of her motion for redaction. Pet. Exhibit (“Ex.”) 67.

Petitioner requests her name be redacted and replaced with her initials due to her previous employment and her spouse’s current employment with the State of Texas. Pet. Mot. at ¶¶ 9-10. Petitioner was formerly employed by the State of Texas in the Child Protective Services Department. *Id.* at ¶ 9; Pet. Ex. 67 ¶ 3. Petitioner’s spouse continues to be employed by the State of Texas as a Peace Officer, in the Criminal Investigations Division, which focuses on organized crime and other felony cases, and often involves undercover work. Pet. Mot. at ¶ 9; Pet. Ex. 67 ¶ 3. Petitioner stated that given the nature of her past employment and the sensitive nature of her spouse’s current employment, they have taken steps to protect public disclosure of personal information in the past and are keenly aware of their online presences and general privacy. Pet. Ex. 67 ¶ 4. Petitioner also explained that Texas state law affords additional privacy. *Id.* at ¶ 5 (citing Texas Government Code, Section 552.117). Petitioner and her spouse have made efforts to protect their privacy due to the nature of their past and ongoing employment in accordance with Texas law. Publication of the Court’s Decision documenting Petitioner’s injury and award of compensation would “run[] counter to [Petitioner’s] efforts to maintain [her family’s] privacy. The nature of [Petitioner’s spouse’s] employment in law enforcement makes [them] vulnerable to legal actions filed against the State of Texas” and “[d]isclosure of the financial award in connection with [Petitioner’s] last name could increase [their] susceptibility.” Pet. Ex. 67 ¶ 6.

Petitioner argues that for “the future well-being of [P]etitioner and her family, it is fair and reasonable to remove all possibility of discovery” and doing so “will not infringe upon the government’s interest in public disclosure” of Petitioner’s vaccine injury claim and the Court’s substantive legal analysis of the evidence. Pet. Mot. at ¶ 11.

Respondent filed a response to Petitioner’s motion to redact on July 13, 2023. Respondent’s Response to Pet. Mot. (“Resp. Response”), filed July 13, 2023 (ECF No. 154). Respondent outlined the analytical framework for deciding a motion for redaction and stated he

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2018) (“Vaccine Act” or “the Act”). All citations in this Order to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

³ The exhibit is labeled as an affidavit, however it is not notarized so the undersigned will refer to it as a declaration.

“defers to the Special Master’s judgment.” *Id.* at 2-6. Petitioner did not file a reply by the court-imposed deadline.

This matter is now ripe for adjudication.

II. DISCUSSION

A motion for redaction is governed by section 12(d)(4)(B) of the Vaccine Act. *See* § 12(d)(4)(B). That section provides that information concerning “medical files and similar files” may be redacted if its disclosure “would constitute a clearly unwarranted invasion of privacy.” *Id.* What constitutes a “clearly unwarranted invasion of privacy” requires balancing petitioner’s “right of privacy against the public purpose of the Vaccine Act.” *W.C. v. Sec’y of Health & Hum. Servs.*, 100 Fed. Cl. 440, 460 (2011), *aff’d*, 704 F.3d 1352 (Fed. Cir. 2013). While a petitioner has an interest in keeping sensitive medical or other embarrassing information private, the public has an interest in disclosure, so as to increase public awareness of vaccines and the medical conditions they may or may not cause. *Id.* at 461. In other words, sensitive information is often the subject of the litigation, and “in cases where sensitive information is the subject of the dispute, that information is routinely disclosed in decisions, to enable the reader to follow and understand the decision maker’s rationale.” *Castagna v. Sec’y of Health & Hum. Servs.*, No. 99-411V, 2011 WL 4348135, at *13 (Fed. Cl. Spec. Mstr. Aug. 25, 2011).

Although the Vaccine Rules make mandatory the redaction of a minor’s name, adult petitioners’ names, which are not similarly protected automatically, may also be redacted if the petitioner establishes proper grounds for redaction. *See R.V. v. Sec’y of Health & Hum. Servs.*, No. 08-504V, 2016 WL 3776888, at *2 (Fed. Cl. Spec. Mstr. May 10, 2016) (“[A] petitioner needs to make some showing to justify the relief of redaction; redaction is not available simply at a petitioner’s beck and call.”). The undersigned will permit redaction in cases, such as this, where a specialized showing is made.

The facts and circumstances of this case warrant redaction of Petitioner’s name. Petitioner made an adequate showing for redaction. **Accordingly, Petitioner’s motion to redact her name in the decision based on stipulation is GRANTED.**

The public version of the decision based on stipulation shall be redacted to include only Petitioner’s initials, C. K. Moreover, the undersigned further directs the clerk to amend the case caption⁴ to the following:

* * * * *	*
C. K.,	*
	*
Petitioner,	*
	*

⁴ If either party objects to the undersigned’s redaction of the case caption, a motion requesting the undersigned to reconsider redaction of the case caption may be filed.

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master