

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-1435V

Filed: April 7, 2017

Unpublished

JERALD SMITH,

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Petitioner,

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v.

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

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Jeffrey S. Pop, Attorney at Law, Beverly Hills, CA, for petitioner.

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

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On October 31, 2016, Jerald Smith (“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 sustained a shoulder injury related to vaccine administration (“SIRVA”) from an influenza (“flu”) vaccination he received on January 8, 2016. Petition at 1. The case was assigned to the Special Processing Unit (“SPU”) of the Office of Special Masters.

On April 7, 2017, respondent filed a Rule 4(c) Report conceding that petitioner is entitled to compensation. Rule 4(c) Rep. at 1. Based on the opinion of the medical personnel at the Division of Injury Compensation Programs, Department of Health and Human Services (“DICP”), respondent agrees “that petitioner experienced SIRVA of the right upper extremity[,] ... more likely than not caused by the January 8, 2016, flu vaccination.” *Id.* at 4. No other causes for petitioner’s injury were identified. *Id.* In

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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

addition, petitioner's medical records demonstrate satisfaction of the statutory six month sequela requirement. *Id.* Based on the record as it now stands, respondent believes entitlement to Vaccine Act compensation is appropriate. *Id.*

In view of respondent's concession 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