

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-642V

Filed: October 5, 2021

UNPUBLISHED

ELIZABETH DOLES,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;
Tetanus, diphtheria, acellular
pertussis (“Tdap”) Vaccine; Multiple
Sclerosis; Significant Aggravation

Joseph Vuckovich, Maglio Christopher & Toale, P.A., for petitioner.

Catherine Stolar, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On May 16, 2017, Elizabeth Doles (“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 initially alleged that she suffered from Acute Disseminated Encephalomyelitis. (ECF No.1, p. 1-2.) On July 5, 2019, petitioner filed an amended petition, alleging that she “has suffered from central nervous system (CNS) demyelination” and further alleging that her expert opined that “Petitioner’s neurological injuries are best characterized as multiple sclerosis (MS).” (ECF No. 44, p. 2.)

On February 1, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a significant aggravation of MS. (ECF No. 73.) On October 4, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$135,000.00 in compensation for pain and suffering and \$2,400.00 in compensation for past unreimbursable expenses. (ECF No. 82.) In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.*

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **This means the decision 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, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$137,400.00, representing \$135,000.00 in compensation for pain and suffering and \$2,400.00 in compensation for past unreimbursable expenses, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Daniel T. Horner
Daniel T. Horner
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**

_____)	
ELIZABETH DOLES,)	
)	
Petitioner,)	
)	No. 17-642V
v.)	Special Master Horner
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On May 16, 2017, Elizabeth Doles (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that her receipt of a polio vaccine and a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine on April 4, 2016 and April 22, 2016, respectively, caused or significantly aggravated Acute Disseminated Encephalomyelitis. ECF No. 1, at 1-2. On April 24, 2018, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report setting forth the reasons why petitioner was not entitled to compensation. ECF No. 21. On July 5, 2019, petitioner filed an amended petition, alleging that as a result of her April 4, 2016 and April 22, 2016 vaccinations, she “has suffered from central nervous system (CNS) demyelination.”¹ ECF No. 44 at 2. On February 1, 2021, following briefing by both parties, the

¹ In the amended petition, petitioner further alleged that “Dr. John Steel, a neurology expert retained by Petitioner, has opined that Petitioner’s neurological injuries are best characterized as multiple sclerosis (MS).” ECF No. 44 at 2.

Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation for a significant aggravation of MS.² ECF No. 73.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$135,000.00** in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$2,400.00**. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Special Master's decision and the

² The parties have no objection to the amount of the proffered award of damages set forth herein. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Special Master's February 1, 2021 Ruling on Entitlement. This right accrues following issuance of the damages decision.

Court's judgment award the following³: a lump sum payment of **\$137,400.00**, in the form of a check payable to petitioner.

Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Elizabeth Doles: **\$137,400.00**

Respectfully submitted,

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/s/ Catherine E. Stolar
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DATED: October 4, 2021

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