

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-709V

Filed: June 12, 2018

UNPUBLISHED

JANNIE OWENS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Causation-In-Fact; Influenza (Flu)
Vaccine; Bursitis

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.

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

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On May 30, 2017, 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 petitioner suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of her September 19, 2016 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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

On June 11, 2018, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent indicates that

DICP [the Division of Injury Compensation Programs at the Department of Health and Human Services] has determined that petitioner's alleged injury is not consistent with a SIRVA injury because her pain was not "limited to the shoulder in which the intramuscular vaccine was administered," as required by the Qualifications and Aides to Interpretation that are appended to the Vaccine Injury Table. See 42 U.S.C. § 300aa-14 and 42 CFR § 100.3. (c)(10)(iii). Rather, petitioner repeatedly complained of pain that radiated to her neck and her forearm. See, e.g., Pet. Ex. 3 at 3 ("Left deltoid primarily with radiation down left arm to fingers."), 18 ("arm pain is getting worse and now pain in neck"); Pet. Ex. 9 at 11 ("She complains of pain from the shoulder radiating into the neck and upper back ad pain from the shoulder radiating into her left upper extremity distally into at least the forearm.").

Nonetheless, DICP has concluded that a preponderance of the medical evidence establishes that petitioner's bursitis, confirmed by an MRI, was caused-in-fact by the flu vaccine she received on September 19, 2016. Of note, Dr. Baddour opined that pain from the flu vaccine caused petitioner to limit her arm movement, resulting in her bursitis. Pet. Ex. 5 at 5. DICP did not identify any other cause for petitioner's injury, and the medical records outlined above demonstrate that she suffered the residual effects of her condition for more than six months. Therefore, based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Vaccine Act. See 42 U.S.C. § 300aa-13(a)(1)(B); 42 U.S.C. § 300aa-11(c)(1)(D)(i).

Id. at 5-6.

In view of respondent's position 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