

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-736V

Filed: July 2, 2019

Unpublished

CAROLYN ORRELL,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Influenza Vaccination; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA); Finding of  
Fact; Onset; Site of Vaccination

*Michael G. McLaren, Black McLaren Jones Ryland & Griffee, P.C., Memphis, TN, for petitioner.*

*Camille M. Collett, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON FACTS<sup>1</sup> AND SCHEDULING ORDER– SPECIAL PROCESSING UNIT**

**Dorsey**, Chief Special Master:

On June 2, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a November 7, 2014 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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 Because this unpublished ruling contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

<sup>2</sup> 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).

## **I. Summary of Procedural History**

Following the filing of the June 2, 2017 petition, petitioner submitted medical records, an affidavit, and a Statement of Completion on June 6, 2017. ECF No. 7, 8. Additional outstanding records were filed on August 9, 2017, along with an amended statement of completion. ECF Nos. 10, 11.

Respondent filed a Rule 4(c) Report recommending that entitlement be denied in this case on February 1, 2018. ECF No. 23. Respondent's conclusion was based in part on petitioner's delay in reporting left shoulder pain, and delay in seeking treatment. *Id.* 8-9. Respondent also argued that there is evidence petitioner's pain and reduced range of motion were not limited to her left shoulder, citing a fall that occurred on August 12, 2015 (10 months after petitioner's vaccination) wherein petitioner injured her right shoulder. *Id.* at 8.

On February 21, 2018, petitioner was ordered to submit additional affidavit evidence addressing the onset of petitioner's injury and any accompanying delay in seeking treatment. ECF No. 24. Petitioner submitted three affidavits addressing the onset of petitioner's injury on February 23, 2018. Exs. 6-8.

On October 15, 2018, petitioner filed a Motion for a Factual Finding as to Onset of SIRVA Within 48 Hours of Vaccination. ECF No. 42. Respondent filed a response on November 30, 2018. ECF No. 43.

The undersigned recommending holding a fact hearing, which was held on June 4, 2019.

## **II. Fact Hearing**

The undersigned held the fact hearing on June 4, 2019, with petitioner and three other lay witnesses testifying. At the conclusion of the proceeding, the undersigned informed the parties that she intended to issue a ruling from the bench regarding (1) the onset of petitioner's symptoms, and (2) the site of vaccination. See Hearing Transcript ("Tr."), filed June 18, 2019 (ECF No. 52), at 125-127. With regard to onset, the undersigned found that the onset of petitioner's injury was within 48 hours of her vaccination. Tr. at 126. With regard to the cite of vaccination, the undersigned found that the vaccination was administered in petitioner's left arm. Tr. at 126. The undersigned's findings were based on the evidence submitted in this case, including the exhibits, medical records, affidavits, and testimony. Tr. at 126. Additional citations to the record and the underlying relevant evidence is set forth in the hearing transcript. See Tr. at 125-128.

## **III. Conclusion**

**In light of all of the above and in view of the record as a whole, the undersigned finds (1) that petitioner's November 7, 2014 influenza vaccination was administered into her left deltoid and (2) that the onset of petitioner's alleged shoulder pain resulting from her vaccination began within 48 hours of the November 7, 2014 influenza vaccination.**

**Accordingly, the following is ORDERED:**

- **The parties are ordered to submit any additional evidence with regard to entitlement by August 1, 2019; and,**
- **Petitioner shall file, by no later than August 1, 2019, either a Status Report indicating that the parties are willing to discuss settlement or a Motion for a Ruling on the Record.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master