

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-0953V

(not to be published)

JUSTIN M. GILLESPIE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 8, 2019

Special Processing Unit (SPU);
Attorney's Fees and Costs

Joseph Michael Russell, Von Briesen & Roper, S.C., Milwaukee, WI, for Petitioner.

Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On July 17, 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 he suffered a shoulder injury related to vaccine administration ("SIRVA") following the receipt of his November 8, 2016 influenza ("flu") vaccination. (Petition at 1). On April 1, 2019, a decision was issued by then-Chief Special Master Dorsey, awarding compensation to Petitioner based on the Respondent's proffer. ([ECF No. 50](#)).

¹ Although I have not designated this Decision for publication, it will be made available 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, 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](#). Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of [42 U.S.C. § 300aa \(2012\)](#).

Petitioner has now filed a motion for attorney's fees and costs, dated October 2, 2019, ([ECF No. 55](#)), requesting a total award of \$37,600.92 (representing \$36,828.00 in fees and \$772.92 in costs). In accordance with General Order #9, counsel for Petitioner's counsel represents that he incurred no out-of-pocket expenses. ([ECF No. 58-1](#).) Respondent reacted to the motion on October 16, 2019 indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case and defers to the Court's discretion to determine the amount to be awarded. ([ECF No. 57](#)). Petitioner did not file a reply thereafter.

I have reviewed the billing records submitted with Petitioner's request. In my experience, the request appears reasonable, and I find no cause to reduce the requested hours or rates.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorneys' fees and costs. I award a total of **\$37,600.92** (representing \$36,828.00 in attorney's fees and \$772.92 in costs) as a lump sum in the form of a check jointly payable to Petitioner and his counsel, Joseph Michael Russell, Esq. In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk shall enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.