

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 17-1355V

Filed: January 14, 2022

* * * * *
HERBERT GELLER,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED

Decision Awarding Damages;
Pain and Suffering;
Influenza (“Flu”) Vaccine;
Brachial Neuritis.

Leah Durant, Esq., Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.
Claudia Gangi, Esq., U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Roth, Special Master:

On September 27, 2017, Herbert Geller (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program (“the Program”)² alleging that he received an influenza (“flu”) vaccination on September 22, 2015, and thereafter suffered from brachial neuritis. *See* Petition (“Pet.”) at 1.

On May 29, 2019, a ruling was issued finding petitioner entitled to compensation. ECF No.

¹ Although this Decision has been formally designated “unpublished,” it will nevertheless be posted on the Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). **This means the Decision will be available to anyone with access to the internet.** However, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public. *Id.*

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

21. A damages order was issued on the same day. ECF No. 22. The parties were unable to reach a resolution on the appropriate amount of pain and suffering and proposed filing briefs on damages. ECF No. 29.

On December 17, 2021, a damages ruling was issued awarding petitioner \$125,000.00 for past pain and suffering and \$2,500.00 per year for the 11 years of his life expectancy, reduced to net present value, for future pain and suffering. ECF No. 36. Because neither party had proposed an appropriate net discount rate to convert the award of future pain and suffering to net present value, the parties were ordered to file a joint status report advising on an agreed upon net discount rate. On January 14, 2022, the parties filed a joint status report agreeing on a one percent (1%) net discount rate and that the resulting net present value of petitioner's future pain and suffering is \$26,178.26. ECF No. 37.

Therefore, the undersigned awards the following compensation:

A lump sum payment of \$151,178.26 (representing \$125,000.00 in past pain and suffering and \$26,178.26 in future pain and suffering) in the form of a check payable to petitioner, Herbert Geller. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

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

IT IS SO ORDERED.

s/Mindy Michaels Roth
Mindy Michaels Roth
Special Master