

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1606V

Filed: August 16, 2019

UNPUBLISHED

ROBIN HAMLIN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Ruling on Entitlement; Table Injury;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Alison H. Haskins, Maglio Christopher & Toale, PA, Sarasota, FL, for petitioner.
Mollie Danielle Gorney, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On October 25, 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 she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of her November 9, 2016 influenza (“flu”) vaccination. See Petition at 1-4. The case was assigned to the Special Processing Unit of the Office of Special Masters. On July 31, 2019, the undersigned issued Findings of Fact that “the onset of petitioner’s left shoulder injury occurred within 48 hours of her November 9, 2016 flu vaccination.” Findings of Fact at 4.

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 Because this unpublished ruling contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

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 August 14, 2019, respondent filed his Supplemental Rule 4(c) report in which requests a ruling on the record. Respondent's Rule 4(c) Report at 1. Specifically, respondent indicates that "[w]hile preserving his right to appeal the Chief Special Master's July 31, 2019 finding that petitioner's left arm pain began on the date of the November 9, 2016 flu vaccination, respondent accepts this ruling as the law of the case for purposes of further proceedings before the Chief Special Master." *Id.* at 4. Additionally, respondent notes

[i]n light of the Chief Special Master's fact ruling, and medical record evidence submitted in this case, DICP has concluded that petitioner suffered SIRVA as defined by the Vaccine Injury Table. Specifically, petitioner had no recent history of pain, inflammation, or dysfunction of her left shoulder; the onset of pain occurred within 48 hours after receipt of an intramuscular vaccination;³ the pain was limited to the shoulder in which the vaccine was administered; and, no other condition or abnormality, has been identified to explain petitioner's left shoulder pain. 42 C.F.R. §§ 100.3(a), (c)(10).

Id. at 5. Respondent further agrees that "petitioner suffered the residual effects of her condition for more than six months. 42 U.S.C. § 300aa-11(c)(1)(D)(i)." Finally, respondent indicates that "based on the record as it now stands and subject to his right to appeal the Finding of Fact, respondent does not dispute that petitioner has satisfied all legal prerequisites for compensation under the Act. 42 U.S.C. § 300aa-13." *Id.*

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

³ Respondent indicates that "[t]his criterion is met pursuant to the Chief Special Master's July 31, 2019 Finding of Fact, and respondent does not waive his right to a potential appeal of this issue. In addition, nothing in this Rule 4(c) Report constitutes a waiver of any defenses that respondent may assert in the damages phase." Respondent's Rule 4(c) Report at FN. 2.