

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1906V

Filed: April 19, 2019

UNPUBLISHED

JEANNE RAFFERTY,

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)

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Linda Sara Renzi, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On December 8, 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”) caused in fact by the influenza vaccination she received on October 17, 2016. Petition at 1, ¶¶ 1, 4 (ECF No. 1). The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision 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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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 October 11, 2018, the undersigned issued a combined order and factual ruling, denying respondent's motion to dismiss and making factual findings regarding the site of vaccination and onset of petitioner's pain. (ECF No. 15). Specifically, the undersigned found there was preponderant evidence to establish petitioner received the influenza vaccination alleged as causal in her right injured arm and that the onset of her pain occurred within 48 hours of vaccination. *Id.* at 10-13. She instructed the parties to engage in settlement discussions and ordered petitioner to submit a demand to respondent. *Id.* at 13-14.

After settlement discussions, interrupted by the unavailability of respondent's counsel during the partial government shutdown from late December 2018 through late January 2019,³ respondent filed a status report indicating he expected to respond to petitioner's demand by April 8, 2019 and requesting to file a Rule 4 report by April 17, 2019. (ECF No. 21).

Respondent has filed his Rule 4 report indicating that he has concluded that petitioner suffered a Table SIRVA "[b]ased on the medical record evidence submitted in this case, and the Chief Special Master's findings that petitioner received a flu vaccination in her right arm and that the onset of her shoulder pain occurred with 48 hours of vaccination." Rule 4 Report, filed Apr. 17, 2019, at 4 (ECF No. 23). However, respondent stresses that he is not waiving his right to appeal the factual findings made by the undersigned. *Id.* at 4, 4 n.2. Respondent concedes that "based on the record as it now stands and subject to his right to appeal the Fact Ruling, respondent does not dispute that petitioner has satisfied all legal prerequisites for compensation under the Act." *Id.* at 4.

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 See General Orders, filed on Dec. 26, 2018 and Jan. 29, 2019, which can be found on the court's website.