

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 18-0477V

Filed: May 6, 2019

UNPUBLISHED

DAVID MCKAIRNES,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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

*David Alexander Tierney, Rawls Law Group, Richmond, VA, for petitioner.*

*Lisa Ann Watts, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

**Dorsey**, Chief Special Master:

On April 2, 2018, David McKairnes (“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 he suffered a right shoulder injury related to vaccine administration (“SIRVA”) due to an influenza (“flu”) vaccine he received on November 18, 2015. Petition at Preamble. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 6, 2019, respondent filed his Rule 4(c) report in which he concedes that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at 1. Specifically, respondent “concluded that petitioner suffered SIRVA of the right shoulder

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 Because this unpublished ruling contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

as defined by the Vaccine Injury Table. Specifically, petitioner had no recent history of pain, inflammation, or dysfunction of his right shoulder; the onset of pain occurred within 48 hours after receipt of an intramuscular vaccination; the pain was limited to the shoulder where the vaccine was administered; and, no other condition or abnormality, such as brachial neuritis, has been identified to explain petitioner's right shoulder symptoms." *Id.* at 4-5. Respondent further agrees that petitioner suffered the residual effects of his condition for more than six months and therefore, has satisfied all legal prerequisites for compensation under the Act. *Id.* at 5.

**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