

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0477V

Filed: September 17, 2019

UNPUBLISHED

DAVID MCKAIRNES,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
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.

DECISION AWARDING DAMAGES¹

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.*,² (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, a ruling on entitlement was issued, finding petitioner entitled to compensation. On September 17, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$92,500.00 for his past

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 Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website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

and future pain and suffering. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$92,500.00 (for his past and future pain and suffering) in the form of a check payable to petitioner, David McKairnes.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

DAVID MCKAIRNES,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-477V

Chief Special Master Dorsey

ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On April 2, 2018, David McKairnes (“petitioner”) filed a petition for vaccine injury compensation alleging that he suffered a right shoulder injury related to vaccine administration (“SIRVA”), a Table injury, following receipt of an influenza (“flu”) vaccination administered on November 18, 2015. Respondent filed his Rule 4(c) Report conceding entitlement to compensation on May 6, 2019. The Chief Special Master issued a Ruling on Entitlement that same day.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$92,500.00 for his past and future pain and suffering. This represents all elements of compensation to which petitioner would be entitled under **42 U.S.C. § 300aa-15(a)**.¹ Petitioner agrees.

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future damages.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$92,500.00 in the form of a check payable to petitioner.²

Petitioner agrees.

Respectfully submitted,

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s/Lisa A. Watts
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DATED: September 17, 2019

² Petitioner is a competent adult. Proof of guardianship is not required in this case.