

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1095V

UNPUBLISHED

DAVID CHOI,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 12, 2019

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Matthew B. Vianello, Jacobsen Press & Fields, Clayton, MO, for petitioner.

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

DECISION AWARDING DAMAGES¹

On July 26, 2018, David Choi 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 shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccination administered on October 5, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 26, 2019, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On December 12, 2019, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$62,065.00 (consisting of \$60,000.00 for past and future pain and suffering, and \$2,065.00 for unreimbursable expenses). Proffer at 1. In the Proffer, Respondent

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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, I agree that the identified material fits within this definition, I will redact such material from public access.

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).

represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$62,065.00 (consisting of 60,000.00 for past and future pain and suffering, and \$2,065.00 for past unreimbursable expenses) in the form of a check payable to Petitioner.** 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/Brian H. Corcoran
Brian H. Corcoran
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 CHOI,)	
)	<u>ECF-SPU</u>
Petitioner,)	
)	
v.)	No. 18-1095V
)	Chief Special Master
SECRETARY OF HEALTH AND HUMAN SERVICES,)	Brian H. Corcoran
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On September 26, 2019, the Court issued a Ruling on Entitlement finding that David Choi (“petitioner”) suffered a left shoulder injury related to vaccine administration (“SIRVA”), a Table injury, following receipt of an influenza (“flu”) vaccination administered to him on October 5, 2016. Respondent now Proffers the following regarding the amount of compensation to be awarded.¹

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a total of \$62,065.00, consisting of \$60,000.00 for his past and future pain and suffering and \$2,065.00 for past unreimbursable expenses. This represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).² Petitioner agrees.

¹ The parties have no objection to the proffered award of damages. However, respondent reserves his right to seek review of the Chief Special Master’s decision pursuant to 42 U.S.C. § 300aa-12(e)(1).

² 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 \$62,065.00 in the form of a check payable to petitioner.³

Petitioner agrees.

Respectfully submitted,

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Assistant Attorney General

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Acting Director
Torts Branch, Civil Division

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s/Lisa A. Watts
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DATED: December 12, 2019

³ Petitioner is a competent adult. Proof of guardianship is not required in this case.