

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

DIANA SCHMAUDER,	*
	*
Petitioner,	* No. 19-186V
	* Special Master Christian J. Moran
	*
v.	* Filed: April 26, 2021
	*
SECRETARY OF HEALTH	* Damages; Prevnar 13 vaccine;
AND HUMAN SERVICES,	* SIRVA; shoulder injury.
	*
Respondent.	*

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner;
Adriana R. Teitel, United States Dep’t of Justice, Washington, DC, for respondent.

UNPUBLISHED DECISION AWARDING COMPENSATION¹

On January 31, 2019, Diana Schmauder sought compensation for shoulder injury related to vaccine administration (“SIRVA”) following her Prevnar 13 vaccination on July 13, 2016. Ms. Schmauder seeks compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 through 34 (2012).

A fact hearing was held on January 28, 2021. In advance of the hearing, the undersigned reviewed all documentary evidence. The parties highlighted the most important documents during the hearing through the oral testimony of Ms. Schmauder and other percipient witnesses.

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

The undersigned issued two documents on February 1, 2021. First, the undersigned issued a ruling finding the onset of Ms. Schmauder's shoulder pain began within two days of her vaccination. Second, the undersigned issued a tentative finding indicating a reasonable amount of damages for pain and suffering totaled \$72,500. This tentative finding was based on the facts and circumstances of Ms. Schmauder's case. In reaching this tentative finding, the undersigned considered other roughly analogous cases in the Vaccine Program. Factors considered in comparing Ms. Schmauder's case included: (1) severity of the injury and interference with daily activities, (2) presence of range of motion issues, (3) whether petitioner received cortisone injections, (4) whether petitioners underwent physical therapy, and (5) whether petitioners had surgery related to the injury. Ms. Schmauder experienced significant interference with daily and routine activities, and some range of motion issues in the first month following her vaccination. She also received two cortisone injections, approximately fifteen physical therapy sessions, and no surgery.

The ruling regarding onset altered the Secretary's assessment of the case. The Secretary conceded that based upon the finding of fact, Ms. Schmauder was entitled to compensation. Resp't's Am. Rep., filed Mar. 30, 2021.

A status conference was held on April 13, 2021. In this status conference, Ms. Schmauder's counsel confirmed that Ms. Schmauder's damages claim is limited to compensation for past pain and suffering. She was waiving any minimal unreimbursed out-of-pocket expenses. She also was not claiming any compensation for future pain and suffering.

The undersigned then issued a ruling finding entitlement on April 16, 2021. The remaining question is the amount of compensation to which Ms. Schmauder is entitled.

For the reasons explained in the February 1, 2021 order presenting a tentative finding regarding the amount of compensation, Ms. Schmauder's pain and suffering merits an award of \$72,500. In the April 13, 2021 status conference, Ms. Schmauder accepted this tentative finding. While the Secretary did not explicitly endorse this tentative finding, the Secretary also did not oppose it. The Secretary has not presented any reason why the tentative finding is not reasonable. See Vaccine Rule 8(f).

Accordingly, Ms. Schmauder's damages are as follows:

A lump sum payment of \$72,500 representing compensation for pain and suffering, in the form of a check payable to petitioner, Diana Schmauder. This amount represents compensation for all damages available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment according to this decision.²

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.