

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1227V

UNPUBLISHED

BERTHA SMITH  
*on behalf of her deceased husband*  
DONALD SMITH,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: July 16, 2020

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Guillain-Barre Syndrome (GBS)

*Michael Avrim Firestone, Marvin Firestone, MD, JD, and Associates, San Mateo, CA, for petitioner.*

*Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for respondent.*

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

On August 16, 2019, Bertha Smith filed a petition on behalf of her deceased husband, Donald Smith, for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Ms. Smith alleges that Donald Smith “suffered the ‘Table Injury’ known as Guillain-Barré Syndrome” as a result of an influenza (“flu”) vaccination received on September 28, 2017, and that Mr. Smith passed away due to complications of GBS on January 18,

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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.

<sup>2</sup> 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).

2018. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 15, 2020, 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, it is Respondent's position that "petitioner has satisfied the criteria set forth on the Vaccine Injury Table ('Table') and the Qualifications and Aids to Interpretation ('QAI'), which afford petitioner a presumption of causation if the onset of GBS occurs between three and forty-two days after a seasonal flu vaccination and there is no apparent alternative cause." *Id.* at 5.

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master