

CORRECTED

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1262V

UNPUBLISHED

MICHAEL POSTLEWAIT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 27, 2021

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

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Julia Marter Collison, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On August 22, 2019, Michael Postlewait 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”) after receiving an influenza vaccine on September 16, 2018. Petition at 1, ¶ 2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 5, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his SIRVA. ECF No. 17. On May 27, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$72,500.00, representing compensation for his pain and suffering. Proffer at 1, ECF No. 23. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.*

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

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 \$72,500.00, representing compensation for his pain and suffering, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 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.

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OFFICE OF SPECIAL MASTERS**

MICHAEL POSTLEWAIT,

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SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 19-1262V
Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On August 22, 2019, Michael Postlewait (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to 34 (“Vaccine Act” or “Act”), as amended. Petitioner alleges that he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered to him on January 16, 2018. On February 4, 2021, respondent filed his Vaccine Rule 4(c) report, recommending that compensation be awarded. On February 5, 2021, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation.

I. Items of Compensation

Respondent proffers that petitioner should be awarded \$72,500.00 in pain and suffering damages. *See* 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master’s decision and

the Court's judgment award the following¹: a lump sum payment of \$72,500.00, representing compensation for all elements of economic and noneconomic damages, in the form of a check payable to petitioner, Michael Postlewait.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Michael Postlewait: **\$72,500.00**

Respectfully submitted,

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Dated: May 27, 2021

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 lost earnings and future pain and suffering.