

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1377V

UNPUBLISHED

KIM BOYER,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 2, 2021

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

*Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for petitioner.*

*Christine Mary Becer, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On September 10, 2019, Kim Boyer filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) caused by an influenza (“flu”) vaccine administered on October 12, 2017. Petition at 1. Petitioner further alleges that the vaccine was administered within the United States, that he suffered the effects of his injury for six months or more, and that there has been no award or settlement for his injury. Petition at 1, 5-6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 22, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On April 1, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$110,220.25

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

<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).

consisting of \$110,000.00 for pain and suffering, and \$220.25 for out-of-pocket expenses. Proffer at 1. In the Proffer, Respondent 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 \$110,220.25 consisting of \$110,000.00 for pain and suffering, and \$220.25 for out-of-pocket 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.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> 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**

KIM BOYER,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 19-1377V
	)	Chief Special Master Corcoran
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Procedural History**

On February 19, 2021, respondent filed a **Vaccine Rule 4(c)** report concluding that petitioner sustained the onset of a left shoulder injury related to vaccine administration (“SIRVA”) within the Table time period following an influenza vaccine, and therefore sustained an injury that is compensable under the terms of the National Childhood Vaccine Injury Act of 1986, as amended, **42 U.S.C. §§300aa-10** to -34. Accordingly, on February 22, 2021, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for SIRVA following the influenza vaccine she received on October 12, 2017.

**II. Items of Compensation**

Respondent proffers that petitioner should be awarded \$110,000.00 for pain and suffering and \$220.25 for out-of-pocket expenses.

This represents all elements of compensation to which petitioner is entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

**III. 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 following<sup>1</sup>: a lump sum payment of \$110,220.25, in the form of a check payable to petitioner.

**IV. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Kim Boyer: **\$110,220.25**

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Acting Deputy Director  
Torts Branch, Civil Division

ALEXIS B. BABCOCK  
Assistant Director  
Torts Branch, Civil Division

s/Christine Mary Becer  
CHRISTINE MARY BECER  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Tel: (202) 616-3665

DATED: April 1, 2021

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<sup>1</sup> 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 pain and suffering.