

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1731V

UNPUBLISHED

BOBBY TATE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 7, 2021

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

*Jerome A. Konkel, Samster Konkel and Safran, Wauwatosa, WI., for petitioner.*

*Traci R. Patton, U.S. Department of Justice, Washington, DC, for respondent.*

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

On November 7, 2019, Bobby Tate 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 he suffered a Table injury – Shoulder Injury Related to Vaccine Administration (“SIRVA”) – as a result of his November 5, 2018 influenza (“flu”) vaccination. Petition at 3, 6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 22, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On May 5, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$52,500.00. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the proffered award.

---

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 Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

*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 \$52,500.00 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

---

<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**

BOBBY TATE,	)	
	)	
Petitioner,	)	
v.	)	No. 19-1731V
	)	Chief Special Master Corcoran
SECRETARY OF HEALTH AND HUMAN	)	ECF
SERVICES,	)	
	)	
Respondent.	)	

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

**I. Items of Compensation**

On April 19, 2021, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. The Chief Special Master issued a Ruling on Entitlement on April 22, 2021, finding that petitioner was entitled to vaccine compensation for his left-sided shoulder injury related to vaccine administration (“SIRVA”). Based upon the evidence of record, respondent proffers that petitioner should be awarded \$52,500.00. This amount represents all elements of compensation to which petitioner would be entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

**II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$52,500.00, in the form of a check payable to petitioner.<sup>1</sup> Petitioner agrees.

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

---

<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 lost earnings and future pain and suffering.

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

DARRYL R. WISHARD  
Assistant Director  
Torts Branch, Civil Division

s/Traci R. Patton  
TRACI R. PATTON  
Senior Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Ben Franklin Station  
Washington, DC 20044-0146  
Tel: (202) 353-1589  
E-mail: [Traci.Patton@usdoj.gov](mailto:Traci.Patton@usdoj.gov)

Dated: May 5, 2021