

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1883V

UNPUBLISHED

FRANCES A. VACCARO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 24, 2021

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Wes Baker Allison, Kahn Law Firm, LLP, Charleston, SC, for Petitioner.

Lara Ann Englund, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On December 12, 2019, Frances A. Vaccaro 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 she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered on October 2, 2018. Petition at ¶¶ 2-17. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 11, 2020, Petitioner filed a motion for a ruling on the record (ECF No. 23). Respondent filed a response in opposition on March 26, 2021 (ECF No. 26).

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

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).

On July 19, 2021, I granted Petitioner's motion in part and made factual findings. Findings of Fact, issued July 19, 2021 (ECF No. 27). I found that a preponderance of the evidence established that the flu vaccine was administered in Petitioner's left deltoid and that the onset of Petitioner's pain occurred within 48 hours of vaccination. *Id.* at *7-9.

On August 23, 2021, Respondent filed his Rule 4(c) report. Rule 4(c) Report, filed Aug. 23, 2021 (ECF No. 29). In it, Respondent reserves the right to appeal the July 19, 2021 fact findings, but accepts the ruling as the law of the case for purposes of further proceedings before me. *Id.* at 5-6. Respondent states:

Based on the Chief Special Master's fact ruling and medical record evidence submitted in this case, DICP will not continue to contest that petitioner suffered SIRVA as defined by the Vaccine Injury Table. Specifically, petitioner had no recent history of pain, inflammation, or dysfunction of her left shoulder; the onset of pain occurred within 48 hours after receipt of an intramuscular vaccination; the pain was limited to the shoulder in which the vaccine was administered; and no other condition or abnormality, such as brachial neuritis, has been identified to explain petitioner's left shoulder pain.

Rule 4(c) Report at *6 (citations omitted).

Respondent further agrees that Petitioner suffered the residual effects of her condition for more than six months and "based on the record as it now stands and subject to his right to appeal the Findings of Fact, respondent does not dispute that petitioner has satisfied all legal prerequisites for compensation under the Act." Rule 4(c) Report at *6.

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