

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1917V

Filed: November 29, 2022

UNPUBLISHED

DEBRA CAIN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Entitlement Ruling; Influenza
("Flu") Vaccine; Shoulder Injury
Related to Vaccine
Administration ("SIRVA"); Table
Injury

*David John Carney, Green & Schafle LLC, Philadelphia, PA, for petitioner.
Neil Bhargava, U.S. Department of Justice, Washington, DC, for respondent.*

Ruling on Entitlement¹

On December 18, 2019, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34 (2012),² alleging that as a result of an influenza ("flu") vaccination received on January 15, 2019, she suffered a right shoulder injury related to vaccine administration ("SIRVA"). (ECF No. 1.) Initially, respondent filed a report recommending against compensation. (ECF No. 25.) However, on August 31, 2022, I subsequently found that petitioner preponderantly established that she experienced onset of shoulder pain within forty-eight hours of receiving her vaccination. (ECF No. 42.) Thereafter, on November 14, 2022, respondent filed an amended report. (ECF No. 47.)

In his amended report, respondent indicated that "[r]ecognizing that the Special Master's factual finding that petitioner's right shoulder pain began within 48 hours of her

¹ Because this ruling contains a reasoned explanation for the special master's action in this case, it will be posted on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. See 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 the special master, upon review, agrees that the identified material fits within this definition, it will be redacted from public access.

² Within this decision, all citations to § 300aa will be the relevant sections of the Vaccine Act at 42 U.S.C. § 300aa-10-34.

January 15, 2019 flu vaccination is the law of the case, respondent advises that he will not defend the case on other grounds during further proceedings before the Office of Special Masters.” (*Id.* at 2.) Respondent further indicates that “[w]hile preserving his right to appeal the Special Master’s August 31, 2022 Findings of Fact, respondent submits that petitioner has otherwise satisfied the criteria set forth in the Vaccine Injury Table and Qualifications and Aids to Interpretation (‘QAI’) for Shoulder Injury Related to Vaccine Administration (‘SIRVA’).” (*Id.*) Further to this, respondent acknowledges that petitioner suffered her injury for more than six months and does not dispute that petitioner has satisfied all legal prerequisites for compensation under the Act. (*Id.* at 8.)

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

IT IS SO ORDERED.

s/Daniel T. Horner

Daniel T. Horner

Special Master