

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-0377V

DAVID BUTTS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 27, 2024

Bridget Candace McCullough, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Catherine Elizabeth Stolar, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDED DAMAGES¹

On April 2, 2020, David Butts 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 his receipt of an influenza (“flu”) vaccination on October 18, 2018 caused him to develop a shoulder injury related to vaccine administration (SIRVA). Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 30, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his SIRVA. ECF No. 30. On February 27, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$142,987.20, representing \$135,000.00 for pain and suffering, \$763.20 for past

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (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 section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

unreimbursed expenses, and \$7,224.00 for past and future lost wages. Proffer at 1-2. 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 \$142,987.20, representing \$135,000.00 for pain and suffering, \$763.20 for actual unreimbursable expenses, and \$7,224.00 for actual and projected lost wages 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 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DAVID BUTTS,)	
)	
Petitioner,)	
)	
v.)	No. 20-377V
)	Chief Special Master Corcoran
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On April 2, 2020, David Butts (“petitioner”), filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“the Vaccine Act” or “the Act”), as amended. Petitioner alleged that his receipt of an influenza (“flu”) vaccine on October 18, 2018, caused him to develop a left-sided Shoulder Injury Related to Vaccine Administration (“SIRVA”). ECF No. 1 at 1. On August 30, 2021, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for SIRVA Table injury. ECF No. 29. The same day, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 30.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$135,000.00** in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that he incurred past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$763.20**. *See* 42 U.S.C. § 300aa-15(a)(1)(B).

Petitioner agrees.

C. Lost Wages

Evidence supplied by petitioner documents that he incurred past and future lost wages as a result of his vaccine-related injury. Respondent proffers that petitioner should be awarded lost wages in the amount of **\$7,224.00**. *See* 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 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 following:¹ a lump sum payment of **\$142,987.20**, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, David Butts:	\$142,987.20
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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.

Respectfully submitted,

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