

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-0512V

UNPUBLISHED

CAROL WAGNER,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 15, 2021

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Tetanus Diphtheria  
acellular Pertussis (Tdap) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Howard Dale Mishkind, Mishkind Law Firm Co., L.P.A., Beachwood, OH, for Petitioner.*

*Lauren Kells, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On April 27, 2020, Carol Wagner 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”) as a result of a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine she received on November 27, 2018. Petition at 1. Petitioner further alleges that she experienced the residual effects of her injury for more than six months. Petition at 2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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 Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

<sup>2</sup> 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 (2012).

On October 14, 2021, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, Respondent states that Petitioner "has satisfied the criteria for SIRVA set forth in the Vaccine Injury Table and the Qualifications and Aids to Interpretation, which affords petitioner a presumption of causation if there is no prior history of pain, inflammation, or dysfunction in the affected shoulder prior to vaccination that would explain the symptoms occurring after vaccination; the onset of shoulder pain occurs within forty-eight hours after receipt of an intramuscular seasonal flu vaccination; pain and reduced range of motion are limited to the shoulder in which the vaccine was given; and there is no apparent alternative cause." *Id.* at 5. Respondent further agrees that Petitioner experienced the residual effects of her SIRVA for more than six months and has therefore satisfied all legal prerequisites for compensation under the Act. *Id.*

**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