

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: December 20, 2023

* * * * *	*	
HELENA JOHNSON,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 20-1030V
	*	
v.	*	Special Master Dorsey
	*	
SECRETARY OF HEALTH	*	Damages Award; Table Injury
AND HUMAN SERVICES,	*	Influenza (“Flu”) Vaccine;
	*	Shoulder Injury Related to Vaccine
Respondent.	*	Administration (“SIRVA”).
	*	
* * * * *		

David John Carney, Green & Schafle LLC, Philadelphia, PA, for Petitioner.
Catherine Elizabeth Stolar, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES BASED ON PROFFER¹

On August 17, 2020, Helena Johnson (“Petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program (“the Program”)² alleging that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered on October 9, 2017. Petition at Preamble (ECF No. 1). On October 22, 2020, Petitioner filed an amended petition alleging that her October 9, 2017 flu vaccination caused her to develop the “Table injury of brachial neuritis and/or brachial plexus” or, in the alternative, a Table SIRVA. Amended (“Am.”) Petition at 1, 6 (ECF No. 14).

¹ Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it 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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2018). All citations in this Ruling to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

On November 17, 2023, the undersigned issued a ruling finding Petitioner entitled to compensation based on Respondent's concession that Petitioner suffered a Table SIRVA. Ruling on Entitlement dated Nov. 17, 2022 (ECF No. 74); see also Respondent's Am. Report (ECF No. 73) (conceding entitlement); Damages Order dated Nov. 17, 2023 (ECF No. 75).

On December 19, 2023, Respondent filed a Proffer on Award of Compensation ("Proffer"), attached hereto as Appendix A. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. Proffer at 2. Based on the record as a whole, the undersigned finds that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, the undersigned awards Petitioner:

A lump sum payment of \$71,785.29, representing \$70,000.00 for pain and suffering, and \$1,785.29 for past unreimbursable expenses.

Proffer at 2. This amount represents all elements of compensation to which Petitioner is entitled under § 15(a).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** herewith.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is 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**

HELENA JOHNSON,)	
)	
Petitioner,)	
)	
v.)	No. 20-1030V
)	Special Master Dorsey
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On August 17, 2020, Helena Johnson (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza (“flu”) vaccine that she received on October 9, 2017.¹ ECF No. 1 at 1. On November 13, 2023, respondent filed an Amended Rule 4(c) Report indicating that this case was appropriate for compensation under the terms of the Act for a Table SIRVA. ECF No. 73. On November 17, 2023, the Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation based on respondent’s concession that petitioner suffered from a Table SIRVA. ECF No. 74.

¹ On October 20, 2020, petitioner filed an amended petition, in which she alleged that she “suffered a Table Injury of brachial neuritis and/or brachial plexus” as a result of her vaccination. ECF No. 14 at 1. At the same time, petitioner alleged, albeit in the alternative, that the flu vaccine caused her to suffer a Table SIRVA. *See id.* at 6. The Secretary of Health and Human Services (“respondent”) denies that the flu vaccine caused petitioner to develop brachial neuritis, an injury of the brachial plexus, or any other injury or condition besides a Table SIRVA. *See* ECF No. 73 at 9-10.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded **\$70,000.00** 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 she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of **\$1,785.29**. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

The above 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 Special Master's decision and the Court's judgment award the following²: a lump sum payment of **\$71,785.29**, in the form of a check payable to petitioner.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Helena Johnson: **\$71,785.29**

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

² 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.

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

/s/ Catherine E. Stolar
CATHERINE E. STOLAR
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: (202) 353-3299
Fax: (202) 616-4310
Email: catherine.stolar@usdoj.gov

DATED: December 19, 2023