

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1832V

NICOLE FEY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 21, 2023

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Julia Marter Collison, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On December 11, 2020, Nicole Fey filed a petition² for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*³ (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury, after receiving a tetanus diphtheria (“Td”) vaccine on June 5, 2018. Amended Petition at 1, ¶ 2. Petitioner further alleges that she received the vaccination within the United States, that she suffered the

¹ Because this Ruling 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 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 Petitioner filed an amended petition on August 18, 2022, to correct the date of vaccination. *Compare* Petition at 1, ¶ 2, ECF No. 1 *with* Amended Petition at 1, ¶ 2, ECF No. 35-1; Exhibit 1 at 4 (vaccine record).

³ 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).

residual effects of her SIRVA for more than six months, and that neither she nor any other party has filed a civil case or received compensation for her SIRVA injury. *Id.* at ¶¶ 2, 9-11. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 26, 2023, I issued a factual ruling, finding that Petitioner continued to suffer the residual effects of her alleged SIRVA for more than six months. ECF No. 39; see Section 11(c)(1)(D)(i) (statutory six-month severity requirement). On September 20, 2023, Respondent filed an amended Rule 4(c) Report, indicating that he “will not defend this case.” Amended Rule 4(c) Report at 1, ECF No. 43. Reserving his right to appeal my fact ruling regarding severity but acknowledging that it is the law of the case for further proceedings, Respondent believes “that [P]etitioner has satisfied the criteria set forth in the Vaccine Table and Aids to Interpretation (“QAI”) for SIRVA.” *Id.* at 5. He further indicates that “[b]ased on the record as it now stands, [he] does not dispute that [P]etitioner has satisfied all legal prerequisites for compensation under the Act.” *Id.* 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