

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-0667V

UNPUBLISHED

ERIN ELLIOTT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 13, 2023

Special Processing Unit (SPU);
Petitioner's Motion for a Decision
Dismissing Petition; Influenza (Flu)
Vaccine; Shoulder Injury Related to
Vaccine Administration (SIRVA)

Jessi Carin Huff, Maglio Christopher & Toale, PA, Seattle, WA, for Petitioner.

Madelyn Weeks, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION¹

On January 12, 2021, Erin Elliott 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 she suffered a shoulder injury related to vaccine administration ("SIRVA") resulting from an influenza vaccine received on October 15, 2019. Petition at 1-4. The case was assigned to the Special Processing Unit ("SPU") of the Office of Special Masters.

On April 12, 2023, Petitioner filed a motion for a dismissal decision, acknowledging that she will be unable to demonstrate entitlement to compensation. Petitioner's Motion for Decision Dismissing Petition, filed April 12, 2023, at *1 (ECF No. 33). Petitioner states

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 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 (2012).

that “[a] thorough investigation of the facts subsequent to filing has demonstrated to petitioner that she will be unable to prove that she is entitled to compensation under the Vaccine Program.” *Id.* Under these circumstances, Petitioner states that “to proceed further would be unreasonable and would waste the resources of the Court, the Respondent, and the Vaccine Program.” *Id.* at 2. Thus, Petitioner requests dismissal, stating, “Petitioner understands that a decision by the Special Master dismissing their petition will result in a judgment against them. They have been advised that such a judgment will end all of their rights in the Vaccine Program.” *Id.*

To receive compensation under the Vaccine Act, Petitioner must prove either 1) that she suffered a “Table Injury” – i.e., an injury falling within the Vaccine Injury Table – corresponding to a covered vaccine, or 2) that she suffered an injury that was actually caused by a covered vaccine. See §§ 13(a)(1)(A) and 11(c)(1). A petitioner must also demonstrate that the injury satisfies the statutory severity requirement. *Id.* at § 11(c)(1)(D). Examination of the record does not disclose that Petitioner is able to satisfy these requirements.

Under the Vaccine Act, a petitioner may not be awarded compensation based on the petitioner’s claims alone. Rather, the petition must be supported by either the medical records or by a medical opinion. § 13(a)(1). In this case, the record does not contain medical records or a medical opinion sufficient to demonstrate entitlement to compensation. For these reasons, and in accordance with § 12(d)(3)(A), **Petitioner’s claim for compensation is DENIED and this case is DISMISSED for insufficient proof. The Clerk shall enter judgment accordingly.**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.