

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 21-1349V

UNPUBLISHED

JOHN ALLAIN,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 28, 2022

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Tetanus Diphtheria  
acellular Pertussis (Tdap) Vaccine;  
Brachial Neuritis

*Laura Levenberg, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.*

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

On May 13, 2021, John Allain 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 he suffered brachial neuritis as a result of his August 13, 2019 tetanus diphtheria acellular pertussis (“Tdap”) vaccination. See Petition at ¶ 1. Petitioner further alleges that he suffered the residual effects of his injury for more than six months, and that there has been no prior award or settlement of a civil action on his behalf as a result of his injury. Petition at ¶¶ 7, 9-10. 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 Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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 June 23, 2022, 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 indicates that it is his

position that petitioner has satisfied the criteria set forth in the Vaccine Injury Table and Qualifications and Aids to Interpretation for brachial neuritis from his Tdap vaccine. Specifically, the pain in petitioner's right arm and shoulder was a presenting symptom and occurred between two and 28 days after vaccination; EMG/NCS studies showed that petitioner's injury was localized to the brachial plexus; motor, sensory, and reflex findings on physical examination and EMG/NCS studies were consistent in confirming that petitioner's dysfunction was attributable to the brachial plexus; and no other condition or abnormality was present that would explain petitioner's symptoms. 42 C.F.R. §§ 100.3(a), (c)(6).

*Id.* at 6. Respondent further agrees that the statutory severity requirement and "all legal prerequisites for compensation under the Act" have been satisfied." *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