

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UNPUBLISHED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: December 21, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
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.

DECISION AWARDING DAMAGES¹

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.*² (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. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 28, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his brachial neuritis. On December 20, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$125,000.00, representing compensation for his pain and suffering. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.*

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$125,000.00, representing compensation for his pain and suffering in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.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.

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JOHN ALLAIN,

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No. 21-1349V

Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On May 13, 2021, John Allain (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-1 to -34, alleging that he suffered brachial neuritis in his right upper extremity as a result of a diphtheria, tetanus, and acellular pertussis (“DTaP”) vaccine administered on August 13, 2019.¹ Petition at 1. On June 23, 2022, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act, and on June 28, 2022, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 18; ECF No. 19.

I. Items of Compensation

Respondent proffers that petitioner should be awarded \$125,000.00 in actual pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

¹ Respondent notes that petitioner’s medical records indicate that he received a tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccine, rather than a DTaP vaccine; however, this does not affect petitioner’s entitlement to, nor award for, compensation.

The above amounts represent all elements of compensation to which petitioner would be 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 be made through a lump sum payment as described below:

A lump sum payment of \$125,000.00, in the form of a check payable to petitioner.

Respectfully submitted,

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/s/ Alexa Roggenkamp
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