

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 22-207V

LARRY TOOTHMAN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 13, 2024

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for Petitioner.

Camille Jordan Webster, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On February 24, 2022, Larry Toothman (“Petitioner”) 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 from a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving an influenza (“flu”) vaccination on August 17, 2021. Pet., ECF No. 1. Petitioner further alleges that he suffered the residual effects of his injury for more than six months. *Id.* The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 22, 2024, Respondent filed a Rule 4(c) report stating that this case is not appropriate for compensation and requesting a fact ruling regarding the site of vaccine

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 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).

administration. ECF No. 25. In response, on April 19, 2024, I issued a fact ruling finding that Petitioner received the subject flu vaccination in his right arm, as alleged. ECF No. 26.

On June 12, 2024, Respondent filed his Amended Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 2, ECF No. 29. Specifically, Respondent indicated that "[P]etitioner has met the criteria for SIRVA as defined by the Vaccine Injury Table." *Id.* at 7. Respondent does not dispute that Petitioner "has satisfied all legal prerequisites for compensation under the Act." *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