

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1259V

DENNIS ECKERT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 18, 2023

Anne Carrion Toale, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioner.

Tyler King, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On September 8, 2022, Dennis Eckert filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). In that petition, Petitioner requested compensation “for injuries resulting from adverse effects of a vaccination or vaccinations covered by 42 U.S.C. § 300aa-10, *et seq.*” Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 26, 2023, 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 determined that Petitioner has satisfied the criteria set forth in

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).

the Vaccine Injury Table and the Qualifications and Aids to Interpretation. *Id.* at 11. In conceding entitlement to compensation, Respondent clarifies that he denies that the Plevnar-13 vaccine can cause GBS, and his recommendation that compensation be awarded is based solely upon Petitioner's Table flu/GBS claim. *Id.* at 1, n. 1.

A telephonic status conference was held on September 20, 2023, to discuss how to proceed in light of Respondent's position. The parties decided to continue settlement/damages discussions, and Petitioner would determine at a later time whether will amend the petition with a proffer to follow, or whether the parties will ultimately continue in litigative risk/settlement discussions with a stipulation to follow.

On December 11, 2023, Petitioner counsel emailed the OSM staff attorney managing this case stating that Petitioner agreed to resolve this case with Respondent's proffer and would file an amended petition forgoing the Plevnar claim. On December 12, 2023, Petitioner filed an amended petition stating "On October 30, 2019, Petitioner received a flu vaccination in his right deltoid. Ex. 1 at 6-7. This claim is brought for this vaccination." Amended Petition at 1.

In view of Respondent's position in the June 26, 2024 Respondent's Report, 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