

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 23-0257V

JOSEPH HERNANDEZ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 31, 2024

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Joseph Adam Lewis, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On February 22, 2023, Joseph Hernandez 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 a left shoulder injury related to vaccine administration (“SIRVA”) resulting from an influenza vaccine received on September 17, 2021. Petition at 1. Petitioner further alleges that the vaccine was received in the United States, his SIRVA symptoms persisted for more than six months, and neither Petitioner, nor any other party, has ever filed any action or received compensation in the form of an award or settlement for Petitioner’s vaccine-related injury. Petition at ¶¶ 1, 7-9. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 29, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On May 30, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$65,000.00. Proffer at

¹ Because this Decision 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 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 (2018).

2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* 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 \$65,000.00 (for past 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.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JOSEPH HERNANDEZ,)	
)	
Petitioner,)	No. 23-257V ECF
)	
v.)	Chief Special Master Corcoran
)	
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On February 22, 2023, Joseph Hernandez (“petitioner”) filed a Petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act”), as amended, alleging a left shoulder injury related to vaccine administration (“SIRVA”), resulting from petitioner’s receipt of an influenza (“flu”) vaccination on September 17, 2021. Petition at 1. On January 18, 2024, respondent filed his Vaccine Rule 4(c) Report, concluding that petitioner suffered from SIRVA as defined by the Vaccine Injury Table, within the Table timeframe. ECF No. 19. On January 29, 2024, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner is entitled to compensation for a SIRVA Table injury. ECF No. 21.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$65,000.00** solely for past pain and suffering. This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a).

Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following: A lump sum payment of **\$65,000.00** in the form of a check payable to petitioner.² Petitioner agrees.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI R. PATTON
Assistant Director
Torts Branch, Civil Division

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

s/ Joseph A. Lewis
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