

CORRECTED

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: December 18, 2024

* * * * *	*
VAUGHN COSTELLO,	*
	*
Petitioner,	*
	*
v.	*
	*
SECRETARY OF HEALTH	*
AND HUMAN SERVICES,	*
	*
Respondent.	*
	*
* * * * *	*

No. 23-1228V

Special Master Dorsey

Damages Award; Tetanus-Diphtheria-Acellular Pertussis (“Tdap”) Vaccine; Influenza (“Flu”) Vaccine; Brachial Neuritis.

Renee Ja Gentry, Law Offices of Renee J. Gentry, Washington, DC, for Petitioner.
Sarah Black Rifkin, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES BASED ON PROFFER¹

On August 3, 2023, Vaughn Costello (“Petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program (“Vaccine Act” or “the Program”), 42 U.S.C. § 300aa-10 et seq. (2018).² Petitioner filed an amended petition for compensation on March 13, 2024. Petitioner alleged that as a result of tetanus-diphtheria-acellular pertussis (“Tdap”) and influenza (“flu”) vaccines administered on November 11, 2021, he developed brachial neuritis in his right shoulder. Amended Petition at Preamble (ECF No. 21). On April 23, 2024, Respondent filed his amended Rule 4(c) report recommending that compensation be awarded “under the terms of the Vaccine Act with respect to the right-sided brachial neuritis that

¹ Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it 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, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2018). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C. § 300aa.

petitioner presumptively sustained from the Tdap vaccine.”³ Amended Respondent’s Report, filed Apr. 23, 2024, at 9 (ECF No. 27). Later that day, the undersigned issued a ruling finding Petitioner entitled to compensation. Ruling on Entitlement dated Apr. 23, 2024 (ECF No. 28).

On December 18, 2024, Respondent filed a Proffer on Award of Compensation (“Proffer”), attached hereto as Appendix A. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. Proffer at 2. Based on the record as a whole, the undersigned finds that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, the undersigned awards Petitioner:

(1) A lump sum payment of \$65,000.00 representing compensation for pain and suffering in the form of a check payable to Petitioner.

Proffer at 2. This amount represents all elements of compensation to which petitioner is entitled under § 15(a). Id.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** herewith.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ Respondent maintains “[b]rachial neuritis is not a presumptive Table injury for the flu vaccine. To the extent that petitioner claims injury from the flu vaccine administered on November 11, 2021, respondent maintains that petitioner has not established a causation-in-fact claim.” Proffer at 2 n.2.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.