

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 24-0829V

MICHAEL CLAYTON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 17, 2025

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for Petitioner.

Margaret Armstrong, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On May 29, 2024, Michael Clayton 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 shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, 42 C.F.R. § 100.3, or in the alternative, that his injuries were “caused in fact” by an influenza (“flu”) vaccination received on November 16, 2022. Petition at 1, 7. Petitioner further alleges that he suffered the residual effects of his injury for more than six months. Petition at 6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 17, 2025, 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 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).

1. Specifically, Respondent state that “petitioner developed septic arthritis of his right shoulder joint and osteomyelitis of his right upper extremity, which was more likely than not caused in fact by administration of the November 16, 2022 flu vaccine at the same location. No other causes for petitioner’s septic arthritis and osteomyelitis have been identified.” *Id.* at 7. Respondent further agrees that “petitioner has satisfied the statutory requirement that petitioner’s injury lasted for at least six months, or resulted in ‘inpatient hospitalization and surgical intervention’ as required by 42 U.S.C. § 300aa-11(c)(1)(D)(i),(iii). Therefore, based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Act.” *Id.* at 7-8.

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