

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-786V

Filed: August 14, 2015

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UNPUBLISHED

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Petitioner,

Special Master Dorsey

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Joint Stipulation on Damages;
Flu vaccine; Guillian-Barré
Syndrome.

Respondent.

* * * * *

Altom M. Maglio, Maglio Christopher & Toale, Sarasota, FL, for petitioner.

Michael P. Milmo, United States Department of Justice, Washington, DC, for respondent.

DECISION¹

On November 3, 2008, John Gerard (“petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program.² 42 U.S.C. §§ 300aa-1 to -34 (2006). Petitioner did not file a vaccination record, however, the undersigned determined on August 8, 2014 that, based on a preponderance of the evidence in the record, petitioner received an influenza (“flu”) vaccine on or about November 11, 2005. See Findings of Fact and Conclusions of Law, docket no. 97, filed Aug. 8, 2014. In his petition, petitioner alleged that as a result of receiving the flu vaccination he

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

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-1 to -34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

suffered from Guillain-Barré Syndrome (“GBS”). See Petition at ¶ 1, 4, docket no. 1, filed Nov. 3, 2008. Further, petitioner alleged that he experienced residual effects of his injury for more than six months. Id. at ¶ 4.

On August 13, 2015, the parties filed a stipulation in which they state that a decision should be entered awarding compensation. Respondent denies that petitioner received a flu vaccine in November 2005, and denies that the flu vaccine caused petitioner’s GBS, or any other injury, and further denies that petitioner’s current disabilities are the result of a vaccine-related injury. See Stipulation for Award at ¶ 6, docket no. 115, filed Aug. 13, 2015. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A.

The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulate that petitioner shall receive the following compensation:

A lump sum of \$175,000.00, in the form of a check payable to petitioner, [REDACTED]. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

Id. at ¶ 8.

The undersigned approves the requested amount for petitioner’s compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties’ stipulation.³

IT IS SO ORDERED.

s/ Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties’ joint filing of notice renouncing the right to seek review.