

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 14-079V

DAVID SUMMER, *successor in interest to*, *
DONNA SUMMER, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

Special Master Corcoran

Filed: February 8, 2017

Decision; Attorney's Fees and Costs;
Influenza ("flu") Vaccine; Central and
Autonomic Nervous System.

Andrew Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for Petitioner.

Michael Milmo, U.S. Dep't of Justice, Washington, DC, for Respondent.

ATTORNEY'S FEES AND COSTS DECISION¹

On January 28, 2014, Donna Summer filed a petition seeking compensation under the National Vaccine Injury Compensation Program ("Vaccine Program").² However, in May of 2014, Mrs. Summer died in a car accident, so David Summer (Mrs. Summer's husband) entered in the case as successor-in-interest to Mrs. Summer. Petitioner alleged that Mrs. Summer suffered a central and autonomic nervous system impairment as a result of her October 16, 2013, receipt of

¹ Because it contains a reasoned explanation for my actions in this case, this decision will be posted on the United States Court of Federal Claims website, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the published decision's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen 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). Otherwise, the whole decision will be available to the public. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) ("Vaccine Act" or "the Act"). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

the influenza (“flu”) vaccine. The parties filed a stipulation for damages on September 12, 2016 (ECF No. 62), which I adopted by decision, dated September 15, 2016. ECF No. 63.

Petitioner has now filed a motion requesting final attorney’s fees and costs, dated January 19, 2017. *See* ECF No. 68. Petitioner requests reimbursement of attorney’s fees and costs in the combined amount of \$40,698.88 (representing \$35,700.50 in attorney’s fees, plus \$4,998.38 in costs). *Id.* In addition, and in compliance with General Order No. 9, Petitioner represents that he incurred no litigation-related expenses in conjunction with this proceeding. *Id.* at 2. Respondent filed a response on February 6, 2017, indicating that she is satisfied the statutory requirements for an award of attorney’s fees and costs are met in this case, and asking that I exercise my discretion in determining a reasonable award. ECF No. 68.

The requested hourly rate for counsel is consistent with my prior decisions, and I find that the hours devoted to the matter were also reasonable. Accordingly, an award of **\$40,698.88** should be made in the form of a check payable jointly to Petitioner and Petitioner’s counsel, Andrew Donald Downing, Esq. Payment of this amount represents all attorney’s fees and costs available under 42 U.S.C. § 300aa-15(e). 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 Petitioner’s motion.³

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.