

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1061V

Filed: January 19, 2016

UNPUBLISHED

TENAYA BANKO,

Petitioner,

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

*
*
*
*
*
*
*
*
*

Damages Decision Based on Proffer;
Influenza (“Flu”) Vaccine; Shoulder
Injury Related to Vaccine
Administration (“SIRVA”); Special
Processing Unit (“SPU”).

Tara Cristin O’Mahoney, Law Offices of Chicago-Kent College of Law, Chicago, IL, for petitioner.

Julia Wernett McInerney, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On September 22, 2015, petitioner 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 alleged that she received a seasonal influenza (“flu”) vaccine in her left arm on October 4, 2012, and subsequently suffered a shoulder injury related to vaccine administration (“SIRVA”). Petition at 7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 2, 2015, the undersigned issued a ruling on entitlement finding petitioner entitled to compensation. On January 19, 2016, respondent filed a proffer on award of compensation [“Proffer”] stating that petitioner should be awarded \$45,000.00. Proffer at 1. In the Proffer, respondent represents that petitioner agrees with the proffered award.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, 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)). 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 National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

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 a lump sum payment of \$45,000.00, in the form of a check payable to petitioner, Tenaya Banko.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
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

| | | |
|---------------------|---|-----------------------------|
| TENAYA BANKO, |) | |
| |) | No. 15-1061 |
| Petitioner, |) | ECF |
| |) | Chief Special Master Dorsey |
| v. |) | |
| |) | |
| SECRETARY OF HEALTH |) | |
| AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$45,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$45,000.00 in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

LINDA S. RENZI
Senior Trial Counsel
Torts Branch, Civil Division

/s/ Julia W. McInerny
JULIA W. MCINERNY
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 353-3919

DATED: January 19, 2016