

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-42V

Filed: September 7, 2016

UNPUBLISHED

RONALD D. KLOPFENSTEIN,

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Petitioner,

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v.

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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Attorneys' Fees and Costs;
Reasonable Amount to Which
Respondent Does Not Object

Kelly Burdette, Burdette & Burkette, Seattle, WA, for petitioner.

Lisa Watts, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Roth, Special Master:

On January 8, 2016, Ronald D. Klopfenstein ("Mr. Klopfenstein" or "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 he suffered Guillain-Barré Syndrome after receiving an influenza vaccination on October 3, 2014. *See generally* Petition ("Pet."), ECF No. 1. On June 13, 2016, respondent filed a Rule 4(c) Report ("Resp. Rpt."), stating that petitioner had demonstrated insufficient proof of injury to warrant entitlement. Resp. Rpt. ECF No. 13. Petitioner filed a "Stipulation of Dismissal" on July 29, 2016. Stipulation, ECF

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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).

No. 14. Accordingly, on July 29, 2016, the undersigned issued a decision dismissing petitioner's claim based on the parties' stipulation. Decision, ECF No. 15.

Petitioner now seeks an award of attorney's fees and costs in the amount of \$9,976.83, pursuant to Section 15(e) of the Vaccine Act. Motion for Attorney's Fees ("Motion for Fees"), ECF No. 17, at 2. ECF No. 17. In accordance with General Order #9, petitioner has filed a signed statement indicating petitioner incurred no out-of-pocket expenses. Notice, ECF No. 16. Respondent filed a response to the petitioner's motion for fees on August 25, 2016. Response to Motion for Attorney's Fees ("Response"), ECF No. 18. Respondent made no specific objections to petitioner's fee application, and stated that the amount of fees and costs sought was "not an unreasonable amount to have been incurred." Response at 1. After careful consideration, the undersigned has determined to grant the request in full for the reasons set forth below.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Ms. Burdette has previously received her billed hourly rate of \$250; her co-counsel, Mr. Lee Burdette has previously received his billed hourly rate of \$350. *See Craft v. Sec'y HHS*, No. 15-892V, 2016 WL 3519164 (Fed. Cl. Spec. Mstr. May 26, 2016). Based on the reasonableness of petitioner's request and the lack of opposition from respondent, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$9,976.83³ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel, Kelly Burdette.

The clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

s/Mindy Michaels Roth
Mindy Michaels Roth
Special Master

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁴ 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.