

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-506V

Filed: November 7, 2016

Unpublished

TERRY BARTEE,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Ruling on Entitlement; Concession;
Influenza Vaccination;
Shoulder Injury Related to Vaccine
Administration ("SIRVA");
Special Processing Unit ("SPU")

Jeffrey Pop, Attorney at Law, Beverly Hills, CA, for petitioner.

Alexis Babcock, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Dorsey, Chief Special Master:

On April 25, 2016, Terry Bartee ("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" or "Program"). Petitioner alleges that he suffered injuries to his left shoulder after receiving the influenza ("flu") vaccine on December 11, 2014. Petition at 1. Petitioner further alleges that he received the vaccine in the United State, that he has suffered the residual effects of his injury for more than six months, and that neither he nor any other party has received compensation for his injury alleged as vaccine caused. *Id.* at ¶¶ 5, 16, 18-19. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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 (2012)). 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).

On November 7, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report at 1. Specifically, respondent "has determined that petitioner's left shoulder injury is consistent with SIRVA, and that it was caused in fact by the flu vaccine he received on December 11, 2014." *Id.* at 3. Respondent further indicates "did not identify any other causes for petitioner's SIRVA, and records show that he suffered the sequela of his injury for more than six months." *Id.* Thus, petitioner "has met the statutory requirements for entitlement to compensation." *Id.* (citations omitted).

In view of respondent's concession and the evidence before me, I find that petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master