

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-766V

Filed: October 27, 2017

UNPUBLISHED

MAX BAUM,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Ruling on Entitlement; Uncontested;  
Causation-In-Fact; Influenza (Flu)  
Vaccine; Guillain-Barre Syndrome  
(GBS)

*Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA, for petitioner.*

*Ilene Claire Albala, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

**Dorsey**, Chief Special Master:

On June 29, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that his November 12, 2015 influenza (“flu”) vaccination caused him to develop Guillain-Barre Syndrome (“GBS”). Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 26, 2017, respondent filed his Rule 4(c) report in which he states that he does not contest that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at 1. Specifically, respondent indicates that

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<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims’ website,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. 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.

<sup>2</sup> 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).

Medical personnel at the Division of Injury Compensation Programs, Department of Health and Human Services (“DICP”), have reviewed the petition and medical records filed in the case. It is respondent’s position that petitioner has satisfied the criteria set forth in the newly revised Vaccine Injury Table (“Table”) and the Qualifications and Aids to Interpretation (“QAI”).<sup>3</sup> Although the revised Table only governs petitions filed on or after the effective date of the final rule, the evidence shows that petitioner suffered GBS following the administration of a seasonal flu vaccine, and that the onset occurred within the time period specified in the Table. Recognizing that petitioner may re-file this petition and be afforded a presumption of causation under the revised Table (see 42 U.S.C. § 300aa-16(b)), respondent will not contest entitlement to compensation in this case.

*Id.* at 3-4.

**In view of respondent’s position and the evidence of record, the undersigned finds that petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> “The final rule amending the Table to add GBS as a Table injury for flu vaccine was published on January 19, 2017, and took effect on March 21, 2017. 82 Fed. Reg. 6294 (Jan. 19, 2017) (to be codified at 42 C.F.R. Pt. 100).” Respondent’s Rule 4 (c) Report at Footnote 1.