

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-0580V

Filed: December 22, 2017

UNPUBLISHED

CARLO SMITH,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

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

*Andrew Donald Downing, Van Cott & Talamante, PLLC, Phoenix, AZ, for petitioner.  
Traci R. Patton, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

**Dorsey**, Chief Special Master:

On May 1, 2017, 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 alleged that he suffered a shoulder injury which meets the definition of the Table injury of Shoulder Injury Related to Vaccine Administration (“SIRVA”) after receiving an influenza vaccination on September 11, 2016. Petition at 1, ¶ 15. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 22, 2017, a ruling on entitlement was issued, finding petitioner entitled to compensation for his SIRVA. In his Rule 4(c) Report filed on December 20, 2017, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$118,662.06, representing \$115,000.00 for pain and suffering, and \$3,662.06 for past out-of-pocket expenses. Rule 4(c) Report and Proffer at 1-2.

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 Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

<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).

In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* at 2. 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 \$118,662.06, consisting of \$115,000.00 for pain and suffering and \$3,662.06 for past unreimburseable expenses, in the form of a check payable to petitioner, Carlo Smith.** This amount represents compensation for all damages that would be available under § 15(a).

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

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> 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.