

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-749V

Filed: June 15, 2018

UNPUBLISHED

ANN E. KLEVA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

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

*Daniel Henry Pfeifer, Pfeifer, Morgan & Stesiak, South Bend, IN, for petitioner.
Lisa Ann Watts, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On June 6, 2018, 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 alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”), a Table Injury, due to an influenza (“flu”) vaccine administered on September 28, 2011. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 8, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On June 14, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$187,700.00, representing \$187,500.00 for pain and suffering and \$200.00 for past unreimbursable expenses. Proffer at 1. In the Proffer, respondent represented that petitioner agrees

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims'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

with the proffered award. *Id.* 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 \$187,700.00, representing \$187,500.00 for pain and suffering and \$200.00 for past unreimbursable expenses, in the form of a check payable to petitioner, Ann E. Kleva.** 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.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.

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OFFICE OF SPECIAL MASTERS**

ANN E. KLEVA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 17-749V
Chief Special Master Dorsey
ECF-SPU

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On June 6, 2017, Ann E. Kleva (“petitioner”) filed a petition for vaccine injury compensation alleging that she suffered a right shoulder injury related to vaccine administration (“SIRVA”), a Table injury, following receipt of an influenza (“flu”) vaccination administered on September 28, 2011. Respondent filed his Rule 4(c) Report conceding entitlement to compensation on March 7, 2018. The Chief Special Master issued a Ruling on Entitlement that same day.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$187,700.00 consisting of \$187,500.00 for her pain and suffering and \$200.00 for past unreimbursable expenses. This represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

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 damages.

II. Form of the Award

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$187,700.00 in the form of a check payable to petitioner.²

Petitioner agrees.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Assistant Director
Torts Branch, Civil Division

s/Lisa A. Watts

LISA A. WATTS
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel.: (202) 616-4099

DATED: June 14, 2018

² Petitioner is a competent adult. Proof of guardianship is not required in this case.