In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
No. 17-990V
Filed: December 11, 2018
UNPUBLISHED

BARBARA STOLIKER,
 	
                    Petitioner,
 	
v.
 	
SECRETARY OF HEALTH AND
HUMAN SERVICES,
 	
                    Respondent.
	Special Processing Unit (SPU);
	Ruling on Entitlement; Table Injury;
	Influenza (Flu) Vaccine; Shoulder
	Injury Related to Vaccine
	Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
petitioner.*
Alexis B. Babcock, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT[1]

Dorsey, Chief Special Master:

On July 21, 2017, 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") following receipt of her September 30, 2014 influenza ("flu") vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

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[1] The undersigned intends to post this ruling on the United States Court of Federal Claims' website. **This means the ruling will be available to anyone with access to the internet.** 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. Because this unpublished ruling contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in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).

[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).

Initially, respondent filed a Rule 4(c) report recommending against compensation. (ECF No. 47.) Subsequently, however, respondent moved for a fact ruling. (ECF No. 49.) The undersigned issued her findings of fact on November 9, 2018. (ECF No. 52.) Respondent filed an amended Rule 4(c) report on December 10, 2018. (ECF No. 54.)

In his amended Rule 4(c) report, respondent indicated that:

> Medical personnel at the Division of Injury Compensation Programs ("DICP"), Department of Health and Human Services, have reviewed the evidence filed in this case, as well as the Findings of Fact and Conclusions of Law issued by the Chief Special Master. Recognizing that the Chief Special Master's factual finding that petitioner received a flu vaccination in her right shoulder on September 30, 2014, is the law of the case, and further finding that onset of the symptoms took place within 48 hours, respondent advises that he will not defend the case on other grounds during further proceedings before the Office of Special Masters. While preserving his right to appeal the Chief Special Master's November 9, 2018 Ruling on Facts, respondent submits that petitioner has otherwise satisfied the criteria set forth in the Vaccine Injury Table and the Qualifications and Aids to Interpretation ("QAI") for Shoulder Injury Related to Vaccine Administration ("SIRVA").

(ECF No. 54, p. 2.)

Respondent further indicated that "based on the record as it now stands and subject to his right to appeal the Ruling of Facts, respondent does not dispute that petitioner has satisfied all legal prerequisites for compensation under the Act. 42 U.S.C. § 300aa-13." (*Id*. at 6.)

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

IT IS SO ORDERED.

<u>**s/Nora Beth Dorsey**</u>
Nora Beth Dorsey
Chief Special Master