In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 17-1203
(Not to be Published)

* *

EDWIN M. LAIRD   *
                                                 *
               Petitioner,   *   Filed: October 2, 2018
                                                 *
v.   *
                                                 *   Entitlement; Shoulder Injury
SECRETARY OF HEALTH   *   Related to Vaccine Administration
AND HUMAN SERVICES,   *   ("SIRVA"); Conceded.
                                                 *
               Respondent.   *
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* *

John Hartman Ferguson, Medical Injury Law Center, Seattle, WA, for Petitioner.

Robert Paul Coleman, III, U.S. Dep't of Justice, Washington, DC, for Respondent.

RULING FINDING ENTITLEMENT[1]

On September 6, 2017, Edwin Laird filed a petition seeking compensation under the National Vaccine Injury Compensation Program.[2] Petitioner alleged that he suffered from a Shoulder Injury Related to Vaccine Administration ("SIRVA") as a result of the incorrect administration of the Tetanus-Diptheria-acelluar Pertussis ("TDaP") vaccine[3] on January 16, 2015.

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[1] Although this Ruling has been formally designated "not to be published," it will nevertheless be posted on the Court of Federal Claims's website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Ruling will be available to anyone with access to the internet**. As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Ruling's inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the Ruling in its present form will be available. *Id.*

[2] The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. § 300aa-10 through 34 (2012)).

[3] The Petition identifies this as the "DTP" vaccine (Pet. at 1), which is supported in at least one instance by Mr. Laird's medical records. Ex. 2 at 300, ECF No. 1-4. However, records elsewhere indicate that this was in fact the TDaP vaccine. *Id.* at 5. The Court will cede to the parties and accept Respondent's position that this was the TDaP vaccine.

Pet. at 1, ECF No. 1. He further alleged that he experienced lumbar pain as a sequela of that injury. *Id.*

In his Rule 4(c) Report, Respondent acknowledged that Petitioner's left shoulder bursitis claim is compensable under the Vaccine Act. Resp't's Rule 4(c) Report at 3, ECF No. 21. Respondent specifically stated that medical personnel at the Division of Injury Compensation Programs, Department of Health and Human Services, have reviewed the petition and accompanying documents filed in this case, as well as the relevant medical records, and Respondent has concluded that Petitioner satisfied all relevant Vaccine Act criteria for his bursitis claim. *Id.* However, Respondent does not concede that Mr. Laird's lumbar injury can be causally linked to the January 16, 2015 vaccination. *Id.* at 3–4.

Pursuant to a telephonic status conference held with the parties on October 1, 2018, Petitioner agrees to accept Respondent's limited concession and to recover damages for his bursitis alone.

In view of Respondent's concession, and based on my own review of the record (*see* § 300aa-13(a)(1); 42 C.F.R. § 100.3 (a)(I)), I find that Petitioner is entitled to compensation for an injury that was caused-in-fact by a covered vaccine. 42 C.F.R. §§ 100.3(a)(XIV), 100.3(b)(2). A separate damages order will be issued shortly.

Any questions may be directed to my law clerk, Madeline Lamo, at (202) 357-6391.

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master