

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0456V

UNPUBLISHED

DARRELL BARRETT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 16, 2020

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Jessica Olins, Maglio Christopher & Toale, PA, Washington, DC, for petitioner.

Zoe Wade, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

On March 28, 2019, Darrell Barrett 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 he suffered right shoulder injuries as a result of an influenza vaccine administered on December 28, 2017. Petition at 1-4. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 30, 2020, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case for shoulder injury related to vaccine administration. Respondent’s Rule 4(c) Report at 1. Respondent indicates that he agrees that “petitioner’s medical course is consistent with a shoulder injury related to vaccine administration (“SIRVA”) as defined by the Vaccine Injury Table. Specifically, petitioner

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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). **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, I agree that the identified material fits within this definition, I 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).

had no history of pain, inflammation, or dysfunction of his right shoulder, pain occurred within 48 hours after receipt of an intramuscular vaccination, pain was limited to the shoulder where the vaccine was administered, and no other condition or abnormality, such as brachial neuritis, has been identified to explain petitioner's shoulder pain." *Id.* at 6-7. Respondent further agrees that "petitioner suffered the residual effects of his condition for more than six months. Therefore, based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Act." *Id.* at 7.

In the Rule 4(c) Report, Respondent adds that he "does not believe petitioner is entitled to compensation as related to his biceps tendon injury and its sequela, which occurred approximately nine months after the flu vaccination, requiring surgical intervention, and defends the same." Rule 4(c) Report at 1-2.

On July 8, 2020, a telephonic status conference was held to discuss how the parties wished to proceed in light of Respondent's Rule 4(c) Report. Scheduling Order, issued July 8, 2020 (ECF No. 26). Respondent expressed his view that a full entitlement decision was not appropriate at that time, and the parties agreed that Petitioner would file a status report concerning how the parties wished to proceed by August 7, 2020. *Id.*

The parties then engaged in discussions for several months. On December 16, 2020, Respondent filed a proffer indicating that Petitioner should be awarded damages, and that Petitioner agreed (ECF No. 32).

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master