

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-654V

UNPUBLISHED

DONA KAPLAN, as Executrix of the
Estate of Harold Kaplan,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: December 10, 2020

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

Mark Theodore Sadaka, Mark T. Sadaka, LLC, Englewood, NJ, for petitioner.

Ryan Daniel Pyles, U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

On May 2, 2019, Harold Kaplan filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”).³ Mr. Kaplan alleged that as a result of his October 2, 2017 influenza (“flu”) vaccination he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”). See Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in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

³ Dona Kaplan was substituted as Petitioner in this case on October 26, 2020, following the death of Mr. Kaplan.

On December 8, 2020, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent's Rule 4(c) Report Recommending Compensation and Proffer of Compensation at 1, 3-4. Specifically, Respondent indicates that

[m]edical personnel at the Division of Injury Compensation Programs, Department of Health and Human Services (DICEP), have reviewed the facts of this case and concluded that petitioner's claim meets the Table criteria for SIRVA. Specifically, Mr. Kaplan had no history of pain, inflammation, or dysfunction of the affected shoulder prior to intramuscular vaccine administration that would explain the alleged signs, symptoms, examination findings, and/or diagnostic studies occurring after vaccine injection; he more likely than not suffered the onset of pain within forty-eight hours of vaccine administration; his pain and reduced range of motion were limited to the shoulder in which the intramuscular vaccine was administered; and there is no other condition or abnormality present that would explain Mr. Kaplan's symptoms.

Id. at 3-4 (citing 42 C.F.R. § 100.3(a), (c)(10)). Respondent further agrees that "[w]ith respect to other statutory and jurisdictional issues, the records show that the case was timely filed, that the vaccine was received in the United States, and that petitioner satisfies the statutory severity requirement by Mr. Kaplan suffering the residual effects or complications of his injury for more than six months after vaccine administration." *Id.* at 4 (citing 42 U.S.C. § 11(c)(1)(D)(i)).

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